

United States Senate

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

**How Some Legal, Medical, and Judicial
Professionals Abused Social Security Disability
Programs for the Country's Most Vulnerable:
A Case Study of the Conn Law Firm**

STAFF REPORT

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

UNITED STATES SENATE



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How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country’s Most Vulnerable: A Case Study of the Conn Law Firm

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HOW SOME LEGAL, MEDICAL, AND JUDICIAL PROFESSIONALS ABUSED SOCIAL SECURITY DISABILITY PROGRAMS FOR THE COUNTRY'S MOST VULNERABLE: A CASE STUDY OF THE CONN LAW FIRM

I. EXECUTIVE SUMMARY

In 1993, Eric Christopher Conn opened a legal practice in a small trailer next door to his boyhood home in rural Eastern Kentucky. Located in Stanville, Kentucky, along Highway 23, his office was two hours from the closest major city and over an hour from the Social Security's main regional office in Huntington, West Virginia. Despite operating in a sparsely populated town of 500, Mr. Conn would go on to build one of the largest and most lucrative disability practices in the nation. A two-year investigation of his actions representing claimants applying for Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") benefits uncovered a raft of improper practices by the Conn law firm to obtain disability benefits, inappropriate collusion between Mr. Conn and a Social Security Administrative Law Judge, and inept agency oversight which enabled the misconduct to continue for years.

From the beginning, Mr. Conn focused his efforts primarily – and later exclusively – on helping people onto the Social Security Administration's ("SSA") disability program rolls. His knack for navigating the program's arcane rules, along with an aggressive approach to marketing that included television, radio, and online advertisements, drew thousands of clients to his office looking to obtain benefits. At the height of his success in 2010, Mr. Conn employed nearly 40 people and obtained more than \$3.9 million in legal fees from SSA, making him the agency's third highest paid disability lawyer that year. Today, the Eric C. Conn Law Complex is significantly larger than the single trailer used twenty years earlier. Several interconnected trailers now surround a main office building. A prominent feature of the complex is a large replica of the Abraham Lincoln statue in the Lincoln Memorial in Washington, D.C., which has become a local tourist attraction used to recruit clients. Mr. Conn, referred to in some of his advertisements as "Mr. Social Security," used his law practice to exploit key vulnerabilities in a critical federal safety net program and became wealthy in the process.

Concern about Mr. Conn's methods first surfaced publicly in May 2011, when *The Wall Street Journal* published an article about his relationship with David B. Daugherty, an Administrative Law Judge ("ALJ") in the SSA's regional Huntington, West Virginia Office of Disability Adjudication and Review. In the years leading up to 2011, Judge Daugherty had become one of the agency's highest producing judges, issuing more decisions each year than nearly all 1,500 of SSA's other judges. In some years, 40 percent of his caseload consisted of cases represented by Mr. Conn – nearly all of which he approved for benefits. Public airing of the details surrounding the unusual arrangement between Judge Daugherty and Mr. Conn prompted top SSA officials to request an investigation by the SSA Inspector General. Judge Daugherty was also placed on administrative leave, after which he quickly resigned.

Unease with the relationship between Judge Daugherty and Mr. Conn had begun years earlier, however, among those who worked with both men on a day-to-day basis. Inside SSA's Huntington Office of Disability Adjudication and Review ("Huntington ODAR"), some noticed

how Judge Daugherty gave Mr. Conn's cases special treatment. Whereas most judges held 15 to 20 randomly assigned hearings in a week, each lasting an hour or more, Judge Daugherty scheduled as many as 20 hearings for Mr. Conn's clients in a single day, moving them through in 15 minute increments. To ensure most of Mr. Conn's cases ended up before him, Judge Daugherty ignored the office's rotational assignment policy for new cases and personally assigned Mr. Conn's cases to himself. Where Conn cases had already been assigned to other judges, the judge sometimes quietly reassigned them to his own docket without mentioning the reassignments to others. Eventually, Judge Daugherty stopped holding hearings for Mr. Conn's cases altogether, instead deciding them "on the record" in large numbers – and always favorably. These troubling practices were brought to the attention of Huntington's Chief Administrative Law Judge, Charles Paul Andrus, but he failed to stop them.

Inside Mr. Conn's office, some of his employees grew increasingly uncomfortable with his relationship to Judge Daugherty – also known to many as "DB" – who assumed a central role in the law firm's operations and revenues. By 2011, Mr. Conn and Judge Daugherty had collaborated on a scheme that enabled the judge to approve, in assembly-line fashion, hundreds of clients for disability benefits using manufactured medical evidence.

Since at least 2006, Judge Daugherty had a practice of coordinating with Mr. Conn to create what was referred to as a "DB List," which was a list of Mr. Conn's clients that the judge planned to approve for benefits that month. After deciding which claimants would be on the month's DB List, Judge Daugherty personally telephoned Mr. Conn's office, provided the claimant list to one of Mr. Conn's employees, and indicated whether the claimants needed to provide additional medical evidence of a "mental" or "physical" ailment. Within days, Mr. Conn scheduled the listed claimants to see one of the several doctors he paid to provide medical assessments. These doctors almost invariably concluded that the claimant was disabled. In most cases, the doctors simply signed and dated a medical form which had been filled out ahead of time by Mr. Conn's office.

After receiving the medical forms he had requested, Judge Daugherty overturned earlier agency denials and issued favorable decisions awarding Mr. Conn's clients disability benefits. The evidence indicates that the entire process, from the time a Conn claimant requested a hearing before an ALJ on a denied claim to the issuing of a favorable decision by Judge Daugherty, took as little as 30 days. During the same period, waiting times for claimants nationally, as well as others with cases before the Huntington ODAR, averaged well over one year. According to Mr. Conn's former employees, word about the special treatment of his cases spread far enough that prospective clients would come to his office asking how they could get their cases heard by Judge Daugherty.

After publication of the *Wall Street Journal* article in May 2011, SSA instituted a number of reforms to correct the situation in Huntington, including reinstituting the assignment of cases to all ALJ's on a strict rotational basis.

Mr. Conn, Judge Daugherty and Chief Judge Andrus also took steps in reaction to the article. According to the testimony of former employees, and corroborated by documentary evidence, Mr. Conn's office purchased several disposable prepaid cellular phones for the purpose of

allowing Mr. Conn and Judge Daugherty to talk. Mr. Conn systematically destroyed several dozen of the Conn Law Office's computers, and hired a local shredding company to clear out a large warehouse full of documents. Mr. Conn's use of a shredding company was the first time he had shredded such a large amount of firm documents at one time, according to former employees and documents reviewed by the Committee.

Additional evidence indicates that Mr. Conn and Judge Andrus devised a plan to discredit an SSA employee suspected of blowing the whistle on the Huntington office problems, Sarah Carver. According to former Conn and SSA employees as well as a recorded SSA IG interview in which Judge Andrus admitted his part, he and Mr. Conn worked together to have video surveillance conducted of Ms. Carver on days when she worked from home in an attempt to catch her violating the office's telework policies. After several unsuccessful attempts, according to the employees, Mr. Conn, together with Judge Andrus, fabricated evidence and sent it to her superiors.

In 2011, SSA placed Judge Daugherty on administrative leave, and he later retired. The same year, SSA removed Judge Andrus from his position as Chief ALJ, but allowed him to remain in the Huntington office. In September 2013, SSA placed him on administrative leave pending a removal action. Mr. Conn has continued to represent claimants seeking disability benefits and has even opened a new office in California.

While the events that unfolded at SSA's Huntington ODAR paint an unappealing picture of corruption, fraud, and favoritism in that office, they also call attention to the need for specific steps to be taken by the Social Security disability programs to prevent this type of wrongdoing from recurring.

a. Investigation Overview

In May 2013, the Social Security Trustees estimated the Social Security Disability Trust Fund, which supports the SSDI program would be exhausted by 2016 and only able to pay 80 percent of scheduled SSDI benefits.¹ As such, the Trustees "recommend[ed] that lawmakers address the projected trust fund shortfalls in a timely way in order to phase in necessary changes and give workers and beneficiaries time to adjust to them."²

This report is the second in a series examining problems within the Social Security SSDI and SSI disability programs and recommending workable solutions for fixing and saving them. In September 2012, the Minority Staff of the U.S. Senate Permanent Subcommittee on Investigations issued the first report finding more than a quarter, or 25 percent, of 300 Social Security Administration ("SSA") disability decisions had "failed to properly address insufficient, contradictory, or incomplete evidence."³ Problems with the agency's decision process were

¹ The 2013 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, <http://www.ssa.gov/oact/tr/2013/tr2013.pdf>.

² *Id.*

³ Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs>.

particularly acute at the Administrative Law Judge (“ALJ”) level of appeal. The Report’s findings corroborated a 2011 internal quality review conducted by SSA that found on average nationwide, disability decisions made by agency ALJs had errors or were insufficient 22 percent of the time.⁴ The Report also made a number of recommendations to improve the agency’s decision-making process.⁵

In the course of reviewing a broad spectrum of disability decisions for the first report, information emerged that a few ALJs issued and approved cases at levels far higher than their peers. One ALJ stood out. Judge Daugherty in the Huntington office awarded disability benefits in all but four of the 1,375 claims he decided in 2010.⁶ The year before he approved benefits in 1,410 cases, denying benefits in only five.⁷ While other ALJs issued an average of 500-700 decisions and approved 60 percent of them for benefits on average,⁸ Judge Daugherty issued nearly three times as many and approved almost all of them.

The Committee initiated an investigation to evaluate how Judge Daugherty was able to process so many cases and why, contrary to other ALJs, he awarded disability benefits in almost every case before him. During the course of its work, the Committee also investigated the allegations that Judge Daugherty had engaged in an improper partnership with Mr. Conn. In conducting its two-year investigation, the Committee obtained and reviewed thousands of pages of documents from the Social Security Administration, the Conn law firm, and other entities. It also interviewed current and former Social Security Administration employees and ALJs as well as former employees of the Conn Law Firm. Through his attorney, the Committee requested an interview of Mr. Conn, but he declined to cooperate.

b. Findings

The Report makes the following findings of fact.

- **Agency Backlog Plan Created Pressure for ALJs to Complete Cases.** In 2007, due to long wait times at the ALJ level of appeal, the Social Security Administration instituted an ALJ hearing backlog reduction plan. The plan focused on moving high volumes of cases through the ALJ level quickly. Numerous ALJs and other SSA employees told the Committee that this plan created significant pressure to move cases as fast as possible.
- **Daugherty Awarded More Than \$2.5 Billion in Benefits in the Last Years of His Career.** Judge Daugherty moved an unusually large number of disability cases through the agency and awarded an unusually high percentage of disability benefits. Over a nearly seven year period, from 2005 to his retirement in mid-2011, Judge Daugherty awarded disability

⁴ *Id.*

⁵ *Id.* at 5-6.

⁶ Information provided by the Social Security Administration.

⁷ *Id.*

⁸ See generally, Social Security Administration, ALJ Disposition Data, http://www.socialsecurity.gov/appeals/DataSets/archive/03_FY2010/03_September_ALJ_Disp_Data_FY2010.pdf

benefits to 8,413 individuals, which translates into about 1,200 cases per year and an estimated total award of federal lifetime benefits exceeding \$2.5 billion.⁹

- **Judge Daugherty and Mr. Conn Engaged in Inappropriate Collusive Efforts to Approve Benefits.** Judge Daugherty worked with Mr. Conn in inappropriate ways to approve a high volume of cases submitted by the Conn Law Firm.
- **Judge Provided “DB Lists” to Conn Law Firm.** From at least June 2006 to July 2010, Judge Daugherty telephoned the Conn law firm each month and identified a list of Mr. Conn’s disability claimants to whom the judge planned to award benefits. Judge Daugherty also indicated, for each listed claimant, whether he needed a “physical” or “mental” opinion from a medical professional indicating the claimant was disabled. Over the four year period reviewed, from 2006 to 2010, the monthly list identified between 14 and 52 disability claimants each time for at least 1,823 claimants. Conn Law Firm personnel referred to the monthly list as the “DB List” for David B. Daugherty.
- **Daugherty Assigned Himself Mr. Conn’s Cases.** Judge Daugherty assigned cases submitted by the Conn law firm to himself to decide, at times awarding benefits in cases that had been officially assigned to other ALJs in the Huntington ODAR.
- **Daugherty Relied on Conn’s Doctors to Generate Medical Evidence.** After receiving the DB List, Mr. Conn’s office scheduled appointments for the identified claimants with certain doctors favored by the law firm. The Conn law firm provided several of those doctors with physical or mental residual functional capacity (“RFC”) forms in which the medical information was already filled out, and the doctors signed the forms without making any changes. Frequently, these pre-filled forms contained information that conflicted with other information in the claimant’s case file.
- **Identical Medical Evidence Used for Multiple Claimants.** A review of the RFC forms found that the Conn law firm supplied certain doctors with 15 pre-filled versions of the physical RFC form and five pre-filled versions of the mental RFC form for hundreds of claimants. In almost all cases, only the names and Social Security numbers on the forms differed. Of the forms reviewed, 97 described the claimants as having the exact same limitations and contained no unique medical or employment information specific to the claimant. Because each individual has different abilities and ailments, and the forms require a complex set of data, finding two RFCs exactly alike should have statistically been an extremely rare occurrence.
- **Doctors Processed a Large Number of Patients in a Short Period of Time.** Some of the doctors examined the claimants in a “medical suite” in the Conn law firm, spending as little as 15 minutes per claimant and seeing up to 35 claimants in a day.

⁹ This estimate based upon the Social Security Office of Inspector General’s determination that each award of disability benefits costs \$300,000 in federal lifetime benefits. See Social Security Administration, Office of Inspector General, “Disability Fraud Probe Leads to Arrests in Puerto Rico,” <http://oig.ssa.gov/audits-and-investigations/investigations/disability-fraud-probe-leads-arrests-puerto-rico>.

- **Key Doctors Had Suspect Credentials.** Of the doctors used by the Conn law firm to produce medical opinions for disability claimants, two had their medical license suspended or revoked in another state. Under SSA rules, a doctor with a suspended or revoked license could not be used by the Social Security Administration to review a disability case, but could still examine claimants at the request of a claimant or outside attorney.
- **Judge Daugherty Wrote Questionable Decisions Relying on Mr. Conn's Doctors.** A review of 110 case files for disability claimants listed on the DB Lists found the vast majority to contain highly questionable decisions. In all 110 cases, Judge Daugherty's decisions justified reversing the agency's prior denial of disability benefits by relying solely on the medical forms provided by the doctors procured by the Conn law firm. All but two of the 110 cases used the agency's Medical-Vocational grid guidelines to award benefits.
- **Mr. Conn Obtained Millions in Attorney Fees Paid by SSA.** From cases on the DB Lists alone, over the four year period from 2006 to 2010, the Social Security Administration paid Mr. Conn over \$4.5 million in attorney fees.¹⁰ Social Security records show that, altogether in 2010, Mr. Conn was the third highest paid disability law firm in the country due to its receipt of over \$3.9 million in attorney fees from the Social Security Administration. In 2009, Mr. Conn received a total of \$3.5 million in attorney fees from the agency.
- **Mr. Conn Paid Doctors Substantial Fees for Evaluations.** The doctors used by Mr. Conn to evaluate his claimants were also paid substantial fees. A review of records found that, over the past six years, Mr. Conn paid five doctors almost \$2 million to provide disability opinions for his claimants. Mr. Conn contracted with his claimants to repay the fees given to the doctors to perform their medical evaluations.
- **Daugherty Bank Records Show \$96,000 in Unexplained Cash Deposits.** From 2003 to 2011, Judge Daugherty's bank records contain regularly occurring cash deposits totaling \$69,800, the source of which is unexplained in the judge's financial disclosure forms. From 2007 to 2011, his daughter's bank records list similar cash deposits totaling another \$26,200. When asked about the \$96,000 in cash deposits, Judge Daugherty refused to explain their origin or the source of the funds.
- **Huntington ODAR Became One of the Top Producing Offices.** During Judge Daugherty's tenure, Huntington ODAR became one of the fastest offices in the country in deciding disability cases. In 2010, it had the second shortest average processing time at just 263 days. The office ranked 12th out of 149 hearing offices in ALJ Dispositions per day per ALJ with each Huntington ODAR ALJ recorded as processing 2.93 cases per day.
- **Judge Daugherty Violated Agency Attendance Policy.** Judge Daugherty was on several occasions found by SSA officials to have violated the time and attendance policy in place for ALJs. On a regular basis, over a period of many years, he would arrive at work and sign in,

¹⁰ Under SSA rules, attorney and claimant representatives may be awarded fees by the agency using funds taken from back-pay benefits awarded to a claimant. An attorney or representative can currently obtain as much as 25 percent of the back-pay awarded to a claimant, with a maximum of \$6,000 per claimant.

leave for the entire workday and then return at the end of the day only to sign out. SSA never disciplined him for these absences.

- **SSA Whistleblower Targeted by Huntington Chief Judge Andrus and Eric Conn.** Following the public disclosure of Mr. Conn's relationship with Judge Daugherty, Huntington Chief ALJ Andrus worked with Mr. Conn to discredit and retaliate against an SSA employee suspected of leaking the information.
- **Judge Daugherty and Mr. Conn Communicated Using Disposable Phones.** Following the initiation of an investigation by the SSA Office of Inspector General ("OIG") and a news article on Judge Daugherty approving a large number of Mr. Conn's claimants, Mr. Conn purchased disposable prepaid cellular phones to communicate with Judge Daugherty.
- **Mr. Conn Destroyed Documents during an Investigation.** After talking with SSA OIG investigators, Mr. Conn contracted with a local shredding company to destroy over 26,000 pounds of documents, the equivalent of 2.6 million sheets of paper. Former Conn law firm personnel asserted that he destroyed all hard copies of the DB Lists as well as computer hard drives in his office.
- **Huntington ODAR may have Destroyed Key Documents.** Also subsequent to initiation of the SSA OIG investigation, the Huntington ODAR purchased four personal paper shredders for management and Chief ALJ Andrus, even though it already had a contract in place with a local company to routinely shred documents containing protected information. The SSA Inspector General's office interviewed the individuals in possession of the shredders and concluded "the office was not inappropriately destroying documents." However, one of those same individuals was later determined to have misled the OIG on matters related to the broader investigation of the Huntington office, and the agency appears to have later been unable to recover numerous documents and emails requested by the Committee.

c. Recommendations

The Report makes the following recommendations:

- **ALJ Consideration of Prior Agency Decision.** Judge Daugherty ignored information provided in prior decisions denying benefits and overturned those decisions by relying on information provided by Mr. Conn and his network of doctors that the claimant was disabled. The agency should ensure initial decisions made by the Department of Disability Services ("DDS") to deny benefits are well documented, with specific evidence on why the claimant did not meet the agency's definition of disability. The agency should consider allowing the ALJ to contact the DDS examiner who made the prior decision in the presence of the claimant's representative to ask about the reasons for the prior denial. The ALJ would remain responsible for providing a *de novo* review of the claim.
- **Strengthen ALJ Quality Review Process.** Judge Daugherty's approved decisions were not subject to further review or the scrutiny of the appellate process, since his awards of benefits were not appealed by the claimant. It is important the agency strengthen and expand the

review of ALJ award decisions by the Quality Division of the Office of Appellate Operations, and that Congress provide adequate funding for that effort. The agency should conduct more reviews during the year and improve ways of measuring the quality of disability decisions. Such information should be made available to Congress.

- **Reform the Medical-Vocational Guidelines.** Almost all of Judge Daugherty's cases reviewed by the Committee were decided based on the outdated medical-vocational guidelines, which have not been changed since 1980. Those guidelines should be reviewed to determine the reforms needed to update the guidelines to reflect current life expectancy and related ability. Additional studies should be conducted to evaluate whether the current guidelines utilize the proper factors and if they appropriately reflect a person's ability to work.
- **Prohibit Claimant Use of Doctors with Revoked or Suspended Licenses.** In some cases, the Conn law firm provided medical opinions from a doctor whose licenses had been suspended or revoked in another state. The agency should prohibit claimants from submitting opinions by doctors whose services, under its existing rules, the agency itself could not accept.
- **Strengthen ALJ Analysis of Medical Opinions.** Almost all of Judge Daugherty's decisions were based on a medical opinion provided by an attorney-procured medical professional. Many times those opinions were in direct conflict with other evidence in the claimants' files. SSA should provide specific training with regard to how ALJs should use these types of opinions.
- **Focused Training for ALJs.** The Office of Appellate Operations, Quality Division, should provide training to all ALJs regarding adequate articulation in opinions of legal determinations. This training should emphasize the proper way to analyze and address these issues as required by law, regulation and agency guidance, including how to address obesity and drug and alcohol abuse.
- **OIG Review of Top Attorney Fee Awards.** The SSA Inspector General should conduct an annual review of the practices of the law firms earning the most attorney fees from processing disability cases to detect any abusive conduct. The review could include examining a sample of RFC forms from the firm's claimants to detect repetitive language, reviewing the licensing history of the doctors used by the law firm to provide medical opinions, and seeing if a disproportionate number of the claimants represented by the firm had their cases decided by a particular judge.

II. INTRODUCTION

The Social Security Disability Insurance and Supplemental Security Income programs were created to provide a level of financial security to Americans who become too disabled to work. The programs are the largest federal programs providing financial assistance to individuals that meet the program's definition of disability.¹¹ In recent years, however, the programs have come under increased financial pressure as budgets have tightened and beneficiary rolls have swelled. Fiscal Year 2012 saw the programs grow to support the largest number of beneficiaries in their history, raising concerns that resources may not be sufficient over the long run. At the end of August 2013, more than 14 million individuals were receiving SSDI, SSI, or both.¹²

In addition to an aging workforce and economic downturn, the growth of the disability rolls can be traced, in part, to a decision made in 2007 to focus intensely on eliminating what was at that time a growing backlog of cases.¹³ By 2006, the Social Security Administration ("SSA") was regularly receiving over 2.1 million applications for benefits per year, many of which were taking years to resolve.¹⁴ The focus, after 2007, on quickly reducing the SSA backlog increased the likelihood of poorly reviewed claims.¹⁵

A brief review of the application process is helpful in understanding why the adjudication of these claims takes so long and how the backlog developed.¹⁶ Individuals who apply for disability benefits are afforded several levels of review, each of which is *de novo*, meaning the claimed is reviewed anew each time with no deference given to the prior denial at the next level of review. The result is the applicant is given multiple opportunities to prove they are eligible for the program. As such, if someone is denied at the initial level and, in most states, again at the first level of appeal called "reconsideration," he or she may request a hearing before one of the

¹¹ See Social Security Administration, Benefits for People with Disabilities, <http://www.ssa.gov/disability>.

¹² See Social Security Administration, Research, Statistics, and Policy Analysis, Monthly Statistical Snapshot, April 2013, Table 1, Number of People Receiving Social Security, Supplemental Security Income or both, April 2013, http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot. For a more detailed explanation of the financial challenges facing the Social Security Disability Insurance program, see the Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs>.

¹³ See Social Security Administration, Press Releases, Social Security Administration Attacks Disability Backlog, October 9, 2007, <http://www.ssa.gov/pressoffice/pr/disability-backlog-pr.htm>.

¹⁴ The number of applications peaked in 2009 at over 2.9 million and fell over the past several years. See Social Security Administration, Selected Data From Social Security's Disability Program, <http://www.ssa.gov/oact/STATS/dibStat.html>. See also Social Security Administration, Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, September 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

¹⁵ Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs>.

¹⁶ For a detailed explanation of the application process for benefits under the Social Security Disability Insurance program, see the Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs>.

agency's 1,500 administrative law judges ("ALJs") in SSA's Office of Disability Adjudication and Review.¹⁷

Administrative Law Judges give each case an independent *de novo* review. This helps ensure a claimant's appeal is looked at on the merits, and that agency mistakes might be corrected. Unlike prior levels of review, however, ALJs are supposed to engage in a detailed process that involves collecting new evidence, holding live, on-the-record hearings and drafting detailed decisions. While initial benefit determinations can be made in a matter of months, decisions from ALJs can take years. From the time a claimant is denied at the initial level, it can take an additional year or two before their claim is heard by an ALJ at a hearing, with still more time before the ALJ issues a decision.¹⁸ At the ALJ level of appeal, the likelihood of a claimant being approved for benefits increases, since the majority (on average 62 percent) of ALJ decisions are historically allowances.¹⁹

In 2006, SSA officials noted the number of requests for ALJ hearings had increased at an alarming rate over the past decade. From 1997 to 2001, the agency received 472,000 requests for ALJ hearings per year, which rose to 564,000 per year from 2002 to 2006 – an increase of nearly twenty percent.²⁰ Moreover, the number of days it took to process cases at the ALJ level reached its highest level ever by 2005, rising by nearly 141 days over a five year period.²¹ Processing times would later rise another 99 days by 2008, when it took 514 days between an appeal and a hearing.²²

¹⁷ Social Security Administration, Hearings and Appeals, Hearing Office Locator Office of Disability Adjudication and Review, http://www.ssa.gov/appeals/ho_locator.html.

¹⁸ The average processing time for a case at the ALJ level of appeal has fallen from 476 days in October 2008 to 359 days 359 days in March 2011. See Social Security Administration, Office of Inspector General, The Office of Disability Adjudication and Review's Hearings Backlog and Processing Times, Report A-12-11-21192, June 2011, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-21192.pdf>.

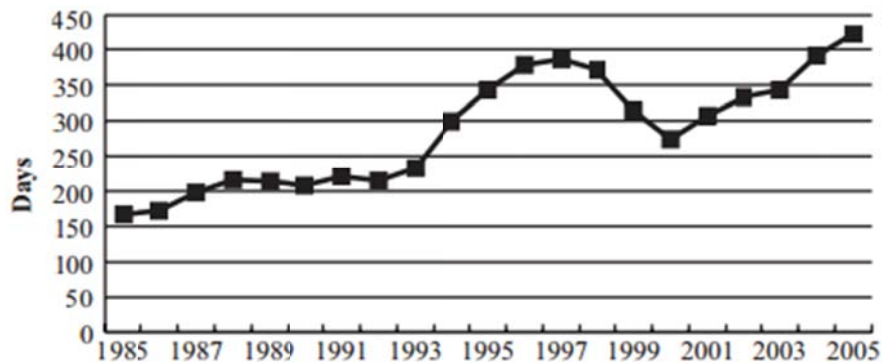
¹⁹ See Social Security Administration, Office of Inspector General, The Social Security Administration's Review of Administrative Law Judges' Decisions, Report A-07-12-21234, March 2012, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-12-21234.pdf>.

²⁰ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

²¹ Report of the Social Security Advisory Board, "Improving the Social Security Administration's Hearing Process, September 2006, <http://www.ssab.gov/documents/HearingProcess.pdf>.

²² Social Security Administration, *National Hearings Average Processing Time (FY 2008 – FY 2013)*, http://www.socialsecurity.gov/appeals/charts/National_Hearing_APT_FY2008-FY2013_3rd_Qtr.pdf (last visited Sep. 27, 2013).

Chart 4 Average Hearing Processing Time, 1985 - 2005



By 2007, however, as higher volumes of hearings resulted in longer waiting times for claimants, pressure grew for the agency to eliminate its backlog. During his confirmation hearing in January 2007 to become SSA commissioner, Michael Astrue was told by Senate Finance Committee members the backlog was “irresponsible” and an “outrage.”²³ Mr. Astrue said addressing it was his top concern, and the options were either a huge increase in SSA staff or “some radical change in the system.”²⁴ He committed to return later in 2007 to discuss his recommendations for bringing the backlog down.²⁵

Once the Senate confirmed Mr. Astrue, SSA began developing a plan of action, which it made public in September 2007. In short, the plan involved asking employees to do more, faster. The goal was to ensure more cases were heard each year by spending less time on each case.

Over the following years, the agency saw an incredible turnaround in its statistics, which appeared to show the plan was working. Wait times for ALJ hearings, which in fiscal year 2008 were 514 days, dropped to as few as 353 days by 2012.²⁶ Hearing decisions likewise skyrocketed from 575,380 in 2008 to 820,484 in 2012 – a 43 percent increase.²⁷ By February 2011, Commissioner Astrue was able to announce that under his watch, the agency had “reversed a trend of declining service and an increasing backlog in our disability workloads.”²⁸

²³ Hearing Before The Committee On Finance United States Senate on the Nomination of Michael J. Astrue, To Be Commissioner of Social Security, S. Hrg. 110-222, 110th Cong. 18-19 (2007), *available at* <http://permanent.access.gpo.gov/lps90778/393871%5b1%5d.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Chart of the Social Security Administration, “National Hearings Average Processing Time (FY 2008 – FY 2013),” accessed May 21, 2013, http://ssa.gov/appeals/charts/National_Hearing_APT_FY2008-FY2013_2nd_Qtr.pdf.

²⁷ Chart of the Social Security Administration, “National Hearing Decisions (FY 2008 – FY 2013),” accessed May 21, 2013, http://ssa.gov/appeals/charts/National_Hearing_Decisions_FY2008-FY2013_2nd_Qtr.pdf.

²⁸ Social Security Administration, News Release, “Statement of Michael J. Astrue, Commissioner of Social Security, on the President’s Fiscal Year 2012 Budget Request,” February 14, 2011, <http://www.ssa.gov/pressoffice/pr/fy12-budget-request-pr.html>.

At the same time, however, questions were being raised whether the backlog plan was as successful as it appeared. The plan put enormous pressure on SSA's components to post big numbers, which they did. In at least some instances investigated by the Committee, though, agency employees appear to have done so by cutting corners and reducing the attention given to each case and issuing questionable decisions.

During the years in which the backlog plan was in full swing, one SSA office in particular stood out for its exceptional ability to produce huge numbers, becoming one of the most productive in the nation. Located in Huntington, West Virginia, the Huntington Office of Disability Adjudication and Review was one of 149 "ODAR" offices run by SSA to handle disability cases needing ALJ review.²⁹ While it is unclear if the practices at Huntington ODAR were widespread, the office used questionable and often inappropriate means to clear cases through the system. Many of these short-cuts appear to have violated Agency rules and regulations.

The Social Security Administration divides all ODAR offices into regions, with Huntington located in Region 3 reporting to the Philadelphia Regional Office.³⁰ Huntington ODAR hears appeals from claims originally denied by Social Security Field Offices in Ashland, Pikeville, and Prestonsburg, Kentucky as well as in Huntington, West Virginia, itself.³¹ As a general rule, disability cases are assigned to the office closest to where a claimant lives.³²

The Huntington ODAR office is staffed with approximately 60 people, including seven to nine judges at any given time. The remaining staff supported the work of the judges. Attorneys assisted in reviewing case files and writing decisions, while case technicians and other administrative staff helped organize the many files and interface with claimants. Each became deeply familiar with the operations of the office, owing in large part to the heavy caseload they worked together to clear.

Over time, several members of the staff began to grow concerned about how Huntington ODAR was conducting its business. They felt the pressure to move cases quickly, but noticed that to do so the office was cutting corners, sometimes in inappropriate ways. Their concerns, however, were overlooked even as the office continued to use questionable practices.

The Committee's two-year investigation finds the success of the Huntington ODAR in achieving a high number of dispositions, or final case decisions, rested in part on questionable case decisions and poor oversight. The Social Security Administration, responding to significant pressure to reduce the disability backlog, pressured ALJs to decide cases quickly. Under this

²⁹ The agency now has 165 ODAR Hearing Offices, http://www.socialsecurity.gov/appeals/DataSets/archive/05_FY2013/05_July_Average_Processing_Time_Report.html.

³⁰ Social Security Administration, Hearings and Appeals, Hearing Office Locator, Office of Disability Adjudication and Review, Philadelphia Region 3, http://www.ssa.gov/appeals/ho_locator.html#vt=2.

³¹ *Id.*

³² To the extent possible, the location of the hearing site will be within 75 miles of the claimant's residence...A claimant should not be required to travel a significant distance to the hearing office (HO) or another hearing site if a closer hearing site exists and there are no other circumstances that prevent an ALJ from conducting the hearing at the closer hearing site. Hallex I-2-3-10, "Scheduling Hearings," http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-3-10.html, (May, 24, 2011).

pressure to decide cases quickly, it appears that many decisions from the Huntington ODAR office failed to meet the quality standards required by law and regulation.

Case files reviewed by the Committee indicate that, while working to decide cases quickly, several ALJs in Huntington ODAR placed little, if any, scrutiny on the documentation provided to them by outside lawyers, particularly the medical evidence supplied by doctors and other medical professionals used by certain attorneys and representatives to evaluate claimants.

Decisions made by Congress and top agency officials to prioritize hearing cases quickly and reducing the agency's backlog resulted in questionable decisions by ALJs and created an opportunity for the disability programs to be exploited.

III. SSA PRESSURED ALJS TO DECIDE A HIGH NUMBER OF CASES, BUT FAILED TO ENSURE THEY PRODUCED QUALITY DECISIONS

The agency has long focused on the productivity of its ALJs. That focus intensified in September 2007 following an agency plan to push the judges to decide 500-700 cases a year. Caseload statistics were reported to top regional offices each month and ODAR offices were under enormous pressure to meet their monthly caseload targets.

Regional offices, however, appeared to place less emphasis on determining whether the decisions reached by ODAR offices were accurate and legally defensible. Many ODAR staff members felt that the emphasis placed on meeting caseload targets came at the expense of reaching high quality decisions.

a. The Agency Encouraged ALJs to Decide High Numbers of Cases

The agency monitored the number of cases being decided by each ODAR office by requiring monthly reporting to the regional offices. In Huntington, the office reported to Regional Chief Administrative Law Judge (“RCALJ”) Frank Cristaudo, the head of the Philadelphia Region. Documents reviewed by the Committee showed Judge Cristaudo questioned the productivity of the office as early as 1999. In an email, Judge Cristaudo reached out to the Hearing Office Chief Administrative Law Judge (“HOCALJ”), Charlie Paul Andrus and let him know the office’s performance one month was inadequate. Judge Cristaudo said, “[o]n first quick review, I am disappointed in your office’s November [1999] performance. [Regional Office] staff will be contacting you for an explanation and plans for improvement.”³³ In response, Judge Andrus forwarded the email from the RCALJ to the entire Huntington ODAR and encouraged the office to work harder.³⁴

The emphasis on quantity continued. In a 2004 memorandum from Judge Cristaudo to all Region III Hearing Office Chief Judges, Cristaudo asserted “[o]ne of our greatest challenges is to achieve our disposition goal.”³⁵ The memorandum noted that “offices are encouraged to make use of their creative talents to overcome obstacles...Our focus should be on what we need to do to get the job done.”³⁶ Finally, Judge Cristaudo directed:

Offices should communicate the importance of meeting goals to their judges and staff and seek individual and collective commitment to achieving them. Staff should be aware of what is individually and collectively needed to be successful. Everyone needs to be aware of exactly how many cases are needed to be pulled, scheduled, heard, decided and written and be asked to work toward that objective. We need to think of creative ways to celebrate when we pull, schedule, write, hear and decide the number of cases needed to achieve the daily, weekly, or monthly

³³ December 2, 1999 Email from RCALJ Cristaudo to Judge Charlie Paul Andrus, PSI-SSA-95-032338-39. Exhibit 1.

³⁴ *Id.*

³⁵ July 7, 2004 Memorandum from Frank Cristaudo, Regional Chief Judge, Region III – Philadelphia to Hearing Office Chief Judges, Hearing Office Directors, Region III – Philadelphia on “Fourth Quarter Performance.” Exhibit 2.

³⁶ *Id.*

goals that we set. Achieving goals can be satisfying and fun. When you come up with new ideas, share them so other offices can have some fun too.³⁷

While each office was asked “to carefully monitor and report on its progress toward meeting [its] goal,” the memorandum did not discuss, or even mention, the quality or legal sufficiency of the ALJ decisions.³⁸

By April 2007, Judge Cristaudo, who had since become Chief Judge for all SSA ALJs, began working with newly installed Commissioner Astrue to develop the plan for addressing the agency’s growing backlog. He sent a memorandum to the Regional Chief Judges regarding “benchmarks for quality case processing.”³⁹ The memorandum explained “[w]e have defined the Benchmarks to target all statuses by week instead of round numbers. Use of weekly targets for this purpose supports our approach of monitoring weekly performance and workloads.”⁴⁰ These benchmarks set the number of days a disability case would be allowed to remain in each agency assigned status. Each status represents the stage the case is at in the ODAR office. For example, an “ALJ Writing Decision” status indicates the ALJ is drafting a decision, which should not take longer than 14 days.⁴¹

On September 13, 2007, the agency presented its backlog reduction plan.⁴² The plan included a number of proposals designed to shorten the amount of time to decide a case.⁴³

At the ALJ level, the agency planned to “increase adjudicatory capacity” by expediting the hiring 150 more ALJs. The agency streamlined the work performed by support staff in preparing medical evidence for the ALJ to review before a hearing as well and “limit[ed medical] file assembly to a cover sheet and numbering pages sequentially.” Previously, support staff would prepare the medical evidence for the ALJ to review by reviewing the file themselves, noting important evidence, and removing multiple copies of records.⁴⁴

The plan also included mandating the use of Findings Integrated Template (“FIT”) described as “an abbreviated decision format that captures all the key elements required for a defensible decision.” ODAR offices were also directed to screen old cases for potential on-the-record decisions without a hearing and utilize new flexibility by sharing electronic case files across

³⁷ *Id.*

³⁸ *Id.*

³⁹ April 18, 2007 Memorandum from Frank Cristaudo, Chief Judge to Regional Chief Judges. Exhibit 3.

⁴⁰ *Id.*

⁴¹ See Social Security Administration, Office of Inspector General, The Office of Disability Adjudication and Review’s Hearings Backlog and Processing Times, Report A-12-11-21192, June 2011, Appendix D, Quality Case Processing Benchmarks.

⁴² Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

⁴³ One of these proposals to increase the time spent on decisions at initial application was the nationwide rollout of the Quick Disability Determination or “QDD.” “QDD uses automated tools to screen cases, and allows SSA to fast-track cases that are most likely to be allowed.” In a pilot program, QDD resulted in 97 percent of certain cases decided in 21 days. See Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

⁴⁴ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

offices and using video hearings. While the agency's plan included "time frames for submitting evidence to the ALJ and closing the evidentiary record at the time of the ALJ decision," neither were implemented.⁴⁵

The next month, in October 2007, Judge Cristaudo sent another memorandum "asking each of our Administrative Law Judge to manage their dockets in such a way that they will be able to issue 500-700 legally sufficient decisions each year."⁴⁶ Prior to this instruction, ALJ's were given greater latitude in the number of cases they heard each year.⁴⁷ In the coming years, based on this instruction, ALJs adjusted work patterns to hit this new goal.

Next, to encourage judges to decide as many cases as possible, the agency developed decisional goals broken down by region, hearing office, and ALJ. This left little ambiguity as to the goal each ALJ needed to reach, often on a daily basis. The agency began setting these goals in 2011, which were "derived formulaically and are computed based on the number of cases all ALJs must dispose of per day in order to achieve the negotiated nationwide 'budget disposition' number. For Fiscal Years 2011 and 2012, the number of cases each ALJ was to decide was based on 2.37 dispositions per ALJ per day."⁴⁸ That figure was then used to determine the number of cases each hearing office needed to decide to meet that month's decisional goal.

Beginning in 2010, the agency posted the number of cases decided, by ALJ, online, including statistics on each ALJ's approved and denied cases.⁴⁹ According to several judges from around the country who spoke with Committee investigators, this was widely interpreted by ALJs to ensure they met their goal of deciding 500 cases per year.

b. The Agency Encouraged ALJs to Decide Cases On-the-Record to Reduce the Hearing Backlog

Part of encouraging judges to decide a higher number of cases included allowing ALJs to review cases to determine if they could be decided "on-the-record" ("OTR") based upon medical evidence in the case file without an ALJ hearing. This included "screening" paper files to determine if the evidence supported an OTR decision. According to the agency, allowing judges more flexibility to decide cases without hearings would have the advantage of shortening claimant wait times. However, it appears this policy was abused in order to decide a higher-than-average volume of cases with a minimal level of effort and scrutiny.

In its September 13, 2007 plan to reduce the backlog, the agency wrote that on-the-record decisions would be used more often, especially for old cases:

⁴⁵ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

⁴⁶ October 31, 2007 Memorandum from Frank A. Cristaudo, Chief Administrative Law Judge. Exhibit 4.

⁴⁷ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

⁴⁸ Complaint; *Association of Administrative Law Judges, et al. v. Carolyn W. Colvin*, (D.D.C. filed April 18, 2013).

⁴⁹ Social Security Administration, Hearings and Appeals, ALJ Disposition Data, http://www.ssa.gov/appeals/DataSets/03_ALJ_Disposition_Data.html.

SSA will screen its oldest cases using profiles developed by the Office of Quality Performance to identify cases where there may be a high probability that an allowance can be issued on the record without a hearing. ... [T]his could make a significant impact on SSA's backlogs.⁵⁰

However, the agency's description of its plans differed from actual implementation. A January 2011 document distributed by Judge Cristaudo to claimant representatives noted how ALJ's were "aggressively" looking to write on the record decisions:

Therefore, we encourage all representatives to review the file and submit evidence as early in the hearing process as possible. Do not wait until the case is scheduled to submit evidence. ODAR is aggressively screening cases for potential "on the record" situations and updated evidence is helpful in identifying cases that may be reversed without the need for a hearing.⁵¹

On-the-record decisions, while allowing ALJs to dispose of certain cases more quickly, also present judges with several challenges. First, the purpose of allowing ALJs independence in writing decisions is to provide checks and balances within the SSA disability program. As such, if an application is inappropriately denied an ALJ looking at the same set of information can decide to award benefits. However, in the words of SSA's current Chief ALJ, Debra Bice, ALJs should "never abdicate the role of judge," and are always obliged to render a correct judgment.⁵² By eliminating an in-person ALJ hearing, which provides the claimant a forum to plead their case after previously being denied benefits twice, an ALJ misses the opportunity to hear from a claimant firsthand leaving ALJs less than fully informed.⁵³

Second, allowing judges to screen all of their cases for those easiest to decide creates an incentive to let complicated cases sit for longer than they should. An ALJ like Judge David Daugherty, who was simply looking to meet his or her monthly goal, could select less complicated cases to boost his numbers, while claimants in need of decisions were left waiting.

c. Judge Daugherty Used Agency Policies to Approve a High Number of Cases

One particular ALJ in the Huntington ODAR who decided a high number of cases, both OTR and with hearings, was David B. Daugherty. Judge Daugherty began his career as an ALJ with

⁵⁰ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

⁵¹ Social Security Administration, "Best Practices for Claimants' Representatives," January 2011, http://www.socialsecurity.gov/appeals/best_practices.html/rep/rep/rep_info.html.

⁵² Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=6f2d2252-50e8-4257-8c6f-0c342896d904.

⁵³ See Social Security Administration, Hearings and Appeals, What You Need to Know to Request a Hearing Before an Administrative Law Judge, http://www.socialsecurity.gov/appeals/hearing_process.html.

the Social Security Administration in 1990. Prior to working as an ALJ, he served as an elected circuit court judge in Cabell County, West Virginia.⁵⁴

According to public data, Judge Daugherty was one of the highest producing ALJ's in the nation. During 2010, the last full fiscal year in which he decided cases, Judge Daugherty was the third most productive ALJ, deciding 1,375 cases and awarding benefits in 1,371 of them – an approval rate of 99.7 percent.⁵⁵ In 2011, he decided 1,003 cases, awarding benefits 1,001 times.⁵⁶

Judge Daugherty's ability to produce such a high volume of cases, however, surprised many of his colleagues who questioned whether his work habits matched his productivity. Some of Judge Daugherty's co-workers had strong opinions about him. For example, a senior ALJ stated in an email that Judge Daugherty "was intellectually lazy. That was probably his most obvious characteristic."⁵⁷ In a Committee interview, another senior ALJ described Judge Daugherty as "a spoiled little boy who grew up to become a judge," and that in performing his work he "sought the easiest way out."⁵⁸ Still another ALJ told the Committee that when he expressed concern about quickly reviewing and deciding cases, Judge Daugherty advised him that "you're just going to have to learn which corners to cut."⁵⁹

d. Huntington ODAR Management Focused on Production Numbers Despite Office Morale Problems

The highest ranking member of management onsite in the Huntington ODAR office, as with all ODAR offices, is the Hearing Office Chief Administrative Law Judge, referred to as the "HOCALJ." The HOCALJ is directly responsible for all program and administrative matters concerning SSA's hearing process in the hearing office. The HOCALJ's main responsibility is to oversee and supervise ALJs, staff attorneys, and the Hearing Office Director in the office.⁶⁰ The HOCALJ is also chiefly responsible for communicating with the chief regional judge.

During the period under review by the Committee, Charlie Paul Andrus served as the Hearing Office Chief Administrative Law Judge or "HOCALJ" in Huntington ODAR, a job he held from 1997 through 2011.⁶¹ In addition to his responsibilities as HOCALJ, Judge Andrus was also responsible for deciding his share of cases, around 500 each year.⁶² Judge Andrus stated that in

⁵⁴ Damian Paletta, Disability-Claim Judge has Trouble Saying "No," The Wall Street Journal, May 19, 2011, <http://online.wsj.com/article/SB10001424052748704681904576319163605918524.html>.

⁵⁵ Website of the Social Security Administration, "FY 2010 – ALJ Disposition Data," Accessed May 24, 2013, http://www.ssa.gov/appeals/DataSets/Archive/03_FY2010/03_September_ALJ_Disposition_Data_FY2010.html.

⁵⁶ Website of the Social Security Administration, "FY 2011 – ALJ Disposition Data," Accessed May 24, 2013, http://www.ssa.gov/appeals/DataSets/Archive/03_FY2011/03_September_ALJ_Disposition_Data.html.

⁵⁷ May 20, 2011 Email from Patricia Jonas, Executive Director, Office of Appellate Operations to mccarper@msn.com, PSI-SSA-96D2-04632. Exhibit 5.

⁵⁸ June 19, 2012 Committee interview of Judge Charlie Andrus.

⁵⁹ May 29, 2012 Committee interview of Judge William Gitlow.

⁶⁰ Office of the Inspector General, Social Security Administration, Hearing Office Performance and Staffing, Audit Report No. A-12-08-28088 (February 2010), http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-08-28088_7.pdf.

⁶¹ June 19, 2012 Committee interview of Judge Charlie Andrus. Judge Andrus is no longer acting in this capacity and was recently placed on administrative leave by the agency.

⁶² June 19, 2012 Committee interview of Judge Charlie Andrus.

his role as HOCALJ he was able to help low producing ALJs by providing staff and other resources to help the ALJs meet the 500 cases per year goal, which he believed to be “doable, but not easy.”⁶³

At the same time, Judge Andrus related his frustration with the role of HOCALJ, saying he was given little actual authority. For this, he blamed the Administrative Procedures Act (“APA”), which provides each ALJ with “qualified decisional independence.”⁶⁴ With that authority, ALJ’s are given significant independence to decide cases as they see fit, as long as the cases conform to the law and agency guidelines. It is meant to provide some measure of insulation from outside pressures, whether that means to award or deny benefits. The purpose of providing this independence to ALJs was to ensure public confidence in the process of adjudicating claims for benefits.⁶⁵ Judge Andrus asserted because of the APA, a HOCALJ was given little actual authority. In fact, Judge Andrus believed he was limited to “persuading [an ALJ] a lot.”⁶⁶

Although Judge Andrus had little ability to supervise the quality and outcome of disability decisions, he played a key role in assuring that the office decided cases quickly. During his time as HOCALJ, Huntington ODAR was a high producing office. One of the key steps he took was installing a staff who understood how to move cases quickly.

i. Huntington ODAR Management Prioritized the “Numbers”

During the time period reviewed by the Committee, the Huntington ODAR was managed by the Hearing Office Director (“HOD”), Gregory Hall.⁶⁷ The HOD position is described as the principal management advisor to the HOCALJ and works significantly with the HOCALJ in the overall management and administration of the hearing office.⁶⁸ The HOD is responsible for supervising, planning, organizing, and controlling the operations of the hearing office.⁶⁹ This typically includes managing all staff in the hearing office other than the ALJs.

⁶³ *Id.*

⁶⁴ See Report of the Social Security Inspector General, “The Social Security Administration’s Review of Administrative Law Judges’ Decisions,” A-07-12-21234, March 2012, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-12-21234.pdf>. The report contains the following definition of “qualified decisional independence” as provided by SSA:

Qualified decisional independence” means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with agency policy as laid out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. The agency may not take actions that abridge the duty of impartiality owed to claimants when ALJs hear and decide claims.

⁶⁵ See Report of the Social Security Inspector General, “The Social Security Administration’s Review of Administrative Law Judges’ Decisions,” A-07-12-21234, March 2012, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-12-21234.pdf>.

⁶⁶ June 19, 2012 Committee interview of Judge Charlie Andrus.

⁶⁷ July 27, 2011 Committee interview of Gregory Hall.

⁶⁸ Office of the Inspector General, Social Security Administration, Hearing Office Performance and Staffing, Audit Report No. A-12-08-28088 (February 2010), http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-08-28088_7.pdf.

⁶⁹ *Id.*

Mr. Hall started with the agency as a claims representative and worked his way up to be eventually promoted to HOD in October 2006.⁷⁰ Mr. Hall explained to the Committee that one of his primary goals as HOD was ensuring Huntington reviewed a large number of cases quickly, referring to himself “a numbers person, and I’ll tell you that upfront.”⁷¹ As such, Mr. Hall noted that Huntington ODAR ranked number two in the country in 2010 for case processing time. He believed “moving cases quickly is what the agency expects, as long as it’s done accurately.”⁷²

While Judge Andrus managed the ALJs, Mr. Hall focused on ensuring the staff also moved cases quickly. To encourage quick case processing, for many years Mr. Hall sent out weekly emails to the entire office with the subject line, “Where We Are,” outlining how many cases had been decided and whether individuals in the office were meeting their goals.⁷³ To track the progress of the office on a daily basis, Mr. Hall used a variety of detailed reports that constantly updated him on the status of cases.⁷⁴

During Mr. Hall’s tenure Huntington ODAR became one of the highest producing offices in the country. In 2010, it had the second shortest average processing time at just 263 days (just one day longer than the top office of Middlesboro, Kentucky).⁷⁵ The office ranked 12th out of 149 hearing offices in ALJ Dispositions Per Day Per ALJ with each Huntington ODAR ALJ processing 2.93 cases per day.⁷⁶

After 38 years with the agency, on August 18, 2011, Mr. Hall announced his plan to retire from the agency at the end of August 2011.⁷⁷

ii. “Boot Camp Mentality” Led Huntington ODAR to Become a Top Producing Office Despite Morale Problems

Serving under the direction of Mr. Hall was a layer of management responsible for keeping Huntington’s case load moving quickly. However, the intense pressure to dispose of cases led to conflicts within the office.

The employees in the Huntington ODAR are divided into three “groups,” each of which are managed by a Group Supervisor or “GS.” It is the job of the GS to direct the activities of

⁷⁰ July 27, 2011 Committee interview of Gregory Hall.

⁷¹ July 27, 2011 Committee interview of Gregory Hall.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ These reports, called Disability Adjudication Reporting Tools (or “DART reports”) tracked monthly progress by the office, including scheduled hearings, a “Workload Summary Listing” report to show each ALJ’s daily progress, and a “Workload Summary Report” to compare Huntington with other offices in the region. July 27, 2011 Committee interview of Gregory Hall.

⁷⁵ Social Security Administration, Hearings and Appeals, FY2010 Hearing Office Workload Data (Cumulative for 9/26/09 through 9/24/2010)

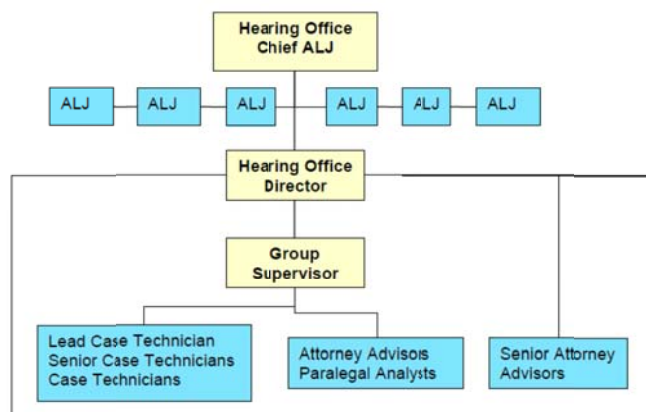
http://www.ssa.gov/appeals/DataSets/Archive/02_FY2010/02_September_HO_Workload_FY2010.html.

⁷⁶ Social Security Administration, Hearings and Appeals, FY 2010 – National Ranking Report by ALJ Dispositions Per Day Per ALJ (Cumulative for 9/26/09 through 9/24/2010),

http://www.ssa.gov/appeals/DataSets/Archive/04_FY2010/04_September_Disposition_Per_Day_Per_ALJ_Ranking_FYTD2010.html.

⁷⁷ See August 18, 2011 Email from Gregory Hall to Huntington ODAR. Exhibit 6.

employees assigned to the group to ensure the efficient, timely, and legally sufficient processing of hearing office cases.⁷⁸ During the time period covered by this report the following individuals



served as a Group Supervisors: (1) Arthur Weathersby; (2) Harriette Cyrus; (3) Kathie Goforth; (4) Stephen Hayes; (5) Carrie Roland; and (6) Jerry Meade.

Office Morale. Huntington ODAR has a long history of discord between management and other office employees. As early as July 2001, Judge William Gitlow emailed a colleague in another office and stated Judge Andrus created a “boot camp” atmosphere in the office:

I can’t say our morale is much better. Our HOCALJ (Andrus) is almost universally despised by the office personnel. We have record numbers of [Equal Employment Opportunity] complaints pending against management. Andrus decided that the reason our office wasn’t producing was a lack of adequate pressure and chose to apply a boot camp mentality to the office. He chose two Group Supervisors with no OHA [Office of Hearing and Appeals] experience (not attorneys), hoping that they would bust heads. The HOD [Hearing Office Director] is also not an attorney. So we have two non attorneys assigning cases, reviewing the performance of the attorneys, who are in turn supervised by a non attorney. (Sigh...). I think that we are the only office in all of OHA that doesn’t have a single attorney in a supervisory position in the office.⁷⁹

Judge Gitlow emphasized how disjointed the office was by pointing out each group had differing standards for denial decisions, but stated “[a]t least I have carte blanche in my group to establish the way denial decision are written for our group and was assigned to ensure the standards for it.”⁸⁰

In October 2001, in response to “constituents allegations of mismanagement” in the Huntington ODAR, Congressman Nick Rahall of West Virginia requested the SSA Office of Inspector General (“OIG”) review “allegations of mismanagement,...discrimination and favoritism in hiring and promotion policies, contempt for employees with special needs, hostile work environment, lack of training, denial of union representation, overemphasis on production, and inappropriate sexual advances.”⁸¹ After its review, the OIG found no indication of criminal

⁷⁸ The GS is the first-line supervisor of the following positions, which support the ALJs by preparing cases for hearings: Attorney-Advisor; Paralegal Analyst; Lead Case Technician; Senior Case Technician; and the Case Technician. Office of the Inspector General, Social Security Administration, Hearing Office Performance and Staffing, Audit Report No. A-12-08-28088 (February 2010), http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-08-28088_7.pdf.

⁷⁹ July 19, 2001 email from William H. Gitlow to Ronald M. Kayser, PSI-SSA-95-032436. Exhibit 7.

⁸⁰ *Id.*

⁸¹ Social Security Administration, Office of Inspector General, Congressional Response Report: Huntington, West Virginia, Office of Hearings and Appeals, A-13-02-22090 (August 8, 2002). Exhibit 8.

activity, but “identified the existence of other problematic conditions pertaining to low office morale, security of claimant case files, performance appraisals not being conducted, and time and attendance reporting.”⁸²

With regard to the low morale problem, the OIG specifically noted a number of SSA attorney staff “resented the GSs because they were not attorneys but were the administrative supervisors of attorneys.” Management appeared to be attempting to remedy the problem. The report stated that “office management expressed awareness of the [morale] problem, and state they were working on ways to improve morale within the office.”⁸³ According to Committee interviews with current and former Huntington ODAR office employees and ALJs, nothing improved.⁸⁴

iii. The Agency Transferred Over 1,000 Cases to Huntington ODAR for Adjudication

The agency took advantage of the Huntington ODAR’s faster processing time. Between January 2006 and August 2011, the agency transferred 1,186 cases to Huntington for adjudication from other ODAR offices that needed help processing cases. The majority of these cases – 1,016 – were transferred from the ODAR in Morgantown, West Virginia. According to Mr. Hall, all of the cases were considered “aged” due to the delay by the Morgantown ODAR in scheduling them for a hearing after losing several ALJs and staff.⁸⁵ A case is considered aged if it is over 750 days old.⁸⁶

Mr. Hall stated Huntington ODAR spent two months after receiving the Morgantown cases screening them to determine if an on-the-record decision was possible. For the cases left, Mr. Hall stated the Huntington ALJs scheduled “rocket dockets” where the ALJs would hear as many as 20 cases a day. Many of these hearings were for unrepresented claimants.⁸⁷ According to Mr. Hall, Huntington ODAR finished processing close to all of the Morgantown cases within a year, as well as dealing with their normal caseload.⁸⁸

⁸² *Id.*

⁸³ *Id.*

⁸⁴ July 25-27, 2011 Committee interviews of Huntington ODAR employees, ALJs, and former ALJs.

⁸⁵ July 27, 2011 Committee interview of Gregory Hall.

⁸⁶ I-2-0-72, Assigning and Processing Request for Hearings filed by Claimants that do not Reside in the United States, http://www.ssa.gov/OP_Home/hallex/I-02/I-2-0-72.html.

⁸⁷ July 27, 2011 Committee interview of Gregory Hall.

⁸⁸ *Id.*

IV. ONE LAWYER REPRESENTED A DISPROPORTIONATE NUMBER OF CLAIMANTS BEFORE THE HUNTINGTON ALJS

With the agency's emphasis on deciding a high number of cases to reduce the ALJ hearing wait time, the Huntington ODAR began to make allowances for attorneys that represented a high number of claimants. No other attorney represented more claimants that appealed to the Huntington ODAR than Eric C. Conn.⁸⁹ By 2010, Mr. Conn represented so many claimants he would become the third highest paid disability lawyer in the nation, following behind Thomas Nash of Nash Disability Law in Chicago and Charles Binder of the nationwide disability advocacy group, Binder & Binder.⁹⁰

a. Mr. Conn's Practice Focused on Representing Claimants for Disability Benefits

Mr. Conn is an attorney located in Stanville, Kentucky, a small rural town in the eastern portion of the state and home to around 520 residents.⁹¹ The majority, if not all, of Mr. Conn's practice involves representing individuals applying for and appealing denials of disability benefits. Mr. Conn is a graduate of Morehead State University and later attended Ohio Northern University Pettit College of Law. According to a biography on his website, "although Conn had completed his tour of [military] duty at the time of Operation Desert Storm, he was called back to active duty and served as a company commander during the Gulf War."⁹²

In 1993, Mr. Conn opened the Eric C. Conn Law Complex in Stanville, Kentucky in a trailer given to Mr. Conn by his parents. At present, the Conn Law Firm ("CLF") office in Stanville exists as a series of connected mobile homes surrounding a main office building. Later, Mr. Conn opened another office in Ashland, Kentucky, which closed in 2012. That same year, Mr. Conn expanded to the West Coast and opened an office in the Beverly Hills neighborhood of Los Angeles, California.⁹³

In correspondence through his attorney, Mr. Conn explained the structure of his law firm:

The law firm is solely owned by Eric C. Conn and employs only a small number of additional attorneys. The law firm employs a larger number of administrative staff, approximately 30 to 40, to intake clients, obtain information from a variety

⁸⁹ Committee analysis of information provided by the Social Security Administration.

⁹⁰ Information provided by the Social Security Administration in a telephone call dated October 2, 2013.

⁹¹ Census Data was unavailable for Stanville, Kentucky. Therefore, the zip code in which Stanville is located was used. See United States Census, American FactFinder, Community Facts, Zip Code 41659, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

⁹² Attorney, Eric Conn, "Eric C. Conn, Beyond the Billboard," Excerpts from the Medical Herald Leader, 8/8/2005, www.mrsocialsecurity.com.

⁹³ See "About Us," <http://mrsocialsecurity.com/about-us/>. See also Press Release, The Eric C. Conn Law Firm Announces New Office Location in Beverly Hills, CA, Expanding Their Social Security Disability Claims Expertise to Both Coasts (Oct. 22, 2012), <http://www.ereleases.com/pr/eric-conn-law-firm-announces-office-location-beverly-hills-ca-expanding-social-security-disability-claims-expertise-coasts-89379>.

of sources, and process a multitude of forms during each stage of the application process, among other functions.⁹⁴

While Mr. Conn's current practice consists mainly of representing claimants seeking disability benefits, he previously practiced before the United States Court of Appeals for Veterans Claims.⁹⁵ In 2002, in response to an investigation by that Court into allegations of professional misconduct, Mr. Conn resigned "from the Bar [of that Court] in lieu of further investigatory proceedings."⁹⁶ While Mr. Conn's resignation from the Court was not an admission of the alleged misconduct, by resigning he agreed "to cease all practice before [the] Court," which the Court determined "provide[d] the Court and its appellants with protection from any repetition of such conduct by him."⁹⁷ The Court also noted that, "[i]n submitting [his] resignation, attorney Conn has also relinquished any right to apply for reinstatement or readmission at any time in the future."⁹⁸

Mr. Conn's resignation from practicing before the United States Court of Appeals for Veterans Claims did not prevent him from representing claimants applying for disability benefits before the Social Security Administration.⁹⁹

b. Mr. Conn Used an Aggressive Marketing Campaign to Recruit Claimants

Mr. Conn and his disability law practice became known for his aggressive use of advertising, which he used to recruit a large number of claimants to represent. Through billboards, television and radio commercials, and his presence at local events, Mr. Conn marketed both himself and his legal practice. In an interview from 2005, Mr. Conn described himself as "a firm believer in advertising" and asserted he "read everything about marketing [he] can get [his] hands on."¹⁰⁰

Mr. Conn's billboards, at one time, were ubiquitous on Highway 23, one of Eastern Kentucky's main thoroughfares, and in the surrounding areas of Kentucky and West Virginia. These

⁹⁴ May 17, 2012 Letter from Pamela J. Marple, Esq., attorney for Eric C. Conn, to the Permanent Subcommittee on Investigations. Exhibit 9.

⁹⁵ *In re Eric C. Conn, Attorney at Law*, No. 01-8001 (U.S. Vet. App. Sept. 30, 2002), <https://www.courtlistener.com/cavc/5bPG/conn-v-principi/>

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Unlike federal and state courts, an individual representing a claimant before the Social Security Administration for a claim of disability does not have to be an attorney admitted to the state bar. Instead, non-attorneys are eligible to represent claimants before the agency. Therefore, Mr. Conn's prior resignation from the Court of Veterans Claims had no effect on his ability to represent disability claimants. The Social Security Administration does, however, have the ability to "refuse to recognize as a representative...any attorney who has been disbarred or suspended from any court or bar to which he was previously admitted to practice..." See 42 U.S.C. 406, Representation of Claimants, http://www.ssa.gov/OP_Home/ssact/title02/0206.htm#ft87. It is unclear whether Mr. Conn's resignation in lieu of investigatory proceedings by the prior Court would support a refusal by SSA to allow him to act as a disability claimant representative.

¹⁰⁰ Attorney, Eric Conn, "Eric C. Conn, Beyond the Billboard," Excerpts from the Medical Herald Leader, 8/8/2005, www.mrsocialsecurity.com.

billboards referred to Mr. Conn as “Mr. Social Security/SSI.”¹⁰¹ Mr. Conn’s website also carries the label: “mrsocialsecurity.com.”¹⁰²

Other television advertisements by Mr. Conn featured “the Obama Girl” Amber Lee Ettinger, bluegrass signer Ralph Stanley, and Jesco White (also known locally as the “Dancing Outlaw”). Mr. Conn stated he produced the advertisement to aid his campaign for appointment to the Social Security Advisory Board.¹⁰³

The Conn Law Firm also boasts the second largest Abraham Lincoln statue in the world, second only to the Lincoln Memorial in Washington, D.C. Visible from Highway 23, it is an exact replica of the statue within the Lincoln Memorial in Washington, D.C. The Conn Law Office uses images of the 19-foot high statue in his advertising on television and billboards. Mr. Conn has estimated the cost of the statue around \$500,000.¹⁰⁴ According to a press release, the statue had to be “put in place by crane. It had to be delivered in three pieces due to the large size.”¹⁰⁵ “Attorney Eric C. Conn state[d] that the statue’s purpose is to remind Kentuckians that Abraham Lincoln was a Kentuckian. Lincoln himself wrote: ‘I, too, am a Kentuckian.’” The statue serves as a tourist attraction with the press release noting the “public may visit the statue 24 hours a day and admission is free.”¹⁰⁶

At times, Mr. Conn also employed women, known variously as “Conn Girls” and “Conn’s Hotties,” to attend local events wearing shirts the displayed his firm’s logo. At other times, he hired local celebrities, such as former Miss Kentucky USA Kia Hampton, who appeared in one of his commercials questioning the ethics of another disability firm, Binder and Binder.¹⁰⁷

Mr. Conn also promoted his disability practice in other ways, including by sponsoring a fundraiser for a local emergency shelter,¹⁰⁸ flying a plane over a “United for Coal” event with a supportive banner,¹⁰⁹ and creating the first 3-D lawyer television commercial.¹¹⁰ Most recently, he commissioned a statue of Charles Ramsey, the Cleveland, Ohio man who gained national recognition after helping to rescue three women held captive for a decade. The statue of Mr. Ramsey was unveiled at the Eric C. Conn Law Office, with the event hosted by Mr. Conn, and

¹⁰¹ Attorney, Eric Conn, “Eric C. Conn, Beyond the Billboard,” Excerpts from the Medical Herald Leader, 8/8/2005, www.mrsocialsecurity.com.

¹⁰² See The Conn Law Firm, <http://mrsocialsecurity.com/>.

¹⁰³ In an interview with a local reporter, Mr. Conn noted to hire the “Obama Girl” cost \$25,000, while Ralph Stanley’s fee was \$10,000; Jesco White charged Mr. Conn \$1,500 to appear in the video. See Scott Utterback, Courier-Journal.com, Kentucky Lawyer Eric Conn Hires the “Obama Girl” for Campaign Video, http://www.youtube.com/watch?v=uW0_EB9Seck.

¹⁰⁴ See Scott Utterback, Courier-Journal.com, Kentucky Lawyer Eric Conn Hires the “Obama Girl” for Campaign Video, http://www.youtube.com/watch?v=uW0_EB9Seck.

¹⁰⁵ Press Releases, Second Largest Seated Lincoln Statue in the World Arrives in Kentucky (Sept. 20, 2010), <http://www.ereleases.com/pr/largest-seated-lincoln-statue-world-arrives-kentucky-40403>.

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g. <http://www.youtube.com/watch?v=gA9YUvBr58>.

¹⁰⁸ Press release, Eric C. Conn Law Firm partners with WestCare Emergency Shelter (Dec. 21, 2012), <http://www.ereleases.com/pr/eric-conn-law-firm-partners-westcare-emergency-shelter-95487>.

¹⁰⁹ Press release, United for Coal Supported by Eric C. Conn (Oct. 22, 2012), <http://www.ereleases.com/pr/united-coal-supported-eric-conn-89371>.

¹¹⁰ Press release, First 3D Lawyer Commercial Announced (Dec. 13, 2010), <http://www.ereleases.com/pr/3d-lawyer-commercial-announced-44252>.

later donated to a Cleveland museum.¹¹¹ In press releases, Mr. Conn also described himself as “a multimillionaire attorney in Kentucky. Conn has made his millions by representing the disabled in Disabled [sic] Social Security and SSI proceedings.”¹¹²

¹¹¹ Press release, “Dishwasher Turned Hero: Charles Ramsey Statue to be Unveiled” (May 23, 2013), <http://www.ereleases.com/pr/dishwasher-turned-hero-charles-ramsey-statue-unveiled-145669>.

¹¹² Press Release, Rohl and Conn Hold Southeast Asia Meetings (March 19, 2010), <http://www.ereleases.com/pr/rohl-conn-hold-southeast-asia-meetings-33282>.

V. HOCALJ ANDRUS MADE SPECIAL SCHEDULING ARRANGEMENTS FOR MR. CONN'S CASES

Since Mr. Conn represented so many claimants in the office, the Huntington ODAR gave him special treatment by giving his cases priority when scheduling hearings. The office scheduled hearings for his clients outside the agency-mandated rotation of assigning an ALJ to a case and Mr. Conn's claimants were often scheduled before other cases, against SSA policy, leading to longer wait times for claimants lacking well-connected representation.

When a disability case file arrives at an ODAR hearing office on appeal from a denial of benefits by DDS, the case is assigned to an ALJ for review and scheduled for a hearing. The SSA Hearing, Appeals, and Litigation Law Manual mandates that the "HOCALJ generally assigns cases to ALJs from the master docket on a rotational basis, with the earliest (i.e., oldest) [request for hearings] receiving priority."¹¹³ This practice is meant to ensure the claimant who had waited the longest for a hearing would be first-in-line to plead their case before the first available ALJ.

Because Mr. Conn was representing so many clients, HOCALJ Andrus proposed creating a separate scheduling system for him, apart from the one in place for other cases.¹¹⁴ The new system expedited Mr. Conn's clients and scheduled them in large blocks so that many of Mr. Conn's clients would have hearings on the same day. It also ensured that all of his hearings would happen at Huntington ODAR's remote site in Prestonsburg, Kentucky, close to Mr. Conn's law offices.¹¹⁵ Prior to implementing this system, Mr. Conn could physically not attend all of the hearings being scheduled for his numerous clients. Mr. Conn's clients would at times be scheduled for hearings with multiple ALJs at the same time, making it impossible to be in two places at once.¹¹⁶

In addition to requiring special accommodations in order to represent his clients, Mr. Conn also appears to have frequently canceled his clients' hearings if he discovered the case was assigned to a judge other than his preferred Judge, David Daugherty. Some in the Huntington ODAR were concerned Mr. Conn was "judge shopping" to ensure his cases had a higher likelihood of approval.¹¹⁷

On July 5, 2001, HOCALJ Andrus sent a memorandum to Steve Slahta, who was serving as Acting Regional Chief Administrative Law Judge for Region III.¹¹⁸ Judge Andrus explained 340

¹¹³ Hearing, Appeals, and Litigation Law Manual, I-2-1-55, "Assignment of Service Area Cases to Administrative Law Judges," http://ssa.gov/OP_Home/hallex/I-02/I-2-1-55.html. See also Hearing, Appeals, and Litigation Law Manual, I-2-3-10, "Scheduling Hearings," http://ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html ("The objective is to hold a hearing as soon as possible after the request for hearing [] is filed, at a site convenient to the claimant.").

¹¹⁴ See July 5, 2001 Memorandum from Charlie P. Andrus HOCALJ Huntington, WV to Steve Slahta, Acting RCALJ OHA Region III. Exhibit 10.

¹¹⁵ *Id.*

¹¹⁶ June 19, 2012 Committee interview of Judge Charlie Andrus.

¹¹⁷ *Id.*

¹¹⁸ See July 5, 2001 Memorandum from Charlie P. Andrus HOCALJ Huntington, WV to Steve Slahta, Acting RCALJ OHA Region III. Exhibit 10.

(or 40 percent) of the 845 unassigned cases to be scheduled for hearings in Prestonsburg, Kentucky were represented by Mr. Conn. Judge Andrus stated:

We have encountered problems being able to schedule a sufficient number of [Mr. Conn's] cases to justify a trip to Prestonsburg for myself on two occasions, and we have had to reduce numbers for other judges on other occasions due to scheduling problems. In addition, we have had problems in setting hearings in a timely manner, due in part to scheduling problems with Mr. Conn. In addition, we suspect that he is engaging in "forum shopping" by his unwillingness to be available during weeks when certain judges are scheduled.¹¹⁹

Judge Andrus elaborated that around this time it became obvious that Mr. "Conn was "suspiciously available when [Judge Daugherty] was available, but suspiciously unavailable" when other judges were scheduled for hearings in Prestonsburg.¹²⁰ After confronting Mr. Conn directly about his "suspicious" availability only when Judge Daugherty was scheduled to hear cases in Prestonsburg, he stated Mr. Conn replied, "well, it was good while it lasted."¹²¹ This confrontation, however, does not appear to have significantly changed Mr. Conn's practice.

Huntington Deviates from Agency Protocol in Assigning Conn Cases. Under agency rules, when a claimant appeals to an ALJ, the oldest case in the office should be assigned a hearing date first. Availability of the claimant's representative is not supposed to be considered in deciding when the case is assigned a hearing date.

Judge Andrus's proposal for scheduling Mr. Conn's cases, however, would involve a new office policy creating a rotational system by which no single judge heard more of his cases than any other judge. In effect, it created a separate track for Mr. Conn's cases giving them preference over older cases represented by other attorneys or claimant representatives.

In July 2001, Judge Andrus sent his scheduling proposal to the Philadelphia Region III Office for approval. While his stated purpose of the scheduling change was to put an end to Mr. Conn's "forum shopping by his unwillingness to be available during weeks when certain judges are scheduled," the impact was to assign Mr. Conn's cases to an ALJ more quickly. To reduce the problem in the short-term, Judge Andrus asserted "that we need to assign Mr. Conn's cases in rotation to each ALJ as they come into the office. This will give each judge about the same amount of cases and will lessen if not eliminate the tendency to forum shop, as all of us will have the same number of his cases."¹²² Judge Andrus noted he "plan[ned] to discuss the problem with Mr. Conn next week," but assumed it would not be met with resistance since Mr. Conn "ha[d] been agreeable to suggested changes in the past."¹²³ Judge Andrus also urged the staff and judges of Huntington ODAR to schedule cases as far into the future as possible when Mr. Conn made clear he was not available certain weeks for hearings. Judge Andrus stated that "if

¹¹⁹ *Id.*

¹²⁰ June 19, 2012 Committee interview of Judge Charlie Andrus.

¹²¹ *Id.*

¹²² See July 5, 2001 Memorandum from Charlie P. Andrus HOCALJ Huntington, WV to Steve Slahta, Acting RCALJ OHA Region III. Exhibit 10.

¹²³ *Id.*

necessary, we can get blocks of days for three or four months in advance.”¹²⁴ If Mr. Conn asserted he was unavailable for hearing dates, Judge Andrus stated “we [would] need a larger supply of ‘other attorney’ cases pulled to be able to fill in the docket if [Mr. Conn] is not available.” Judge Andrus “would pull three ‘other attorney’ cases for every two Eric Conn cases.”¹²⁵

In sum, Judge Andrus’s short-term plan involved rotating Mr. Conn’s cases, but also moved Mr. Conn’s cases to the front of the line, since it meant that Huntington ODAR would “deviate from strict following of age of case when pulling.”¹²⁶ Under this proposal, Mr. Conn’s cases would be assigned to an ALJ and scheduled for hearings before other claimants.

Judge Andrus Chose Not to Implement Other Options Available to Him In Addressing Mr. Conn’s Caseload. In other ODAR offices around the country, backlog situations would often mean judges from less busy offices would arrive and hear cases on a temporary basis. Judge Andrus, however, strongly resisted the use of judges from other ODAR offices and asserted that “out-of-town judges we have in Prestonsburg cause some of the problem.”¹²⁷ Judge Andrus wrote in his memorandum to the SSA regional office, “they tie Mr. Conn up with cases that have to have a priority, they also cause difficulty in scheduling hearing rooms, reporters, and VEs. Considering the hassles, they have been more harm than help.”¹²⁸ Presumably, out-of-town ALJs would take priority over Huntington ALJs who heard cases regularly in Prestonsburg. Therefore, Judge Andrus ensured Mr. Conn’s cases were decided by one of Huntington ODAR’s ALJs.

Another option would have been for Huntington ODAR to simply request that cases be transferred to another ODAR office. Judges in these offices could then issue on-the-record decisions or hold hearings via videoconference. Judge Andrus proposed “if we must send cases out I would prefer to send only Huntington cases,” as opposed to Mr. Conn’s cases scheduled for hearing in Prestonsburg. Judge Andrus reasoned “we [] have a greater number of people doing SSA [disability] cases in Huntington, so that availability of [claimant representatives] is not as difficult a problem. We also find it easier to obtain reporters and VEs in Huntington versus Prestonsburg.” Judge Andrus also highlighted the fact that “[w]e cannot exclude Eric Conn cases if we send Prestonsburg cases, so I would prefer not to send any at all.”¹²⁹

Agency Officials Disagree with the Proposal by Judge Andrus. The proposal by Judge Andrus for scheduling Mr. Conn’s cases was sent to the Philadelphia regional office, and drew strong criticism from Veronica Polohovich in the SSA Philadelphia Office of the Regional Chief Judge. In an email, Ms. Polohovich objected to the special treatment the plan seemed to afford Mr. Conn and wrote she did “not agree with the recommendations by Judge Andrus for the following reasons:

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

1. If Mr. Eric Conn is available, we should be notifying the claimants and Mr. Conn of our attempts to schedule a hearing and advising them that the reason the case has not been scheduled is due to Mr. Conn's unavailability. This should force the issue and either make Mr. Conn be more available or the claimants attain a new representative.
2. I do not agree with deviating from following age of case when pulling, we would be doing this to accommodate Mr. Conn. In fact, the whole proposal seems to be an attempt to accommodate Mr. Conn.
3. The proposal to permanently transfer out only Huntington cases does not follow HALLEX or Region III's case transfer policy. It is not cost effective for traveling judges to travel to Huntington and Huntington judges to travel to the remote sites (Prestonsburg). It is more cost effective for Huntington judges to stay in Huntington and the traveling judges to travel directly to the remote sites.
4. Judge Andrus mentions numerous problems or hassles from visiting judges. These should be brought to the [Regional Office]'s attention when they occur. He may be eluding to DC, but I have not received any complaints.¹³⁰

Despite objections, on July 18, 2001, Valerie Loughran, Regional Management Officer, related to others in the Regional Office the agency had approved Judge Andrus's plan with regard to the transfer of cases:

After discussion with Judge Slahta, we decided that Judge Andrus could vary from the transfer policy for the short term, to deal with the current problem. So if we are transferring cases in the near future we will use Huntington. I know this is not what we want as an ongoing policy, but it may help. If it presents a significant problem please advise.¹³¹

Barbara Bracchi, another employee of the Regional Office, responded on July 20, 2001, pointing out the proposed plan favored Mr. Conn and suggested his clients be informed directly if scheduling changes were made simply to accommodate Mr. Conn's personal availability:

Since they have problems scheduling with [Mr. Conn], I think they should be sending the attorney with a copy to the claimant a form memo every time they attempt to schedule a hearing and he says he is not available so the claimant knows that the attorney is causing the delay. Attorneys generally do not like this and it gives the claimant the opportunity to find another representative if he does not want to wait for the hearing.

¹³⁰ July 18, 2001 Email from Veronica Polohovich to Jim Comerford, PSI-SSA-96D2-003930-35. Exhibit 11.

¹³¹ July 18, 2001 Email from Valerie Loughran to Barbara Bracchi, Jim Comerford, and Steven D. Slahta, PSI-SSA-96D2-003930-35. Exhibit 11.

I'm not inclined to permanently transfer cases unless absolutely necessary since it has recently come to light that the [Hearing Office]s don't seem to be follow our guidelines for these cases anyway. What we have found (in DC, Charlottesville, and others) is that transferring cases are not being worked in [request for hearing] order, but seem to languish for long periods of time in the assisting office (even when they requested the cases).¹³²

Judge Andrus stated he discussed the proposed changes in scheduling Mr. Conn's cases with Mr. Conn in response to an email from Chief Administrative Law Judge Frank Cristaudo.¹³³

In November 2002, nearly 18 months after the new scheduling policy was put in place, Judge Andrus and then-Hearing Office Director ("HOD") Harriette Cyrus met with Mr. Conn and his staff again to discuss scheduling issues. Afterwards, on November 29, 2002, Judge Andrus updated Judge Cristaudo on the meeting and emailed the latest plan he developed to deal with Mr. Conn's cases, which once again involved Mr. Conn's cases receiving special treatment in a number of ways:

I wanted to send a brief note outlining [] what we discussed in the meeting we had with Mr. Conn and his staff. Harriette and I met with them for about two hours the other day and had a productive session.

Mr. Conn has over 50% of our Prestonsburg cases (which constitutes over 60% of our hearings), and scheduling has been a real problem. We normally send two judges a week to Prestonsburg to hear 22 to 30+ cases each. With vacations and other times he may not be available, Mr. Conn literally has more cases than can be heard in that time, if he is the only attorney available. We have agreed to the following actions to make scheduling easier:

- We will solicit volunteer ALJs to make a second trip to Prestonsburg in those four months in a year where we have a "fifth week."
- Mr. Conn will give us dates when his back-up attorney is available as far in advance as he can so that we can schedule case for him as needed.
- Huntington OHA [ODAR] will send a [] report of Mr. Conn's cases to him each week both by alphabet and by [agency] status code. This will allow him to see when case move to [certain status] so that he can start to prepare the case earlier to identify those who have gone back to work or disappeared (for possible dismissal) and those where an OTR may be justified based on new evidence.
- Both of us agree to substitute a new case in the event a scheduled case drops out, up until the day that the judge has left for Kentucky.

Harriette and I believe that this will let us schedule these cases more efficiently. We rejected an idea to schedule out more than one or two months as this is

¹³² July 20, 2001 Email from Barbara Bracchi to Valerie Loughran, Jim Comerford, and Steven D. Slahta, PSI-SSA-96D2-003930-35. Exhibit 11.

¹³³ June 19, 2002 Email from Frank Cristaudo to Charlie Paul Andrus; PSI-SSA-96D2-003368. Exhibit 12.

problematic as his schedule can change that far in advance. In addition, our judges sometimes change dates although they usually do that a month or two in advance. However, scheduling three or four months may result in cancelled cases, which we didn't want to do.

[Mr. Conn's] cases are not just about the same age as the rest of our Prestonsburg docket (they had been 2-3 months older), and we feel that this will keep his case from aging.¹³⁴

As this report will show, the new proposal was ineffective in curbing the problem and Mr. Conn's cases continued to receive special treatment.

a. Mr. Conn Filtered Out-of-Town Claimants through Huntington ODAR

A key reason Mr. Conn had so many cases at the Huntington office was that he exploited a loophole that enabled him to direct cases from other parts of the country to the office for review. Essentially, he had his claimants "waive" their right to a hearing near where they lived and elect instead to travel to Kentucky.

Under SSA regulations, any disability claim should be assigned for review by the ODAR office closest to the claimant's listed residence, usually within 75 miles of the claimant's residence.¹³⁵ The determination of the hearing location is supposed to be made based only on the claimant and not on the location of claimant's representative. The rules state:

"When a [hearing office] receives a [hearing request], the [hearing office] staff will screen [hearing request] to determine if the [hearing office] has jurisdiction, i.e., whether the claimant's address is in the geographic area the [hearing office] serves. If the [hearing office] does not have jurisdiction, the [hearing office] will forward the [hearing request] to the [hearing office] that does."¹³⁶

The rule is intended to ensure that "a claimant should not be required to travel a significant distance to the hearing office or another hearing site if a closer hearing site exists and there are no other circumstances that prevent an ALJ from conducting the hearing at the closer hearing site."¹³⁷ Further, agency rules mandate a request for a change in the location of a hearing "should not be routinely granted" because "routine changes of the place of hearing would be disruptive and could adversely affect service to other claimants."¹³⁸

¹³⁴ November 29, 2002 Email from Charlie Paul Andrus to Frank Cristaudo, PSI-SSA-003696-97. Exhibit 13.

¹³⁵ To the extent possible, the location of the hearing site will be within 75 miles of the claimant's residence...A claimant should not be required to travel a significant distance to the hearing office (HO) or another hearing site if a closer hearing site exists and there are no other circumstances that prevent an ALJ from conducting the hearing at the closer hearing site. Hallex I-2-3-10, "Scheduling Hearings," http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-3-10.html, (May, 24, 2011).

¹³⁶ HALLEX: I-2-0-70, "Hearing Office Service Area," http://www.ssa.gov/OP_Home/hallex/I-02/I-2-0-70.html.

¹³⁷ Hallex I-2-3-10, "Scheduling Hearings," http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-3-10.html, (May, 24, 2011).

¹³⁸ HALLEX: I-2-0-70, "Hearing Office Service Area," http://www.ssa.gov/OP_Home/hallex/I-02/I-2-0-70.html.

Mr. Conn, however, routinely had his clients waive their right to a nearby hearing so they could appear before the Huntington ODAR. To do so, Mr. Conn and his claimants signed a form letter he had designed which was addressed to the Manager of the Social Security Office in Prestonsburg. The form officially came from Mr. Conn and stated in pertinent part:

As you know my office is located in Stanville, Kentucky. I do not have satellite offices at ANY location in Kentucky or in other states.

Therefore, I am requesting that all claims for clients of my office be done and processed at the Prestonsburg Social Security Office regardless of where the client lives.¹³⁹

At the same time, the claimant also signed a “Request for Transfer and Waiver of Travel Expenses,” which stated:

I would like to have my claim transferred to the Prestonsburg Social Security Office. Should I eventually have to attend a hearing on this claim, I would like the said claim to be handled by the Office of Hearings and Appeals in Huntington, WV and to be heard at the Prestonsburg Hearing site.

I expressly waive my right to reimbursement for travel expenses should the transfer of my claim result in my being compelled to travel more than seventy-five miles to attend a hearing or to the Prestonsburg Social Security Office.¹⁴⁰

The Prestonsburg office routinely accepted the waiver requests. The end result was that, despite the claimant’s geographic location, the claim would be sent to the Prestonsburg Social Security Office and, if appealed, through the Huntington ODAR.

When asked about these waivers during an interview with the Committee, SSA Chief Judge Debra Bice said this kind of practice was clearly inappropriate. “I was shocked,” she said of her reaction when she discovered what was happening. “Our policy [that the claim should be heard by the closest ODAR] has always been very, very clear on that. This is clearly against our policy.”¹⁴¹

In August 2011, Chief ALJ Debra Bice reported that “approximately 21% of cases processed in Huntington between 2005 and the present were out of service area cases. ... However, of the 6750 out of service area cases, 2286 (33%) were represented by Conn.” She explained the remaining cases “could be due to case transfers.” She continued:

Conn and [another attorney] use forms to request the field office to process the cases in Prestonsburg and forward the case to the Huntington hearing office. This is contrary to policy. These cases should always be sent to the servicing [Hearing

¹³⁹ See Form Letter to Greg Reynolds, Manager, on “Processing the Claims of Attorney Eric C. Conn.” Exhibit 14.

¹⁴⁰ See Form “Request for Transfer and Waiver of Travel Expenses.” Exhibit 14.

¹⁴¹ August 3, 2012 Committee interview with Chief Judge Debra Bice.

Office] and then the ALJ in that [Hearing Office] will decide whether or not to grant the transfer.¹⁴²

The Committee reviewed 110 case files from Mr. Conn's claimants that were adjudicated by Judge Daugherty; 30 of those case files, or 27 percent, contained a geographic waiver. The case files are discussed in Appendix I.

b. Judge Daugherty Coordinated with Mr. Conn to Award Benefits On-the-Record and Without Hearings

Perhaps the most significant form of special treatment given to Mr. Conn was the unusually high number of cases he had approved by Judge Daugherty, often without a hearing. Judge Daugherty selected dozens of Mr. Conn's clients each month for review and quickly approved the cases for benefits, typically relying on materials in the casefile without holding a hearing. This procedure for resolving the cases was known as an "on-the-record" or OTR decision. Between 2005 and 2011, Judge Daugherty never once denied benefits to a claimant represented by Mr. Conn.¹⁴³

Of the 1,411 cases adjudicated by Judge Daugherty in FY2010, 531 (or 38 percent) were claimants represented by Mr. Conn.¹⁴⁴ The remaining 880 cases Judge Daugherty decided in 2010 were divided among 72 other attorneys and claimants representatives, or an average of 12 apiece. The result was an assembly line process in which hundreds of Mr. Conn's claimants were approved for benefits in only a few short years.

Year	Total Number of Decisions by Judge Daugherty	Total Number of Mr. Conn's Cases Approved by Judge Daugherty	Total Number of Mr. Conn's Cases Dismissed by Judge Daugherty	Total Number of Mr. Conn's Cases Denied by Judge Daugherty
2005	1,003	377	4	0
2006	1,180	481	2	0
2007	1,289	509	2	0
2008	1,433	429	4	0
2009	1,444	451	2	0
2010	1,411	530	1	0
2011	1,030	366	3	0

The arrangement was instrumental in making Judge Daugherty one of the highest volume ALJ's in the nation, and Eric Conn one of the agency's highest paid claimant representatives.

Since at least 2006, Judge Daugherty had a practice of coordinating with Mr. Conn to create the monthly DB List. According to former employees of Mr. Conn, Judge Daugherty called the Conn Law Firm each month and provided to Mr. Conn's staff the list of claimants and their Social Security numbers.¹⁴⁵ The list was composed entirely of Mr. Conn's clients who were

¹⁴² August 30, 2011 Email from Debra Bice to Kristen Fredricks, Joseph Lytle, PSI-SSA-100-004537-38. Exhibit 15.

¹⁴³ As noted in the chart, certain cases before Judge Daugherty of Mr. Conn's were withdrawn.

¹⁴⁴ Committee analysis of information provided by the Social Security Administration.

¹⁴⁵ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶5 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin ¶3-4 (Exhibit 17).

denied benefits at the DDS level and had appealed to be heard by an ALJ. Since Judge David B. Daugherty's widely used nickname was "DB," the lists were referred to around the Conn Law Firm as the monthly "DB List."¹⁴⁶ For example, the June 2006 list, the earliest such list obtained by the Committee, was titled: "D.B. June OTR's [on-the-record] Due on 06/16/06."¹⁴⁷

During Judge Daugherty's monthly phone calls, according to former Conn personnel, after stating the name and Social Security number of the claimant, he said either "physical" or "mental."¹⁴⁸ By stating either "mental" or "physical," Judge Daugherty indicated to Mr. Conn's office the type of medical opinion he needed to award that claimant disability benefits.¹⁴⁹ At times, for certain claimants, Judge Daugherty stated: "either;" "none;" or "both."¹⁵⁰ In some instances, Judge Daugherty just indicated "whatever Eric wants" with regard to the medical opinion needed.¹⁵¹

In addition, for some clients, Judge Daugherty stated that he was changing the claimant's "alleged onset date" to approve their benefits.¹⁵² In the SSA disability program, claimants over the age of 50 are evaluated under more relaxed vocational grids that use age, education, and work experience to find if the claimant is disabled.¹⁵³ When a claimant's age was close to one of the cutoff points, Judge Daugherty at times requested the claimant to "amend onset date for grid rule – 6 months before 50th birthday."¹⁵⁴ The DB Lists also indicated at times that Judge Daugherty was reopening a prior application and, for example, stated: "reopen-report go back to [date]."¹⁵⁵

Some individuals on the DB Lists had prior denials from other Huntington ALJ's. In those cases, Judge Daugherty at times noted that Mr. Conn needed to ensure a claimant's onset date did not fall prior to the date they were denied, which would violate program rules. For instance, in one case in which Judge Andrus had already denied benefits at an earlier date, Judge Daugherty instructed Mr. Conn to "amend [the] onset date to [date] 1 day after Judge Andrus decision."¹⁵⁶

¹⁴⁶ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶7 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin (Exhibit 17). *See also* CLF030566-810. Exhibit 18.

¹⁴⁷ Exhibit 18 at CLF030633.

¹⁴⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶6 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 5 (Exhibit 17). *See also* CLF030566-810. Exhibit 18.

¹⁴⁹ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶6 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin (Exhibit 18).

¹⁵⁰ Exhibit 18 at CLF030649-50, CLF030656-57.

¹⁵¹ Exhibit 18 at CLF030651-2.

¹⁵² Exhibit 18 at CLF030678-79.

¹⁵³ For a full explanation of SSA's vocational grids see pages 10-13 of the Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, <http://www.hsgac.senate.gov/committees/investigations/hearings/social-security-administrations-disability-programs>.

¹⁵⁴ Exhibit 18 at CLF030670.

¹⁵⁵ Exhibit 18 at CLF030739.

¹⁵⁶ Exhibit 18 at CLF030676.

The DB Lists appear to have functioned as a road map for Mr. Conn to ensure his claimants were approved for disability benefits by Judge Daugherty. The DB Lists reviewed by the Committee ranged in date from June 2006 through July 2010.¹⁵⁷ The lists ranged in number of claimants from 15¹⁵⁸ to 52.¹⁵⁹

For the period reviewed by the Committee, a total of 1,823 claimants were identified on the various DB Lists, and almost all were approved for benefits.¹⁶⁰ Through his attorney, Mr. Conn justified the DB Lists as follows:

For Judge Daugherty, his practice was to place a call to the Conn Law Firm and speak with the then-office manager. Judge Daugherty would tell the office manager which claimants represented by the Conn Law Firm...he wanted to consider that month. In that manner, the Conn Law Firm would be sure that all records were complete for those clients and know which clients to prepare for hearings.¹⁶¹

The evidence indicates, however, that the DB Lists were more than a common courtesy to help Mr. Conn prepare; they functioned as a key mechanism enabling the two men to process hundreds of cases per year.

As stated above, certain DB Lists indicated they were lists of claimants to be approved OTR or on-the-record without a hearing.¹⁶² In fact, most of Mr. Conn's cases were approved by Judge Daugherty on-the-record without a hearing.¹⁶³ In 2008, for example, Judge Daugherty approved 429 of Mr. Conn's cases, but held no hearings on cases represented by Mr. Conn.

¹⁵⁷ Mr. Conn, nor his Firm, produced DB Lists from the following months: October 2010; October 2009 through December 2009; and May and June 2010.

¹⁵⁸ See Exhibit 18 at CLF030751.

¹⁵⁹ See Exhibit 18 at CLF030654-55.

¹⁶⁰ According to agency records, the claim for one individual on the DB List was dismissed. For three others, the agency had no record of their application. Information provided by the Social Security Administration.

¹⁶¹ May 17, 2012 Memorandum from Pamela J. Marple, Esq., attorney for Eric C. Conn, to Permanent Subcommittee on Investigations. Exhibit 9.

¹⁶² See, e.g.: Exhibit 18 at CLF030633 titled "D.B. June OTR's Due on 06/16/06;" Exhibit 18 at CLF030672 titled "D.B. OTR's for July 2006 Due by 07/19/06;" Exhibit 18 at CLF030721 titled "August OTR's – Due by August 9, 2006 2nd half due by 17th."

¹⁶³ Committee analysis of information provided by the Social Security Administration.

Year	Number of Hearings Held on Mr. Conn's Cases by Judge Daugherty	Total Number of Mr. Conn's Cases Approved by Judge Daugherty
2006	80*	481
2007	4**	509
2008	0	429
2009	2	451
2010	3	530
2011	18***	366

*All 80 hearings were held over four days (February 22, 2006; March 29, 2006; May 25, 2006; and June 28, 2006) with hearings occurring every 15 minutes starting at 9:00 am to 3:00 pm with an hour mid-day break.

** All four hearings were held on November 19, 2007 between 9:00 and 10:00 am.

*** Judge Daugherty held all 18 of these hearings on one day (March 21, 2011) at 9:05 am. These also included hearings for claimants represented by Mr. Conn's associate, H. David Hicks.

c. Against Agency Rules, Judge Daugherty Took Cases Assigned to Other ALJs and Awarded Benefits On-the-Record and Without Hearings

After identifying which of Mr. Conn's clients he would approve each month – using DB Lists – Judge Daugherty next took steps to ensure the cases were assigned to him and not another ALJ. To do so, Judge Daugherty routinely reassigned himself Mr. Conn's cases, despite the fact they were already set for hearings before other ALJs. Although this practice was against agency policy and repeatedly brought to the attention of management, it was never stopped.

SSA rules are clear that unless extraordinary circumstances require it, all cases appealed to the ALJ level should be assigned in rotation as they come to the office. If SSA does not assign cases by rotation, the agency opens itself up to allegations of favoritism. Patricia Jonas, head of SSA's Appeals Council, which oversees all ALJ decisions, told the Committee the agency held this to be an important principle.¹⁶⁴

Judge Daugherty used several methods over the years to assign himself Mr. Conn's cases. When the agency primarily handled disability claims in paper, any ALJ could go through unassigned cases in the file cabinets, locate a file, and write a decision. In fact, the agency encouraged ALJs to locate and decide as many cases as possible on-the-record to assist with bringing down the backlog. However, it also had the effect of deciding cases out of the normal course of first appealed received, first scheduled for disposition.

In 2003, the agency began using an electronic case management system and switched from a paper-based case file system to an electronic one. A loophole in that system allowed any ALJ to

¹⁶⁴ July 30, 2012 Committee interview of Judge Patricia Jonas.

locate cases electronically and assign the case to themselves for decision.¹⁶⁵ Judge Daugherty used this loophole to assign cases to himself for decision. When asked why the electronic system allowed him to do this, Ms. Jonas responded “no one contemplated that a judge would assign a case to himself.”¹⁶⁶ SSA Chief Judge Debra Bice also confirmed that Judge Daugherty assigning cases to himself was “totally against policy.”¹⁶⁷ In fact, a number of ALJ’s in Huntington alerted management of Judge Daugherty’s practice of doing so.

2005. In October 2005, Judge Daniel Kemper emailed Judge Andrus to complain that Judge Daugherty had assigned cases to himself that were previously assigned to other Huntington ALJ’s, and simply awarded benefits on-the-record.

As I discussed with you yesterday, I have a court remand on a case [] which was decided by me on June 27, 2003 and in an earlier decision by Judge Paris on June 28, 2002. Claimant alleged the same onset date in both filings []. Thereafter, Daugherty takes the record off the master docket and issues a fully favorable decision on April 11, 2004, with the original onset date of September 12, 2000. He completely ignored both Judge Paris’ decision and mine, making no reference to either in the decision. This makes it particularly difficult now to decide the case on remand. I have spoken to Judges Chwalibog and Gitlow about this. Judge Chwalibog believes that a similar situation happened with one of his cases.

You stated that you would discuss this matter with him to the extent that he should at least check to see if there have been any prior applications and decisions made on a particular cases. It seems to me when you have a remote onset date as here, a red flag would have been raised that yes, there may very well have been such a prior application and decision on the case.¹⁶⁸

2006. Judge Daugherty’s practice of pulling cases and approving them on-the-record was pointed out the following year as well. On June 18, 2006, Judge Gitlow emailed a colleague and explained his impression of how the Huntington Office reached its disposition goals each month stating:

Amazing how it takes a ***** [sic] ALJ in an office to make numbers each month. We have Judge Daugherty here who scans the master docket each month, pays 90+% and gets out 80 to 100 cases each month. So we make our numbers each month. Without him we would not. Ever.¹⁶⁹

¹⁶⁵ The agency’s system was known as the Case Processing and Management System or CPMS. See DI 80550.001 Case Processing Management System – Overview, <https://secure.ssa.gov/poms.NSF/lrx/0480550001>. According to agency officials, an ALJ is no longer allowed to assign himself a case for decision. Only certain people in each ODAR office are given rights to assign cases to ALJs. September 27, 2013 Committee interview of Deputy Commissioner Glen Sklar, Judge Patricia Jonas, and Judge Debra Bice.

¹⁶⁶ July 30, 2012 Committee interview of Judge Patricia Jonas.

¹⁶⁷ August 3, 2012 Committee interview of Chief Judge Debra Bice.

¹⁶⁸ October 4, 2005 email from James D. Kemper, Jr. to Charlie P. Andrus, Andrew J. Chwalibog, and William H. Gitlow, PSI-Conf_SourceHWV-01-0053. Exhibit 19.

¹⁶⁹ May 18, 2006 email from William H. Gitlow to Roland M. Kayser, PSI-SSA-95-032792. Exhibit 20.

Complaints that Judge Daugherty reassigned cases to himself continued. Judge Andrus reminded the Huntington office in July of 2006 that cases from Eric Conn and Bill Redd, another attorney who also represented a high number of claimants, were to be assigned in strict rotation to prevent the appearance of judge shopping. Judge Andrus wrote the following in an email to the entire office:

As you know, we have a large amount of cases from Eric Conn's office and Bill Redd's office. The only way that we can fairly handle these cases is by strict rotation. If we don't assign these cases in rotation we leave ourselves open to charges of favoritism, judge shopping, as well as complaint from the lawyers that they only see "certain judges and not others." These allegations have been raised in the past and we have been able to show that the cases for these lawyers are divided equally among all the ALJs.

In addition, I want to remind everyone of the policy we have followed for several years that these cases are NOT to be reassigned to another judge for any reason other than a judge leaving the office or recusal and then they are to be assigned out in strict rotation. I must personally approve any exception to this rule. In addition, the Case Intake Specialist and anyone else adding cases are to assign these cases to the next ALJ in rotation immediately when they are entered onto our system.

Social Security pays these lawyers a lot of money in fees each year due to the size of their caseload (into seven figures). The only way we can refute unfounded allegations of improper assignment of cases to generate more fees for the lawyer is to follow a strict rotation and a "no change" policy.¹⁷⁰

2007. Huntington ODAR staff also took notice of Judge Daugherty's focus on Mr. Conn's cases. In January 2007, Sarah Carver, a Senior Case Technician, emailed the hearing office director, Greg Hall, to inform him:

It has come to my attention the Eric Conn electronic cases are not being equally divided among those judges who have been trained on the electronic files. In fact, as you are now aware, [Judge Daugherty] has, on his own initiative, elected to go in and assign himself SEVERAL electronic cases, all of which are Eric Conn cases.¹⁷¹

Ms. Carver also suggested other ALJs be trained on using the electronic files so "it would put a stop to Eric Conn calling [Judge Daugherty] and giving him a list of his electronic cases, knowing that the other judges are not holding hearings. How else would [Judge Daugherty] have knowledge of Conn's pending electronic cases?"¹⁷²

Ms. Carver alerted Mr. Hall once again five months later in May 2007 that "[t]his month [Judge Daugherty] closed 29 electronic cases. 29 of these are Eric Conn cases. Why? We have other

¹⁷⁰ July 31, 2006 email from Charlie P. Andrus to Huntington ODAR Office, PSI-SSA-95-032809. Exhibit 21.

¹⁷¹ January 25, 2007 Email from Sarah Randolph [Carver] to Gregory Hall. Exhibit 22.

¹⁷² *Id.*

representatives which have electronic cases with this office. The word favoritism comes to mind. This is clearly favoritism.”¹⁷³

In August of 2007, Huntington ODAR employee Donna George noticed certain cases originally assigned to Judge Gitlow were reassigned to Judge Daugherty. To document her concerns she composed a written statement the following month, signed and dated it, then submitted it to the agency for further action. In it, she described how she approached HOD Greg Hall, but he “tried to make out like it was a Master Docket Clerk error.”¹⁷⁴ While the case “first looked like it had been unassigned and that Judge Daugherty [] went into the system and picked it out to be one of his cases,” she soon realized the cases were originally “assigned to Judge Gitlow since February 2007 and Judge Daugherty [] switched it to his own case on 8/20/07.”¹⁷⁵

Ms. George informed Judge Gitlow the cases were reassigned. She reported that “later, Greg [Hall] called me back into his office and told me that Judge Gitlow had went to Judge Andrus with this matter and was very upset about it. He again told me not to tell anyone about it.”¹⁷⁶ Later that week, following a union representative’s meeting with members of management, Mr. Hall told Ms. George “he didn’t want [her] to tell anyone else about this incident” and that “he didn’t want it to get back to Judge Daugherty before Judge Andrus had a chance to look into the matter.”¹⁷⁷

In an email to himself on August 31, 2007, Judge Gitlow documented his version of the same event:

On Tuesday, 8/28/07 Donna [George] came to me with my pencil schedule for October Prestonsburg, saying that she wanted to know if I had already prepped two cases. I had not yet done so. She explained that while those cases were assigned to me in the system, they had now been changed from being in my name to being in Judge Daugherty’s name. I had no knowledge of this. As such, Donna [George] needed to cancel those two hearings and find two different cases for me.

I then went to Chief Judge Andrus to explain what happened. Since they were e-files, they were not papered and as such did not have a folder with my initials on it in the master docket drawer. I asked Judge Andrus if Judge Daugherty would know that these had been assigned to me. His response was that it would depend upon where Judge Daugherty had looked. I explained that I was concerned that the office remains above reproach. He led me to believe that he would take care of this problem.¹⁷⁸

¹⁷³ May 9, 2007 Email from Sarah Randolph [Carver] to Gregory Hall. Exhibit 23.

¹⁷⁴ September 18, 2007 signed statement of Donna George, PSI-Conf_SourceHWV-01-00056. Exhibit 24.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ August 31, 2007 email from William H. Gitlow to William H. Gitlow, PSI-Gitlow-01-0001. Exhibit 25.

Judge Andrus never responded to say whether he would or would not follow up with Judge Daugherty.¹⁷⁹ Judge Gitlow stated the cases at issue were ones in which Mr. Conn represented the claimants, since those were the only cases immediately assigned to ALJs when they are received by Huntington ODAR.¹⁸⁰

In her September 2007 memorandum documenting the incident, Ms. George identified the two claimants. Both of the claimants (and their Social Security numbers) were also listed on the September 4, 2007 “DB List” of claimants Judge Daugherty indicated to Mr. Conn he would decide on-the-record if Mr. Conn provided disabling medical opinions related to the claimants’ “physical” condition.¹⁸¹

A physician frequently used by Mr. Conn, Dr. Huffnagle, provided medical opinions for both claimants, including a medical opinion and a Residual Functional Capacity assessment. He reviewed one of the claimants on August 24, 2007, four days after Judge Daugherty reassigned the case to himself. Both of these claimants were awarded disability benefits. For both claims, Mr. Conn received a total of \$6,491.30 in attorney fees paid by the Agency.¹⁸²

Also in September 2007, Huntington ODAR employee Jennifer Griffith, the Master Docket Clerk, emailed Hearing Office Director Greg Hall that Judge Daugherty continued to transfer files into his name for decision. Ms. Griffith was responsible for implementing the office’s rotational assignment policy, and was aware of repeated incidences in which this happened. She wrote:

I am aware that while I was out of the office Judge Daugherty felt it necessary to take some more cases that were assigned to another judge and place them in his name. I am aware that it was brought to your attention and you tried to blame me. I do not appreciate this.

[Judge Daugherty] does many things like this every month. When I find them I make management aware of it. Nothing is ever done about it. Somehow it always ends up being the fault of one of the master docket clerks. We cannot control him or anything he does.¹⁸³

Ms. Griffith continued to raise the issue with Hearing Office Director Hall and provided specific examples of Judge Daugherty assigning cases to himself.¹⁸⁴ At the same time, Ms. Carver alerted Mr. Hall in October 2007 the problem continued. She emailed Mr. Hall that Judge Daugherty assigning himself cases from the master docket list “continues to be a problem and management has been notified on NUMEROUS occasions.”¹⁸⁵ Ms. Carver also pointed out that

¹⁷⁹ May 29, 2012 Committee interview of Judge William Gitlow.

¹⁸⁰ *Id.*

¹⁸¹ See Exhibit 18 at CLF030782-83.

¹⁸² Committee analysis of Conn Law Firm financial records.

¹⁸³ September 11, 2007 email from Jennifer Griffith to Gregory Hall. Exhibit 26.

¹⁸⁴ October 23, 2007 Email from Jennifer Griffith to Gregory Hall. Exhibit 27.

¹⁸⁵ October 24, 2007 Email from Sarah Randolph to Gregory Hall. Exhibit 27.

her “main concern is the cases [Judge Daugherty] is assigning to himself out of rotation.”¹⁸⁶ This was due mainly to the fact it “exhibits favoritism towards E. Conn.”¹⁸⁷

2009. In 2009, Judge Gitlow once again determined Judge Daugherty was taking his cases where Mr. Conn was the representative and reassigning them to himself.¹⁸⁸ Judge Gitlow stated a Senior Case Technician (“SCT”) alerted him to what Judge Daugherty was doing. While Judge Gitlow believed he should take the matter directly to the Regional Chief Judge, he decided to give Judge Andrus another chance to correct the problem. Judge Gitlow met with Judge Andrus and requested that he address the issue and told him that his prior attempts to remedy the problem were inadequate.¹⁸⁹

2010. Judge Daugherty, however, continued to reassign Mr. Conn’s cases to himself. On March 29, 2010, Ms. Carver emailed Judge Gitlow: “FYI. Someone was closing this case and seen it was originally your case and [Judge Daugherty] took it and did an OTR on it.”¹⁹⁰ Ms. Carver included the claimant’s name and Social Security number. That same claimant’s name (and their Social Security number) was listed on the March 2010 “DB List” created by Mr. Conn’s office.¹⁹¹ Next to this claimant’s name on the DB List was the notation “physical” indicating that Judge Daugherty required evidence of a physical disability to approve the cases on-the-record.¹⁹² Again, Dr. Huffnagle reviewed the claimant and provided an opinion and Residual Functional Capacity assessment. Judge Daugherty ultimately awarded this claimant disability benefits on-the-record and Mr. Conn received \$2,415 from the agency in fees for representing this claimant.¹⁹³

2011. Judge Daugherty continued to reassign Mr. Conn’s cases to himself, which were previously assigned to other judges. On April 29, 2011, Judge Gitlow sent another email to himself laying out the following:

I found out yesterday, 4/28/11, that some cases assigned to me in 12/10 had been reassigned by Judge Daugherty to himself in 1/11. This is the third such incident to which I was aware, with the first in 8/07 and the second in 12/09. In the first instance I went to my HOCALJ; those contemporaneous notes are set forth. The second time I went Judge Chwalibog (AJC) to discuss this and whether I should go directly to the [Regional Chief Administrative Law Judge]. AJC suggested that I give the HOCALJ [Andrus] another opportunity to end this reassignment. I followed his suggestion and went to the HOCALJ a second time. I told the HOCALJ at that time that if it happened again I would be forced to go higher up. Now I have been put in a position where I am faced with knowledge of this a third time. Obviously I am inclined to go directly to the RCALJ. However, I first sought guidance from other experienced ALJs, so I asked AJC and Judge Buel to

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ May 29, 2012 Committee interview of Judge William Gitlow.

¹⁸⁹ *Id.*

¹⁹⁰ March 29, 2010 Email from Sarah Carver to William H. Gitlow. Exhibit 28.

¹⁹¹ “March DB,” Exhibit 18 at CLF030806.

¹⁹² “March DB,” Exhibit 18 at CLF030806.

¹⁹³ Committee analysis of Conn Law Firm financial records.

meet with me. We met on Friday at 2pm, 4/29/11. After I set forth all the facts, they were in agreement that I should go a third time to the HOCALJ, but this time with them as well. I was reluctant to do so, as I felt that if I did not do something further that I would be viewed as somehow complicit or condoning such activity. However, both judges were in agreement that if the three of us met with the HOCALJ together that such action would [be] an appropriate step on my part. As such, the three of us met with the HOCALJ and explained that Judge Daugherty had for the third time been reassigning my cases over to him. Judge Andrus assured me that he would (a) put the instruction to Daugherty in writing this time rather than orally; and (b) take this matter to the RCALJ, Judge Bede, on Monday.

Unfortunately, what I have seen post meeting is a generic message to all the office reminding everyone of the HOCALJ policy on case reassignments. If this is all that the HOCALJ meant by putting the instruction to Daugherty in writing, I feel that I have been misguided. However, I made my decision (not to go to RCALJ) and I now feel bound and constrained by it.¹⁹⁴

Judge Andrus emailed the entire Huntington ODAR office again that day reminding them that ALJ's should not reassign cases to themselves that were previously assigned to other ALJ's:

I want to remind everyone of my long-standing directive about re-assigning cases between judges. Once a case is assigned to a judge that case is to stay with that judge unless I find a specific reason to reassign the case, such as recusal. Therefore, NO ONE should reassign a case from one judge to another without clearing it through their supervisor who will clear it through me. Judges should come directly to me. We will continue our long standing policy of assigning Eric Conn cases immediately upon receipt, by strict rotation, to all judges except Judge Meade. Once Judge Meade starts hearing cases in Prestonsburg, we will assign to him too.

If a case is unassigned, then it can be assigned to a judge without going through the above process. If a staff member has any questions about this procedure please see your supervisor. If the judges have any questions please see me.¹⁹⁵

Judge Andrus told the Committee afterwards that while he sent the generic email to all judges, he also spoke privately to Judge Daugherty to let him know that every though he sent the email to all the judges, "it's going to you."¹⁹⁶

In response, Judge Daugherty this time said he had more than 40 Eric Conn cases that were assigned to other ALJs. Judge Daugherty emailed Judge Andrus back and stated "[y]our email prompted me to check my Eric Conn cases to see if there were any that had been assigned to me from another ALJ. I discovered 23 of them." Judge Daugherty then listed the 23 claimants'

¹⁹⁴ April 29, 2011 email from William H. Gitlow to William H. Gitlow. Exhibit 29.

¹⁹⁵ April 29, 2011 email from Charlie Paul Andrus to Huntington ODAR (at 4:06 p.m.). Exhibit 30.

¹⁹⁶ June 19, 2012 Committee interview of Judge Charlie Andrus.

cases he had assigned to himself, which were previously assigned to Judges Buel, Chwalibog, Dunlap, Gitlow, and Quinlivan.¹⁹⁷

Two hours later, Judge Daugherty emailed Judge Andrus again stating: “OOPS! I looked further and found the following” and listed 19 more cases, which were previously assigned to Judges Buel, Chwalibog, Dunlap, and Gitlow.¹⁹⁸ Judge Daugherty continued and stated “[t]hat should be it! There are no other cases for me to screen. Thank goodness I don’t have to do these cases!!!” Judge Daugherty noted that he wanted to “apologize for the inconvenience, if any, which may have resulted from [] these errors.”¹⁹⁹

The next day, Judge Andrus forwarded Judge Daugherty’s emails to Judge Nicholas Cerulli and Regional Chief Administrative Law Judge Jasper J. Bede stating “I had no clue he was doing this to this extent. I do notice one name conspicuously absent from the list of the judges,” referring to himself.²⁰⁰

On June 10, 2011, around a month after *The Wall Street Journal* story on Judge Daugherty, Mr. Hall sent a memorandum to the Huntington ODAR Staff that under the direction of the Hearing Office Chief Judge only the HOD and group supervisors are “delegated the authority to assign cases to judges...No one else is to assign cases. No other employees, including judges, are authorized to assign cases.”²⁰¹ If an ALJ wanted to review cases for potential on-the-record decisions, they “will email the Hearing Office Chief Judge the request and the number of cases they desire.”²⁰² Most importantly, the memorandum ended the special treatment afforded to Mr. Conn’s cases and stated “[n]o case will be assigned as it arrives in the office except for those cases meeting the exception criteria as outlined within the E-Business Process (Remands and Critical Cases).”²⁰³ As such, “[c]ases will be pulled according to the E-Business Process.”²⁰⁴ Therefore, cases were no longer scheduled under a two-track process favoring Mr. Conn’s clients and instead were pulled according to agency policy of oldest case scheduled for hearing before newer cases.

All of these administrative actions came only after the relationship between Mr. Conn and Judge Daugherty was first uncovered by the *Wall Street Journal* on May 19, 2011. After six years of documenting Judge Daugherty inappropriately pulling cases and reassigning them to himself, the agency finally ended the practice.²⁰⁵

¹⁹⁷ May 2, 2011 email from David B. Daugherty to Charlie P. Andrus, Andrew J. Chwalibog, and William H. Gitlow (at 2:36 p.m.). Exhibit 30.

¹⁹⁸ May 2, 2011 email from David B. Daugherty to Charlie P. Andrus, Andrew J. Chwalibog, and William H. Gitlow (at 4:49 p.m.). Exhibit 30.

¹⁹⁹ *Id.*

²⁰⁰ May 3, 2011 email from Charlie P. Andrus to Nicholas Cerulli and Jasper J. Bede attaching prior email correspondence. Exhibit 30.

²⁰¹ June 10, 2011 Memorandum to ODAR Staff, Huntington, West Virginia from Gregory Hall, Hearing Office Director. Exhibit 31.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ After the *Wall Street Journal* article, another ALJ wrote HOCALJ Andrus forwarding the story and stated “Shame on you!” In response, Judge Andrus wrote only “What can I say – judicial independence.” May 19, 2011 Email from William H. Helsper to Charlie Paul Andrus. Exhibit 32.

VI. JUDGE DAUGHERTY CANCELLED 30 HEARINGS AND AWARDED BENEFITS TO EVERY CLAIMANT WITH OTR DECISIONS

Reassigning cases to himself was not the only action taken by Judge Daugherty that raised suspicion with agency management. Since at least 2002, top agency management was aware of potentially improper actions by Judge Daugherty that appeared to benefit Mr. Conn. In at least one instance, Judge Daugherty cancelled his entire docket of hearings scheduled for the Prestonsburg hearing site and instead approved all of the claims through on-the-record decisions. All of the cases were represented by Mr. Conn.

2002. In January 2002 Judge Andrus emailed the Huntington office ALJs to remind them of the policy regarding the cancelling of hearings. He emphasized to everyone the administrative burden was too great when hearings are cancelled, and so it would generally not be allowed:

I want to remind you all again that you need to clear any changes to the hearing schedule with me before hearing days are cancelled. I found out that many times hearings which cannot be set one month are set for a month or even two months ahead. Therefore, if we cancel a week that has a hearing reporter and VE [vocational expert] (currently through March) we can cause a lot of extra work. This can be avoided by clearing these changes through me or Harriette. We m[a]y be able to find another judge to cover those dates. I would also like to remind you that when dates are cancelled as opposed to being covered by another judge, the hearing reporter and VE have committed time to us that is lost.

By a copy of this message, I am asking...the scheduling clerks to check with me before cancelling the hearing date. This way we have another chance of covering a date rather than losing it.²⁰⁶

Despite the request from Judge Andrus in January 2002, later that year Judge Daugherty cancelled 30 hearings scheduled to take place over a three-day period. On September 5, 2002, Judge Daugherty sent an email to Judge Andrus that stated “[i]n an effort to contribute as many decisions as possible toward this month’s goals, I have cancelled my [Prestons]burg hearings for the 23rd, 24th & 25th of this month and will, instead, write 30 [on-the-record] decisions from them.”²⁰⁷ Judge Andrus forwarded the email to Judge Cristaudo.²⁰⁸

Agency policy discouraged cancelling hearings in this way not only to prevent wasted administrative expenses, but because hearings are often the most important part of an ALJ’s decision-making process.²⁰⁹ Hearings are one of the most important aspects of the appeals process for applicants seeking disability benefits because they afford both claimant and judge the

²⁰⁶ January 23, 2002 email from Charlie Paul Andrus to Huntington Hearing Office ALJs, PSI-SSA-95-032421. Exhibit 33.

²⁰⁷ September 5, 2002 Email from David B. Daugherty to Charlie P. Andrus, PSI-SSA-96D2-003483. Exhibit 34.

²⁰⁸ September 5, 2002 Email from Charlie P. Andrus to Frank Cristaudo, PSI-SSA-96D2-003483. Exhibit 34.

²⁰⁹ See, e.g., Social Security Administration, Office of Disability Adjudication and Review, Plan to Eliminate the Hearing Backlog and Prevent its Recurrence, Annual Report Fiscal Year 2008 (“On October 31, 2007, the Chief Administrative Law Judge issued a letter to all ALJs asking them to...hold scheduled hearings absent a good reason to cancel or postpone hearings.”).

opportunity to speak in-person. Claimants are given the chance to make their best case and ALJs can make judgments based on more than just paper medical files. As Judge Cristaudo made clear, ALJs were expected to “hold scheduled hearings absent a good reason to cancel or postpone the hearing.”²¹⁰

In response to Judge Daugherty’s action, Judge Cristaudo stated he was “furious” and formally requested an official reprimand be issued to Judge Daugherty for cancelling the hearings.²¹¹ Judge Cristaudo wrote a memorandum to the Associate Commissioner on December 2, 2002:

The purpose of this memorandum is to request that an official letter of reprimand be issued to Judge David Daugherty, an administrative law judge in the Huntington (West Virginia) Hearing Office. I spoke with you about this matter when you visited Philadelphia. On September 5, 2002, I was advised by Hearing Office Chief Judge Charlie Paul Andrus that Judge David Daugherty had cancelled a scheduled hearing trip and instead decided to issue favorable on-the-record decisions in 30 of the 35 cases. Judge Daugherty stated that he took this action to help the office attain numerical goals. In fact, he used annual leave on two of the days on which the hearings had been scheduled.

I am most concerned about the conduct of Judge David Daugherty and feel that a letter of reprimand is warranted. When a case is scheduled for hearing, there is an understanding that hearing is needed in order to resolve the matter. To state that 30 hearings were cancelled and 30 on-the-record decisions issued to help the agency meet performance goals suggests possible impropriety and flawed decisions. I believe that the actions taken by Judge David Daugherty justify the issues of a letter of reprimand. For your convenience a draft letter has been prepared and is enclosed along with the relevant background information.²¹²

The draft letter of reprimand recommended by Judge Cristaudo was a strongly worded rebuke to Judge Daugherty for cancelling the 30 hearings and instead writing favorable on-the-record decisions. It emphasized the importance of holding a hearing:

The principal purpose of scheduling a hearing is to afford the claimant an opportunity to be heard and to review the evidence and cross-examine witnesses. This is an important and solemn event, and no hearing should be scheduled if it is unnecessary. The act of scheduling a case for hearing evinces a belief that the documentary record is not sufficient to decide the case, and that oral testimony is needed. Therefore, no hearing should be cancelled without a compelling reason. Moreover, as in this case, the sudden and wholesale cancellation of nearly an entire docket of cases suggests that the hearings were cancelled without individualized attention the cases deserve. What makes your actions even more

²¹⁰ Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, Sept. 13, 2007, <http://www.ssa.gov/hearingsbacklog.pdf>.

²¹¹ May 15, 2013 Committee interview with Judge Frank Cristaudo

²¹² December 2, 2002 Letter from Region III Chief Judge Frank Cristaudo to Associate Commissioner, PSI-SSA-96D2-003703. Exhibit 35.

egregious is that they were motivated by personal interest as well as by your stated desire to promote office productivity. This behavior cannot be tolerated.

As an administrative law judge, you hold a high position in our Federal service and are held to the highest of ethical standards. Your flagrant abuse of the hearing scheduling process is not worthy of the high position of trust which you hold. In order for the agency to meet its obligations, it is essential that all judges discharge their duties in a manner consistent with the high degree of responsibility, trust and integrity required of administrative law judges. Therefore, a reprimand is fully warranted and necessary to deter future misconduct and promote the efficiency of the Federal service.²¹³

Members of agency management met on December 6, 2002 to discuss whether to issue the reprimand to Judge Daugherty. According to Judge Cristaudo, the letter was never sent due to agency concerns regarding ALJ independence.²¹⁴

2003. On April 24, 2003, nearly eight months after the incident, Judge Cristaudo sent a memorandum to Judge Andrus informing him that with regard to Judge Daugherty canceling the hearings, Deputy Chief Judge Bisantz for the agency had “directed [him] to conduct a bias and unfair hearing inquiry on this matter” and “the initial inquiry involves soliciting relevant comments and information from the administrative law judge.”²¹⁵ Judge Cristaudo requested Judge Andrus “initiate an investigation of this matter by obtaining comments from Judge Daugherty and by reviewing the written materials that have already been procured in this matter.”²¹⁶ The memorandum specifically requested:

Judge Daugherty should be asked why he canceled hearings, and subsequent questioning should focus on whether he was trying to increase his dispositions or whether he had a public service motive. Secondly, he should be asked whether he has previously cancelled a large number of hearings and issues on-the-record decisions; and, if so, he should be asked to give some specifics about when, how many cases, and why were they cancelled.²¹⁷

Judge Cristaudo requested Judge Andrus complete the investigation within 14 days. Judge Andrus emailed Judge Cristaudo his investigatory findings on May 5, 2003:

As you requested I spoke with Judge Daugherty about the docket of hearings he canceled in September 2002. He related that the then Group Supervisor, Kathleen DeWeese, requested him to help get out cases before the end of the year by reviewing cases for OTR. Judge Daugherty said that he reviewed the cases scheduled in Prestonsburg as requested by Ms. DeWeese. Evidently Mr. Conn

²¹³ Undated draft letter from Associate Commissioner A. Jacy Thurmond, Jr. to David Daugherty, PSI-SSA-96D2-003707-08. Exhibit 36.

²¹⁴ May 15, 2013 Committee interview of Judge Frank Cristaudo.

²¹⁵ April 24, 2003 Memorandum from Regional Chief Judge OHA – Region III – Philadelphia Frank A. Cristaudo to Charlie P. Andrus Hearing Office Chief Judge, PSI-SSA-96D2-004021-22. Exhibit 37.

²¹⁶ *Id.*

²¹⁷ *Id.*

(who represented nearly all of the claimants) had sent in reports of consultative examinations he had obtained on the cases that were allowed in mid-September. This left Judge Daugherty with only four or five cases which were rescheduled as he no longer had enough cases to justify a travel docket and they could be rescheduled with three to four weeks. He had planned to go on vacation the last week of the month after he had done his hearings in Prestonsburg. At some point in time he changed the plans to leave earlier as he no longer had hearings.²¹⁸

Judge Andrus also opined on the quality of medical opinions Mr. Conn provided to ALJs regarding the claimants that he represented:

Mr. Conn does send many of his clients to physicians who, while not “bought sources”, are more “liberal” in their assessments – as would be expected of an effective advocate. I have no hard evidence to support this, but I think that either Judge Daugherty or Kathleen DeWeese called him and let him know that if he got the reports in early, the cases would be done OTR. If you wish, I can ask Mr. Conn (who I believe will give me a straight answer). I did not want to take this outside SSA without your knowledge.²¹⁹

When discussing the matter with Judge Cristaudo, a colleague wondered “why does Andrus keep bringing up stuff on Daugherty and never follow through on any of it. I am getting tired of him.”²²⁰

When asked later by the Committee, Judge Cristaudo said when he found out about the cancelled hearings he was “furious.”²²¹ He added that as Regional Chief Judge he was powerless to discipline Judge Daugherty over the incident, but if he was the agency’s chief judge he would have “fired or suspended” him.²²²

²¹⁸ May 5, 2003 email from Charlie P. Andrus to Frank Cristaudo, PSI-SSA-96D2-004050-51. Exhibit 38.

²¹⁹ *Id.*

²²⁰ May 5, 2003 email from Valerie Loughran to Frank Cristaudo, PSI-SSA-96D2-004051. Exhibit 38.

²²¹ May 15, 2013 Committee interview with Judge Frank Cristaudo.

²²² *Id.*

VII. TO DEFLECT ATTENTION FROM THE CANCELLED HEARINGS, JUDGE DAUGHERTY ACCUSED JUDGE ANDRUS OF IMPROPER SOCIAL CONTACTS WITH MR. CONN

When Judge Daugherty cancelled the 30 hearings, Judge Cristaudo directly questioned Judge Daugherty about why he had done it. In response, according to a subsequent email by Judge Cristaudo, Judge Daugherty shifted the focus to Chief Judge Andrus, accusing him of inappropriate social contacts with Mr. Conn outside of the office.

On June 19, 2002, Judge Cristaudo emailed Judge Andrus about Judge Daugherty's allegation. Citing an earlier conversation with Judge Daugherty, Judge Cristaudo asked Judge Andrus whether he had, in fact, invited Mr. Conn to dinner and a movie:

When I called Judge Daugherty about "cancelling" hearings in Prestonsburg, he advised me that Counsel Eric Conn advised him that you had invited Counsel Conn to go out to dinner and/or see a movie and that Counsel Conn was uncomfortable with your comment. Please let me know if this occurred, and if so, the circumstances. Though Judge Daugherty indicated he would deny ever saying this, we need to make sure that we investigate this allegation because of the appearance of a conflict of interest. If you would like to discuss this matter further, or if you have any questions, please let me know.²²³

The next day, June 20, 2002, Judge Andrus responded by email and confirmed it was true, but explained it was only to discuss the business of scheduling cases. He added that lunches with Mr. Conn and others were also a regular occurrence. Perhaps the most striking admission in his email, however, was that Mr. Conn had offered to take Judge Andrus with him on two all-expenses-paid international trips to Russia and Brazil, which he stated he turned down:

I did go to a movie with Mr. Conn. I have also had lunch with Mr. Conn, with other judges and the hearing clerks present although I do not ever remember having dinner with him. I went with Mr. Conn to the movie to have the opportunity to discuss changes in the scheduling I wanted to do and I wanted to do it outside the hearing of the staff. I don't believe that Mr. Conn was uncomfortable about the idea as it was his suggestion and each of us paid our own way. Mr. Conn has offered to take me with him to Russia and Brazil at his expense. I politely declined and explained that would be totally improper, and he did not seem offended.

This is exactly what I was talking about when dealing with Judge Daugherty. At least this time he did not accuse me of doing cocaine in my office.

Please advise if you think it improper for me to have social contacts with Mr. Conn.²²⁴

²²³ June 19, 2002 Email from Frank Cristaudo to Charlie Paul Andrus; PSI-SSA-96D2-0033568. Exhibit 12.

²²⁴ June 20, 2002 Email from Charlie Paul Andrus to Frank Cristaudo; PSI-SSA-96D2-0033568. Exhibit 12.

Judge Andrus told the Committee he did not have any further social contact with Mr. Conn after this incident.²²⁵

²²⁵ June 19, 2012 Committee interview of Judge Charlie Andrus.

VIII. MR. CONN MOVED TO DISMISS CLAIMS JUDGE GITLOW INDICATED HE WOULD DENY

In addition to working closely with Judge Daugherty to win favorable decisions for his clients, Mr. Conn also appears to have potentially abused the agency's pre-hearing conference procedures to improperly "forum shop" for favorable judges. Mr. Conn appears to have made a practice of arranging pre-hearing conferences with Judge Gitlow, and based on those conferences would move to dismiss any claims that Mr. Conn felt would be denied at a subsequent hearing.

a. Judge Gitlow Indicated to Mr. Conn He Planned to Deny a Claim

In a pre-hearing conference, an ALJ will meet with a claimant representative to discuss the particulars of a case.²²⁶ While allowed under agency regulations, pre-hearing conferences were strongly discouraged because of the possibility it could compromise a judge's independence.²²⁷ Moreover, SSA discourages ALJs from ever having an off-the-record conversation with a claimant representative unless it is later summarized in full on-the record.²²⁸ Indeed, the federal rules authorizing the pre-hearing conference make clear "[t]he administrative law judge will have a record of the pre-hearing conference made" and the agency "will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them."²²⁹

Agency officials agreed ALJs should not hold pre-hearing conferences. Former Chief Judge Cristaudo made clear all conversations with the claimant's representative should be documented on-the-record. In fact, Judge Cristaudo believed pre-hearing conferences should not be allowed and that ALJs should never go off-the-record with a claimant's representative.²³⁰ Current Chief Judge Bice agreed. She asserted the ALJ should not be talking to the claimant's representative outside of the hearing room and "should never go off-the-record."²³¹

Despite this, pre-hearing conferences between Mr. Conn and Judge William Gitlow were held on a frequent basis, during which the ALJ appeared to have frequently tipped his hand about anticipated case decisions.

As with all Huntington ALJ's, Judge Gitlow would travel to Prestonsburg to hold hearings. In the morning on the day of his hearings, Judge Gitlow would meet with certain claimant representatives that he "felt were above board," a group which included Mr. Conn, as well as two other successful disability attorneys, Grover Arnett, and Dru Shope.²³² During these pre-hearing

²²⁶ Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Social Security Disability Programs: Improving the Quality of Benefit Award Decisions," September 13, 2012, http://www.hsgac.senate.gov/download/report-psi-minority-staff-report_-social-security-disability-programs-improving-the-quality-of-benefit-award-decisions.

²²⁷ August 3, 2012 Committee interview of Chief Judge Debra Bice.

²²⁸ *Id.*

²²⁹ 20 C.F.R. §405.330. Pre-Hearing Conferences, http://www.ssa.gov/OP_Home/cfr20/405/405-0330.htm.

²³⁰ May 15, 2013 Committee interview of Judge Frank Cristaudo.

²³¹ August 3, 2012 Committee interview of Chief Judge Debra Bice.

²³² May 29, 2012 Committee interview of Judge William Gitlow.

conferences, Judge Gitlow would “see if [he] could move the case along.”²³³ This meant that during the meeting he would tell the claimant representative how he planned to decide the case based on the available medical evidence in the file at that time. He would not officially decide the matter, however, until he met the claimant at the hearing.²³⁴

Once the hearing was underway, Judge Gitlow would telegraph to the representative which way he was going to decide a case by the way he posed questions to the court’s Vocational Expert (“VE”).²³⁵ In a disability hearing ALJ’s will often pose to the VE several “hypothetical scenarios” based on the claimant’s medical evidence. This data is used by the VE to make non-binding recommendations to the judge about whether someone with those limitations might find work. In the case of Judge Gitlow, he would ask only a single hypothetical question of a VE, and then rule accordingly. If the stated limitations produced a response from the VE that jobs were available the hypothetical person could perform, the claimant representative would know Judge Gitlow intended to deny the claim.²³⁶

When it became apparent Judge Gitlow was going to deny a claim, Mr. Conn would immediately move to dismiss the claim before the hearing was concluded. Dismissed claims would have to be re-filed at the initial DDS, repeating the initial application and reconsideration stage of the disability adjudication process. Mr. Conn requested claims be dismissed so frequently that Judge Gitlow believed he “had turned it into an art form.” In fact, Judge Gitlow explained Mr. Conn was about the only representative that would move to dismiss a claim. According to Judge Gitlow, Mr. Conn believed he was better off moving for dismissal and re-filing the application with the DDS than having the claim denied by an ALJ and appealing the denial to the Social Security Appeals Council.²³⁷

²³³ *Id.*

²³⁴ May 29, 2012 Committee interview of Judge William Gitlow.

²³⁵ Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Social Security Disability Programs: Improving the Quality of Benefit Award Decisions,” September 13, 2012, <http://www.hsgac.senate.gov/download/report-psi-minority-staff-report-social-security-disability-programs-improving-the-quality-of-benefit-award-decisions>.

²³⁶ May 29, 2012 Committee interview of Judge William Gitlow.

²³⁷ *Id.*

Indeed, Mr. Conn did withdraw a high number of cases before Judge Gitlow, leaving Judge Gitlow few cases to deny:

Statistics for Judge William Gitlow for Cases Represented by Mr. Conn²³⁸

Year	Total Cases	Total Cases for Conn	Total Conn Cases Approved	Total Conn Cases Denied	Total Withdrawn at Request of Conn	Withdrawn for Other Reasons
2005	474	139	74	14	42	9
2006	405	150	95	15	35	5
2007	418	122	66	9	43	4
2008	453	197	124	8	62	3
2009	411	130	90	5	34	1
2010	431	108	69	9	30	0
2011	409	117	70	7	35	5
Totals	3,001	963	588	67	281	27

From 2005-11, Mr. Conn withdrew 29 percent of his cases before Judge Gitlow. Of the cases remaining, Judge Gitlow approved 90 percent of the claims represented by Mr. Conn.²³⁹

Judge Gitlow told the Committee that any dismissed claims would be assigned back to him if the new filing was denied and then appealed once more to Huntington ODAR. SSA policy required this assignment to be made to prevent claimants from withdrawing in hopes of getting heard by a new judge. As such, Judge Gitlow told the Committee that he did not believe it was possible that Mr. Conn was engaging in judge-shopping by moving to dismiss and re-filing claims.²⁴⁰

Moreover, Judge Gitlow recalled that some previously dismissed claims ended up back in front of him as expected. Only, on the second time through Mr. Conn would include new medical evidence in the file, which many times were evaluations by one of Mr. Conn's in-house doctors.²⁴¹ While Judge Gitlow told the Committee the doctors used by Mr. Conn were not credible since they always opined the individual was unable to work, he felt submitting these doctors' evaluations did not skew his opinion because "all the lawyers did it."²⁴²

It is possible, however, that not all of the cases dismissed by Judge Gitlow ended up back in front of him when a claimant reapplied. The Committee located 19 claimants on the DB Lists that had previously withdrawn cases before Judge Gitlow. Instead, cases could be approved at earlier stages of review or, as described above, be intercepted by Judge Daugherty, who would reassign the cases to himself and approve them for benefits on-the-record.

²³⁸ Committee analysis of information provided by the Social Security Administration.

²³⁹ *Id.*

²⁴⁰ May 29, 2012 Committee interview of Judge William Gitlow.

²⁴¹ *Id.*

²⁴² *Id.*

b. Mr. Conn Garnered Favor from Judge Gitlow

Despite withdrawing cases he knew Judge Gitlow would deny, Judge Gitlow stated he had a great deal of respect for Mr. Conn. He stated “one of the things Eric and [Judge Gitlow] enjoyed was talking Social Security law,” since both of them like arcane details of law. As such, Judge Gitlow recommended Mr. Conn be a part of an Association of Administrative Law Judge (“AALJ”) Roundtable on Social Security. He wrote an email to one of the roundtable organizers, stating:

I believe that the addition of one of our attorneys, Eric Conn (Stanville, KY) would be a smart choice as an addition to the roundtable. Mr. Conn is extraordinarily experienced (his volume is huge, with roughly 50 percent of the cases heard at the highly busy Prestonsburg remote site); he is incredibly knowledgeable in the field of Social Security (he is very well read in the field; very well informed; has taught in the field; and is one of only a handful of attorneys nationally to be certified by the new Social Security process). I find him to be passionate about this field of law, always seeking to learn more, yet very moderate in his approach with others. In short, I believe his addition to the roundtable would serve the AALJ quite well and I am certain that afterward you would agree. (Please note I have raised his name without his prior approval).²⁴³

Judge Gitlow noted “it is a pleasure to do Eric Conn cases” in response to an email from a Senior Case Technician (“SCT”) reporting to Judge Gitlow that no new evidence had been submitted for hearings schedule for that day.²⁴⁴

²⁴³ May 3, 2009 Email from William H. Gitlow to Ronald Bernoski, PSI-SSA-95-032907. Exhibit 39.

²⁴⁴ June 14, 2011 Email from William H. Gitlow to Barbara Powers, PSI-SSA-95-031480. Exhibit 40.

IX. MR. CONN POTENTIALLY FABRICATED MEDICAL OPINIONS, RESULTING IN AWARDED DISABILITY BENEFITS

According to witness testimony and evidence reviewed by the Committee, it appears that on several occasions Mr. Conn provided the agency with fabricated medical evaluations based in part on information Mr. Conn found on the internet. This information was incorporated into agency approved templates, which could be quickly approved by ALJs.

In the spring of 2010, Judge Andrus called Mr. Conn with a proposal to help him “get rid of his backlog.”²⁴⁵ Pitching it as a “mutual benefit,” Judge Andrus asked Mr. Conn to submit template decisions for his approval.²⁴⁶ Mr. Conn agreed and Judge Andrus gave him instructions about how the decisions should be written, even identifying certain key sentences that should be included.²⁴⁷

The templates referred to by Mr. Conn and Judge Andrus are known as Findings Integrated Templates, or “FIT decisions.” As part of the agency’s plan to reduce its hearing backlog, SSA introduced the use of “FIT” decisions in order to expedite the decision process by allowing claimant representatives to draft a judge’s decision, and submit it for approval if it accurately reflected the case file.²⁴⁸

A FIT decision is submitted if the claimant’s representative “believe[s] the evidence supports a fully favorable decision for [the] claimant.”²⁴⁹ If the judge agrees to award the claimant disability benefits, the ALJ “may use the language proposed by [the] representative.”²⁵⁰ In practice, the use of FIT decisions results in the claimant’s representative writing a fully favorable decision awarding disability benefits to her claimant and requests the ALJ sign it. Should the ALJ agree the claimant qualifies for benefits, the FIT decision submitted by the claimant’s representative should speed the processing of the claim.

After his agreement with Judge Andrus, Mr. Conn ordered three staff members to pull all cases pending before Judge Andrus and identify old cases that could generate the maximum fee.²⁵¹ He then directed them to prepare approximately 180-200 Findings Integrated Template (“FIT”) decisions. These FIT decisions were submitted by Mr. Conn for signature to Judge Andrus to make fully favorable awards of disability benefits to certain claimants of Mr. Conn.²⁵²

²⁴⁵ March 22, 2012 Committee interview with Jamie Slone.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Social Security Administration, Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, <http://www.ssa.gov/hearingsbacklog.pdf>.

²⁴⁹ Social Security Administration, Hearings and Appeals, Recommending a Favorable Decision for Your Client, <http://www.ssa.gov/appeals/fit/index.html#submission>.

²⁵⁰ HALLEX, I-2-8-98: Exhibit – Information for Claimants and Representatives About Submitting Language That May Be Used in the Hearing Decisions or Bench Decisions Checklist, http://www.ssa.gov/OP_Home/hallex/I-02/I-2-8-98.html.

²⁵¹ March 22, 2012 Committee interview with Jamie Slone.

²⁵² June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 19.

For some of these FIT decisions, Mr. Conn relied on medical evidence members of his staff said he falsified. According to one employee, Mr. Conn would send claimants to receive x-rays from Dr. Ira Potter at the Potter Medical Clinic in Lackey, Kentucky. Mr. Conn provided x-ray request forms for the claimant to take to the clinic. The forms were marked by the Conn Law Firm “WE DO NOT WANT THE FILMS READ BY ANYONE!!!!”²⁵³ The Potter Medical Clinic obliged this request and would give the unread medical images to the claimant when the x-rays were completed.

The claimant would return to the firm with the x-ray films. One of the firm’s employees then observed Mr. Conn personally writing the medical analysis of the x-ray. Mr. Conn appears to have attempted to compensate for his lack of medical training by basing his analysis off descriptions found on the Internet. Mr. Conn would cut and paste these descriptions into his clients’ medical opinions, asserting the claimant was disabled and unable to work. Dr. Frederic Huffnagle, one of the doctors frequently used by Mr. Conn to provide medical opinions of Conn’s claimants, would sign the opinions written by Mr. Conn without any additional edits.²⁵⁴

Mr. Conn then sent Judge Andrus FIT decisions generated by his office. In an August 6, 2010 email to Mr. Conn, Judge Andrus confirmed he had “written the other OTRs and signed most of them.”²⁵⁵ When asked by the Committee about this correspondence, Judge Andrus stated although he awarded benefits to certain claimants of Mr. Conn, Judge Andrus said he evaluated and edited each of the FIT decisions before signing, and only approved 20 to 30 cases in this manner.²⁵⁶ Judge Andrus confirmed this email referred to the FIT decisions Mr. Conn submitted,²⁵⁷ which according to employees contained medical conditions Mr. Conn found on the internet.²⁵⁸ Although this appears to have been an isolated occurrence, the allegations presented to the Committee raise the startling possibility that disability claims were granted based on fabricated medical evidence.

²⁵³ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16); *see also, e.g.*, CLF031230; CLF031232; CLF031234; CLF031236; and CLF031250. Exhibit 41.

²⁵⁴ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

²⁵⁵ August 6, 2010 email from Charlie P. Andrus to Eric Conn, PSI-Conn-09-0050-51. Exhibit 42.

²⁵⁶ June 19, 2012 Committee interview of Judge Charlie Andrus.

²⁵⁷ August 6, 2010 email from Charlie P. Andrus to Eric Conn, PSI-Conn-09-0050-51. Exhibit 42.

²⁵⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20.

X. LAWYERS RELIED ON DOCTORS THEY KNEW WOULD PROVIDE EVIDENCE OF CLAIMANT DISABILITY

The role of medical doctors and professionals in the adjudication of disability cases before Huntington ODAR highlights a key structural vulnerability within the Social Security Disability Insurance program. Because of the subjectivity involved in evaluating disability applications and the independence afforded to ALJs, medical opinions supplied by poorly credentialed doctors may be assigned equal weight to the opinion of more qualified physicians. Within Huntington ODAR, a group of lawyers, doctors, and judges appear to have exploited this vulnerability by utilizing low-quality medical evidence for the purpose of quickly approving claimants.

In an effort to obtain medical evidence supporting an award of disability benefits, some attorneys sought doctors they knew would provide disabling opinions without question. Representatives would send their claimants only to certain doctors to examine the claimant and then opine on their abilities, whether physical or mental. With respect to Doctors obtained by Mr. Conn, the results of these medical evaluations almost always concluded the patient qualified for disability benefits. ALJs, Judge Daugherty in particular, could then quickly approve the claim, giving the purchased medical evidence more weight than the other evidence in the file.

a. Doctors Known to Provide Opinions Stating the Claimant is Disabled Were Known as “Whore Doctors”

The Committee evaluated the medical opinion of a number of doctors who had a reputation for regularly providing questionable medical opinions at the request of disability attorneys. Within SSA, it became common to refer to this class of doctors internally by an unflattering nickname: “whore doctors.”²⁵⁹ This expression, many explained, grew out of the widely held view that attorneys simply purchased disability opinions from the doctors.

Most commonly, the type of medical evidence to come from attorney-arranged exams was a “medical source statement.” These were often brief conclusory statements signed by doctors, providing little if any evidence in support. The price of medical source statements varied by doctor, but typically ranged in price from \$225 to \$650.²⁶⁰

Many at the agency considered attorney procured medical evidence to be problematic. Judge Cristaudo told the Committee he was familiar with the term “whore doctor,” but that it was a challenge for even the best ALJ at times to sort out good medical evidence from bad. For years, he said, “it’s the battle of the medical source statements.”²⁶¹ As a judge he would commonly see the same or similar medical evidence from certain doctors, regardless of the claimant. He told the Committee: “Good judges will look at all the evidence and give them less weight. Lazy

²⁵⁹ June 19, 2012 Committee interview of Judge Charlie Andrus; May 15, 2013 Committee interview of Judge Frank Cristaudo.

²⁶⁰ According to financial documents produced by Mr. Conn, it appears Dr. Herr received \$650 per consultative exam. See, e.g., CLF02216, CLF06038. Exhibit 43.

²⁶¹ May 15, 2013 Committee interview of Judge Frank Cristaudo.

judges will just follow the medical source statements.”²⁶² Judge Cristaudo also was aware of “claims attorneys [would] go to a doctor and say ‘fill this out.’” He told the Committee that he had even heard – in some instances – that when doctors knew an exam was related to the SSA disability program, they would have the “patients or secretaries fill them out.”²⁶³ He added, “There’s so much abuse. It’s the easy way out.” When asked how much weight to give medical decisions that a judge suspects is problematic, he replied, “Who knows? It’s an educated guess.”²⁶⁴

b. Doctors Employed by Mr. Conn Provided Questionable Medical Evidence

The doctors used by Mr. Conn to evaluate his claimants appeared to have routinely provided low-quality medical opinions. Documents reviewed by the Committee and testimony of Mr. Conn’s employees provided evidence that the doctors used by Mr. Conn held perfunctory exams and sometimes signed improper paperwork.

Some of the doctors who evaluated Mr. Conn’s claimants had histories of malpractice allegations, disciplinary problems, and even had a license revoked in another state. According to former Conn personnel, Mr. Conn specifically sought out doctors with licensure problems for his practice.²⁶⁵ Ms. Slone, former office manager for the Conn Law Firm, for example, said Mr. Conn would look online for doctors who were sanctioned and intentionally recruited them.²⁶⁶

Some of the doctors used by Mr. Conn would not have been allowed to provide medical opinions on claimants at the request of the Social Security Administration. The agency’s regulations prevent it from purchasing consultative exams from medical providers whose license to provide health care has been lawfully revoked or suspended by any State licensing authority for reasons bearing on professional competence or conduct.²⁶⁷ No such restrictions exist, however, for medical opinions provided by claimant representatives to ALJs.

The following doctors were among those relied upon most often by Mr. Conn.

i. Dr. Frederic Huffnagle

The primary doctor used by Mr. Conn to review the majority of his claimants during the period reviewed was Frederic Thomas Huffnagle.²⁶⁸ Dr. Huffnagle had a history of malpractice and a long disciplinary record, including revocation of his license to practice medicine in New York.

Medical Malpractice Claims. Dr. Huffnagle received his medical degree in 1961 from Thomas Jefferson Medical College in Philadelphia, PA and became a board certified orthopedic surgeon

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ June 12, 2012 Affidavit of Jamie Lynn Slone; ¶17 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin, ¶15 (Exhibit 17).

²⁶⁶ February 23, 2012 interview with Jamie Slone.

²⁶⁷ See 20 C.F.R. §§404.1503a and 416.903a.

²⁶⁸ June 12, 2012 Affidavit of Jamie Lynn Slone; ¶9 (Exhibit 16). In fact, of the physician opinions reviewed by the Committee, the majority were prepared by Dr. Huffnagle.

in 1970.²⁶⁹ In his first ten years of practice, Dr. Huffnagle settled nine malpractice suits, had his staff privileges revoked by at least one hospital, and provided false statements on his application for staff privileges at another hospital.²⁷⁰

In 1968, Dr. Huffnagle gained staff privileges at Beverly Hospital and Hunt Memorial Hospital, both located in Massachusetts. Two years later, in 1970, Beverly Hospital placed Dr. Huffnagle on probation for scheduling an experimental surgery that neither he, nor anyone else at the hospital, had previously performed. The next year, in 1971, Beverly Hospital declined to renew his staff privileges citing the above incident among “other serious continuing difficulties.”²⁷¹ Despite losing privileges at Beverly Hospital, Dr. Huffnagle continued to practice at Hunt Memorial.²⁷² In total, his eight years of practice in Massachusetts resulted in five separate malpractice suits resulting in payments to patients.²⁷³

One of the malpractice lawsuits involved a patient of Dr. Huffnagle who suffered from osteoarthritis. Dr. Huffnagle implanted the wrong size of artificial knee in the patient and later fractured a bone and ruptured a tendon removing the knee, leaving the patient permanently bound to a wheel chair.²⁷⁴

In 1981, Dr. Huffnagle moved to California and gained staff privileges at Westminster Hospital where he practiced for one year and had four more malpractice suits filed against him.²⁷⁵ He appears to have gained his privileges at Westminster by falsifying answers in his application, claiming no other hospital failed to renew his privileges and there were no settlements paid related to malpractice claims against him.²⁷⁶ After that one year in California, Dr. Huffnagle moved back to Massachusetts and was hired by Massachusetts Osteopathic after being rejected at Hunt Memorial Hospital.²⁷⁷

Falsifying Application. Dr. Huffnagle garnered several monetary fines and had his license revoked in one state for providing false answers on applications for his medical licenses. On March 3, 1999, the Massachusetts Board of Registration entered an order imposing a reprimand and a \$7,500 fine for providing false answers on two Massachusetts license renewal applications and a Pennsylvania license renewal application.²⁷⁸ On May 20, 1999, he had his license revoked in New York for providing false answers on three previous license renewals in other states.²⁷⁹

²⁶⁹ *Small Percentage of Doctors Responsible for Surge in Malpractice Suits, Rates*, BOSTON GLOBE, June 16, 1986, <http://www.saynotocaps.org/newsarticles/Small%20Percentage%20of%20Doctors.html>.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ In the matter of Frederic T. Huffnagle, M.D., State Board for Professional Medical Conduct, State of New York, Surrender Order BPMC No. 99-184, [http://w3.health.state.ny.us/opmc/factions.nsf/0/a7fd6ec05fca9a3985256a4a0047d70f/\\$FILE/lc208366.pdf](http://w3.health.state.ny.us/opmc/factions.nsf/0/a7fd6ec05fca9a3985256a4a0047d70f/$FILE/lc208366.pdf).

²⁷⁹ *Id.*

On March 23, 2000, Dr. Huffnagle was placed on one year probation in Pennsylvania and was reprimanded and assessed a \$400 fine for providing false answers on a previous application.²⁸⁰

Dr. Huffnagle's Opinions in Support of Mr. Conn's Claimants. Dr. Huffnagle routinely found that Mr. Conn's claimants were disabled and could not perform any work. Many of Dr. Huffnagle's examinations were performed on site in the Conn Law Firm's "medical suite."

For two days each month, Dr. Huffnagle would travel 250 miles to Stanville, Kentucky from Bowling Green, Kentucky to evaluate individuals referred to him by Mr. Conn.²⁸¹ The claimants would be scheduled for an examination by Dr. Huffnagle in 10 to 20 minute increments and he would meet with a large number of claimants each day.²⁸² For example, a schedule for Dr. Huffnagle's exams produced by the Conn Law Firm indicated on February 1, 2007 Dr. Huffnagle was scheduled to see 35 claimants and review the medical files for two other claimants and prepare opinions.²⁸³ The first appointment was scheduled for 9 a.m. and the last at 6:20 p.m. Claimants were scheduled at 10 to 20 minute increments; at times, two claimants were scheduled for the same time slot.²⁸⁴

The claimants scheduled to see Dr. Huffnagle were typically also listed on the DB Lists created by Mr. Conn and Judge Daugherty.²⁸⁵ For example, the list of 35 individuals scheduled for Dr. Huffnagle on February 1, 2007 included 25 claimants also listed on the February 2007 DB List, all of which noted "physical."²⁸⁶

Dr. Huffnagle's wife would assist him by dictating the medical opinions, which were later transcribed by an outside service.²⁸⁷ Dr. Huffnagle would provide a short description of the claimant's condition, which consisted mainly of information the claimant reported to Dr. Huffnagle. This included information on the claimant's chief complaint; the history of the present illness; past surgical history; medications; social history; activities of daily living; physical examination; impressions; and discussion.

²⁸⁰ *Disciplinary Action*, Pennsylvania State Board of Med. Newsletter (Pennsylvania State Board of Med., Harrisburg, PA), Spring 2001, at 7, www.state.pa.us/portal/server.pt/document/487090/mednews01_pdf.

²⁸¹ See CLF033386, "Frederic Huffnagle, M.D.; Orthopedic Surgeon; 720 Chestnut Street, Suite 102; Bowling Green, Kentucky 42101." See, i.e., CLF033360 and CLF033356 scheduling evaluations for Dr. Huffnagle on July 26 and 27, 2007. Exhibit 44.

²⁸² See CLF033399, "Dr. Huffnagle Appts for 2/1/07; CLF033384, "Dr. Huffnagle's Appt's for 3/27/07;" CLF033392, "Dr. Huffnagle Appt 03/01/07;" CLF033378, "Dr. Huffnagle Appt's for 4/27/07;" CLF033371, "Dr. Huffnagle's Appt's for 05/24/07." Exhibit 44.

²⁸³ See CLF033399, "Dr. Huffnagle appts for 2/1/07, listing 35 claimant appointments and two "file reviews." Exhibit 44.

²⁸⁴ *Id.*

²⁸⁵ Compare CLF030651-52, "February D.B. 2007 Due Date 02/15/07" (Exhibit 18) to CLF033399, "Dr. Huffnagle Appts for 2/1/07." (Exhibit 44). The February DB List included a total of 36 total claimants with four noting "Decision has been sent!" Also compare CLF030646-48, "D.B. March 2007 List Due March 7, 2007" (Exhibit 18) to CLF033392, "Dr. Huffnagle Appt 03/01/07." (Exhibit 44) The March DB List contains 44 names; 14 of those names are listed on Dr. Huffnagle's appointment schedule for March 1, 2007, all of which noted "physical" on the March DB List.

²⁸⁶ Compare CLF030651-52, "February D.B. 2007 Due Date 02/15/07" (Exhibit 18) to CLF033399, "Dr. Huffnagle Appts for 2/1/07." (Exhibit 44).

²⁸⁷ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶10 (Exhibit 16).

In addition to the report of his examination, Dr. Huffnagle would also sign a Residual Functional Capacity (“RFC”) form for each claimant. This is a standard form provided by doctors on behalf of disability claimants and used by all ALJ’s. Its purpose “is to determine the [claimant’s] ability to do work related activities on a day-to-day basis in a regular work setting.”²⁸⁸ Once a doctor measures an individual’s ability to do these activities, the results are tabulated using guidelines provided by SSA, and a claimant’s “capacity” for work is determined. Using the RFC in combination with a claimant’s age, education and work experience, an ALJ would decide whether someone qualified for disability benefits.

The RFC measures an individual capacity for work by requesting information on: (1) the weight an individual could lift or carry; (2) the time in an 8 hour work day the claimant could stand or walk; (3) the time an individual could sit in an 8 hour work day; (4) how often the individual could perform certain postural activities; (5) the claimant’s limitations with regard to certain physical and communicative functions; and (6) the claimant’s ability to tolerate environmental activities and conditions.

Under agency rules, each RFC is supposed to be tailored to describe each claimant’s individual exact abilities.²⁸⁹ Because each individual has different abilities, and the forms require a complex set of data, it follows that finding two RFC’s that are exactly alike should be a rare occurrence. Claimants who visited Dr. Huffnagle, however, were given the exact same RFCs over and over again. While the form was intended to accurately reflect the claimant’s limitations as observed by Dr. Huffnagle, that was not the case.

Assigning multiple claimants the same RFCs was not an accident, but rather appears to have been an effort to tailor evidence to Judge Daugherty’s preferences. For claimants on the DB Lists which Judge Daugherty noted “physical,” this was understood by Mr. Conn’s staff to mean the claimant needed evidence of some sort of a physical disability.²⁹⁰ Dr. Huffnagle was then asked provide evidence of physical disabilities and sign a RFC associated with the claimant’s physical limitations.²⁹¹

Rather than providing detailed evaluations for each individual claimant, Dr. Huffnagle submitted the same evidence for dozens of claimants. A former employee of Mr. Conn testified the firm used several versions of the RFC form with all information completed before any exam took place. These same versions were used in rotation regardless of the claimant’s medical condition;

²⁸⁸ This language was present on all forms submitted in conjunction with the forms completed by Dr. Huffnagle for Mr. Conn’s claimants. See, e.g., CLF029445-48. Exhibit 44.

²⁸⁹ See 20 C.F.R. Appendix 2 to Subpart P of Part 404 – Medical Vocational Guidelines (“In the application of the rules, the individual’s residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education and work experience must first be determined. When assessing the person’s residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain. The correct disability decision (i.e., the issue of ability to engage in substantial activity) is found by then locating the individual’s specific vocational profile.”).

²⁹⁰ See June 12, 2012 Affidavit of Jamie Lynn Slone; ¶6 (Exhibit 16).

²⁹¹ See June 12, 2012 Affidavit of Jamie Lynn Slone; ¶9 (Exhibit 16).

just the names and Social Security numbers at the top of the form were changed. While Dr. Huffnagle did not write or edit the RFCs, he routinely signed them.²⁹²

The Committee reviewed 837 RFCs signed by Dr. Huffnagle ranging in date from July 2005 to September 2010. A pattern emerged in which large groups of Mr. Conn's claimants had the same limitations and were submitting the same forms – all suggesting that only the names and Social Security numbers were changed on these forms. The Committee found 15 versions of the RFC that were used and approximately 15 groups of claimants, each having the exact same limitations. For example, 54 of Mr. Conn's claimants reviewed by Dr. Huffnagle submitted "RFC Form Version 1," indicating they all had the same limitations:²⁹³

RFC Form Version 1

Physical Act	Limitations
Lifting / Carrying	8 pounds / 5 pounds
Standing / Walking	3 hours / 30 minutes
Total Sitting / Without Interruption	4 hours / 30 minutes

The following chart identifies the features of each version of the RFC form used by Mr. Conn's claimants examined by Dr. Huffnagle. It also provides the number of claimants Dr. Huffnagle submitted each version of the RFC for Mr. Conn's claimants' case decided by Judge Daugherty:

²⁹² June 12, 2012 Affidavit of Jamie Lynn Slone; ¶13 (Exhibit 16).

²⁹³ Dr. Huffnagle signed 15 version of RFCs. Each version can be found at Exhibit 45.

RFC Forms Signed by Dr. Huffnagle and Submitted by Mr. Conn to Judge Daugherty

RFC Version	Lifting / Carrying	Standing/Walking	Sitting / Without Interruption	Number of Claimants with same RFC
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	54
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	55
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	43
4	8-10 pounds / 5 pounds	2 hours / 20 minutes	4-5 hours / 15-30 minutes	53
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	47
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	50
7	10 pounds / 5 pounds	3 hours / 30 minutes	3 hours / 1 hour	50
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	38
9	20 pounds / 15 pounds	1 hour / 30 minutes	4 hours / 30 minutes	97
10	5-10 pounds / 5 pounds	1-2 hours / 30 minutes	4-5 hours / 15-20 minutes	52
11	15 pounds / 5 pounds	3 hours / 20-30 minutes	4 hours / 30 minutes	48
12	15 pounds / 10 pounds	1 hour / 30 minutes	4 hours / 30 minutes	54
13	10 pounds / 7-8 pounds	3 hours / 20 minutes	3 hours / 45 minutes	37
14	20 pounds / 10 pounds	2 hours / 30 minutes	4 hours / 30 minutes	61
15	25 pounds / 10 pounds	3 hours / 20 minutes	3 hours / 30 minutes	17
Total				756²⁹⁴

The RFC then asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with of the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration.

All of these marked categories matched, in the same manner as the above cited similarities. Setting aside the first three categories listed above and just considering the 22 categories to be marked in four ways, the possibility of two claimants having the exact same limitations is statistically remote. Yet, in just the RFCs submitted in support of Mr. Conn's clients to Judge Daugherty reviewed by the Committee, Dr. Huffnagle determined up to 97 of Mr. Conn's claimants had the exact same limitations.

²⁹⁴ The Committee determined that 81 of Dr. Huffnagle's decisions did not appear to fall into one of the cited groups of claimants.

The similar number of claimants in each group is consistent with allegations the RFC forms were rotated on a regular basis as Dr. Huffnagle saw each claimant.²⁹⁵

Dr. Huffnagle died on October 5, 2010.²⁹⁶

ii. Dr. David P. Herr, D.O.

As part of its review, the Committee also reviewed 102 assessments by Dr. Herr submitted to Judge Daugherty in support of Mr. Conn's claimants.

Analysis of Dr. Herr's Opinions. Dr. Herr is an orthopedist located in West Union, Ohio, but his opinions stated evaluations of Mr. Conn's clients were performed in the Law Offices of Eric C. Conn. The majority of claimants examined by Dr. Herr also submitted RFC's identical to the ones listed above for claimants reviewed by Dr. Huffnagle. While claimants examined by Dr. Herr submitted only 11 of the 15 RFC versions cited above, over 94 percent of the RFC's reviewed by the Committee were one of these 15.

²⁹⁵ See June 12, 2012 Affidavit of Jamie Lynn Slone; ¶13 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin. ¶11 (Exhibit 17).

²⁹⁶ Obituary, Dr. Frederic Huffnagle, October 5, 2010, <http://www.legacy.com/obituaries/tennessean/obituary.aspx?page=lifestory&pid=145826864#fbLoggedOut>.

RFC Forms Signed by Dr. Herr and Submitted by Mr. Conn to Judge Daugherty

RFC Version	Lifting / Carrying	Standing/Walking	Sitting / Without Interruption	Number of Claimants with same RFC
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	6
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	18
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	4
4	8-10 pounds / 5 pounds	2 hours / 20 minutes	4-5 hours / 15-30 minutes	17
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	13
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	8
7	10 pounds / 5 pounds	3 hours / 30 minutes	3 hours / 1 hour	n/a
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	8
9	20 pounds / 15 pounds	1 hour / 30 minutes	4 hours / 30 minutes	n/a
10	5-10 pounds / 5 pounds	1-2 hours / 30 minutes	4-5 hours / 15-20 minutes	5
11	15 pounds / 5 pounds	3 hours / 20-30 minutes	4 hours / 30 minutes	6
12	15 pounds / 10 pounds	1 hour / 30 minutes	4 hours / 30 minutes	n/a
13	10 pounds / 7-8 pounds	3 hours / 20 minutes	3 hours / 45 minutes	10
14	20 pounds / 10 pounds	2 hours / 30 minutes	4 hours / 30 minutes	n/a
15	25 pounds / 10 pounds	3 hours / 20 minutes	3 hours / 30 minutes	1
Total				96²⁹⁷

Just as cited above, the RFC then asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with of the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration. All of these marked categories matched, in the same manner as the above cited similarities.

Finally, in most opinions by Dr. Herr reviewed by the Committee, the doctor arrived at the exact same conclusion, using the exact same wording: “In my opinion, it can be stated within a reasonable degree of medical certainty that the claimant will not regain functional capacities with treatment that would support a return to work.”

Agency Analysis. In late 2011, the Division of Quality within the Social Security Administration reviewed 10 of Dr. Herr’s opinions that were adjudicated by Judge Daugherty. That review determined that “Dr. Herr uses the same language to describe the purpose of the evaluation and,

²⁹⁷ The remaining six RFCs reviewed do not fall into one of the listed categories.

with some small variances, how the impairment(s) affect the claimant's life."²⁹⁸ The same review found that, in his opinions, Dr. Herr summarized the medical evidence in the record, but did not find additional impairments. Instead, Dr. Herr used the "claimant's medical history, their subjective complaints and his physical examination to determine [the claimant] to have greater limitations than may have been expressed by either a treating source or a State Agency medical consultant just four to six months prior."²⁹⁹ The agency also noted that in all cases reviewed, Dr. Herr determined the claimant was unable to sustain an eight-hour work day.³⁰⁰

According to documents provided by Mr. Conn, Dr. Herr was paid up to \$650 for each claimant he reviewed and provided an opinion.³⁰¹

The Committee requested to interview Dr. Herr through his attorney, but he declined to cooperate.

iii. Dr. Brad Adkins, Ph.D.

During the period under review, Dr. Adkins worked as a Clinical Psychologist at the Pikeville Medical Center in Pikeville, Kentucky. He received his bachelor of science at Pikeville College; Master of Science in Clinical Psychology at Morehead State University; and his doctoral degree from The Union Institute and University of Cincinnati, Ohio.³⁰²

Dr. Adkins began performing evaluations of disability claimants for the Social Security Administration through the Commonwealth of Kentucky's Disability Determination Services around 2005.³⁰³ At the same time, Dr. Adkins contacted and met with Mr. Conn to perform evaluations for Mr. Conn's disability claimants as well.³⁰⁴ When they met, Mr. Conn and Dr. Adkins determined that Mr. Conn would pay Dr. Adkins \$300 per claimant Dr. Adkins reviewed; that fee later increased to \$350 per claimant.³⁰⁵

Dr. Adkins Evaluated Mr. Conn's Claimants. When Judge Daugherty indicated "mental" in his monthly call to Mr. Conn's law firm listing the claimants he would approve on-the-record, Mr. Conn would usually send those claimants to Dr. Brad Adkins.³⁰⁶

Dr. Adkins explained to the Committee an employee for Mr. Conn would contact him each month to set up the appointments with Mr. Conn's claimants. On average, Mr. Conn would send Dr. Adkins around 20 claimants each month.³⁰⁷ Dr. Adkins would meet with these claimants in

²⁹⁸ Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ See, i.e., CLF06038-39. Exhibit 43.

³⁰² April 4, 2013 Committee Interview of Dr. Brad Adkins. See also Pikeville Medical Weight Loss Surgery Center, Weight Loss Surgery Staff, http://www.pikevillehospital.org/bariatric_staff.html.

³⁰³ April 4, 2013 Committee interview of Dr. Brad Adkins.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ June 12, 2012 Committee Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

³⁰⁷ April 4, 2013 Committee interview of Dr. Brad Adkins.

his office in Betsy Layne, Kentucky on Tuesday afternoons. Since Dr. Adkins reviewed claimants at the request of the agency and local disability attorneys, he tailored his exam based on the request from each entity. For example, the agency could request that Dr. Adkins perform only a clinical interview, without additional testing, for which he received \$80 per exam, with a \$25 bonus if the completed exam was turned in within 15 days. When Dr. Adkins performed this exam at the request of the agency, he would examine and evaluate the patients by: (1) performing a clinical interview;³⁰⁸ (2) reviewing the objective medical history;³⁰⁹ and (3) a mental status exam. A mental status exam administered by Dr. Adkins included a series of questions on five domains of neuropsychological function: (1) language, both receptive and expressive; (2) attention; (3) concentration; (4) immediate, recent, and remote memory; and executive functioning and sensorium.³¹⁰

Dr. Adkins also explained when the agency requested he perform an IQ test, the agency paid Dr. Adkins \$150.00, with a \$25 bonus for a quick turnaround.³¹¹

Dr. Adkins charged the disability attorneys more depending on what exam elements they requested. He noted the mental status exam was replaced with the administration of an IQ test, which is a more involved exam, since the attorney paid \$350.00 per evaluation.³¹²

Dr. Adkin's RFC Forms. Dr. Adkins also provided an RFC form to Mr. Conn describing the patient's limitations, though it focused on mental ability and limitations rather than physical limitations. The form stated that it sought "to determine this individual's ability to do work-related activities on a day-to-day basis in a regular work setting."³¹³ The examiner was asked to describe the claimant's ability in one of the following ways:

- Unlimited: ability to function in his area is not limited by a mental impairment;
- Good: ability to function in this area is more than satisfactory;
- Fair: ability to function in this area is limited but not satisfactory;
- Poor: ability to function in this area is seriously limited but not precluded;
- None: no useful ability to function in this area.³¹⁴

When Dr. Adkins initially started performing evaluations for Mr. Conn, he said he filled out the RFC forms himself. Subsequently, Mr. Conn's office contacted him and asked if they could fill out the RFC form for him, and bring him a copy of his exam report as well as the RFC to review and sign.³¹⁵ According to Ms. Slone, these forms, filled out in advance by Mr. Conn's office, were used in rotation and Dr. Adkins never requested they be edited based on each claimant's

³⁰⁸ Dr. Adkins explained the clinical interview included: assessing a patient's level of pain; how pain interfered with their life and in what domains; mental health history and any prior treatment; family mental health history; current mental state; substance abuse history; legal history; general family history; and any history of developmental delays.

³⁰⁹ According to Dr. Adkins, an objective medical history review included: academic and vocation history; any behavioral observations; activities of daily living.

³¹⁰ April 4, 2013 Committee interview of Dr. Brad Adkins.

³¹¹ *Id.*

³¹² *Id.*

³¹³ *See, i.e.,* CLF016923-25. Exhibit 47.

³¹⁴ *Id.*

³¹⁵ April 4, 2013 Committee interview of Dr. Brad Adkins.

individual condition.³¹⁶ Dr. Adkins admitted when he picked up payment at Mr. Conn's office for rendering the exams, he would sign the pre-filled forms.³¹⁷ He asserted, however, he reviewed each of the forms Mr. Conn prepared to ensure the form matched the claimant's limitations as described in Dr. Adkin's report.

Mr. Conn Used Five Versions of the Mental RFC. The majority of RFC forms signed by Dr. Adkins and reviewed by the Committee fell into one of five versions of the RFC.³¹⁸ While the names of the claimants were handwritten at the top of each RFC, the "X" in each box indicating the claimant's ability was computer generated.³¹⁹ Dr. Adkins explained the computer generated RFCs were filled out by Mr. Conn.³²⁰ The Committee reviewed 182 RFC forms signed by Dr. Adkins in support of adult claims decided by Judge Daugherty. Of those, he signed one of five identical forms 132 times.

As noted below, the numerous variables (15 in all) of the claimants' abilities and related descriptors (i.e., unlimited to none, five in all) suggest these RFCs were not specific to each claimant, but instead prepared independent of the claimant the RFC purported to describe. In fact, the possibility of two claimants having the exact limitations is statistically remote.³²¹

For Version 1 of the RFC, Dr. Adkins found that 26 of Mr. Conn's claimants had the same limitations:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Good	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Good	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Good				
Deal with Work Stresses	Poor				
Function Independently	Fair				
Maintain Attention/Concentration	Poor				

³¹⁶ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

³¹⁷ April 4, 2013 Committee Interview of Dr. Brad Adkins.

³¹⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

³¹⁹ See, i.e., CLF030282-84; CLF030289-91. Exhibit 47.

³²⁰ April 4, 2013 Committee Interview of Dr. Brad Adkins.

³²¹ Dr. Adkins signed five versions of the RFCs, located at Exhibit 47.

Dr. Adkins indicated 26 of Mr. Conn's claimants had the following RFC limitations, or Version 2:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Good	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Fair
Relate to Co-Works	Good	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Good				
Deal with Work Stresses	Poor				
Function Independently	Poor				
Maintain Attention/Concentration	Poor				

Dr. Adkins submitted the following RFC for 29 of Mr. Conn's claimants (Version 3):

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Poor	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Fair	Behave in an emotionally stable manner	Poor
Deal with the Public	Fair	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	Poor				
Function Independently	Fair				
Maintain Attention/Concentration	None				

Version 4 of Dr. Adkin's RFC form was submitted for 20 of Mr. Conn's claimants, which contained the following limitations:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Fair	Understand, remember and carry out complex job instructions	None	Maintain personal appearance	Fair
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Fair	Understand, remember, and carry out simple job instructions	Poor	Related predictability in social situations	Fair
Use Judgment	Poor			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	None				
Function Independently	Poor				
Maintain Attention/Concentration	Poor				

The following limitations – Version 5 – in Dr. Adkin's RFC submissions were submitted for 31 of Mr. Conn's claimants:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Fair	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Fair	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Poor			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	Good				
Function Independently	Fair				
Maintain Attention/Concentration	Poor				

Of note in each version of the RFC signed by Dr. Adkins is that he rated the claimant as “poor” when it came to their ability to “demonstrate reliability.” Therefore, according to the RFC, as determined by Dr. Adkins, the RFC itself was potentially unreliable.

The remaining 50 RFCs reviewed were similar with as many as six claimants having the same limitations marked, but did not fall into one of the above stated categories.

Inconsistencies Between Dr. Adkins’ Reports and RFCs. As noted above, an RFC accompanied each of Dr. Adkins’ opinions. Dr. Adkins stated that while he used to fill out the RFC’s himself, at a certain point in time Mr. Conn’s office stated filling out the forms and then providing them to Dr. Adkins simply to sign. Dr. Adkins claimed he reviewed each of the RFCs to ensure it was consistent with his assessment of the claimant. Dr. Adkins told the Committee he never noticed the RFCs were identical and that only five versions existed.³²²

In reviewing Dr. Adkins opinions and RFCs together there were certain internal inconsistencies, which raised questions about how thoroughly he reviewed the RFCs prior to signing them. For example, after examining a 22 year old woman, Dr. Adkins described the claimant in his medical opinion as having “an impaired ability to adapt to the workplace, regarding her ability to tolerate the stress and pressures associated with day to day work activity.” The RFC for the same individual, however, rated his ability to “deal with work stress” as “good.”³²³ When questioned about the internal inconsistency with regard to his assessment, Dr. Adkins stated “mistakes happen.”³²⁴

Dr. Adkins’ Evaluation of Children. Several of the claimants reviewed by Dr. Adkins were under the age of 18, which SSA evaluates for disability under a different set of criteria than adults. Children are examined within a set of “domains” that are more applicable to their level of development.³²⁵ These include: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for yourself; and (6) health and physical well-being.³²⁶ Instead of filling out an analysis of Mr. Conn’s child claimants based on these factors, Dr. Adkins signed the same RFC he signed for Mr. Conn’s adult claimants. This produced the odd result in which Dr. Adkins claimed that he carefully examined whether children could “deal with work stress” and “relate to co-workers.” For example, in one instance, Dr. Adkins rated a seven-year-old boy as “fair” with regard to “follow work rules” and “relate to co-workers.”³²⁷

Other Report Issues. While Dr. Adkins’s reports stated he spent 3.5 hours with each claimant, he later explained to the Committee that was a typo in all his reports due to the use of a common template.³²⁸ In reality, he explained, his visits with the claimants were much shorter.

³²² April 4, 2013 Committee interview of Dr. Brad Adkins.

³²³ Psychological Evaluation by Dr. Brad Adkins, CLF015807-18. Exhibit 47.

³²⁴ April 4, 2013 Committee interview of Dr. Brad Adkins.

³²⁵ See Social Security Administration Childhood Disability Evaluation Form, <https://secure.ssa.gov/apps10/poms/images/SSA5/G-SSA-538-1.gif.pdf>.

³²⁶ *Id.*

³²⁷ Psychological Evaluation by Dr. Brad Adkins, CLF019495-501. Exhibit 47.

³²⁸ This explained how, for example, on July 17, 2007; November 29, 2007; and December 6, 2007 Dr. Adkins evaluated four claimants each day spending a total of 14 hours with the claimants. The following exams were dated

When asked what he believed the RFC was used for, Dr. Adkins stated he did not know and believed it was only used by the lawyer. He claimed he was unaware the document was reviewed or relied on by an administrative law judge to award disability benefits.³²⁹ In explaining he stated, “if I am guilty of anything, it is of being naïve.”³³⁰

SSA contacted Dr. Adkins in March 2013 and told him he would no longer be asked to review and evaluate disability claimants for the State of Kentucky. Dr. Adkins does, however, continue to review and evaluate claimants for attorneys, though no longer for Mr. Conn.³³¹

iv. Dr. Srinivas Ammisetty

Dr. Srinivas Ammisetty, according to Mr. Conn’s website, is an “independent medical examiner who regularly performs evaluations, file reviews, and completes reports for Eric C. Conn Law Firm.”³³² The Committee reviewed 10 of the medical opinions by Dr. Ammisetty submitted in support of claims before Judge Daugherty.

Dr. Ammisetty received his medical degree from Guntur College in India. He specializes in internal medicine, pulmonary medicine, and sleep disorders, and practices in Stanville, Kentucky, and has privileges in all the hospitals in the surrounding area.³³³ Dr. Ammisetty told the Committee that Mr. Conn requested he perform disability evaluations initially in 2003, but Dr. Ammisetty declined. Mr. Conn approached him again in 2010 when his primary doctor, Dr. Huffnagle, passed away. Dr. Ammisetty told the Committee that Mr. Conn said he had a backlog of cases because of Dr. Huffnagle’s death, and Dr. Ammisetty agreed to handle them.³³⁴ While Mr. Conn asked Dr. Ammisetty to review the claimants in Mr. Conn’s office, Dr. Ammisetty said that he refused. Instead, Dr. Ammisetty insisted he review the claimants in his medical office and said that he never visited Mr. Conn’s Law Firm to examine claimants.³³⁵

The medical opinions submitted by Dr. Ammisetty for Mr. Conn’s clients included an RFC form. As with other doctors Mr. Conn worked with, the Conn office typically filled out the RFCs and Dr. Ammisetty signed them.³³⁶ Dr. Ammisetty told the Committee that he did not complete the RFC forms himself because he was not trained to perform such assessments, and because he did not have the necessary equipment in his office, such as weights, to perform that type of evaluation.³³⁷ Dr. Ammisetty told the Committee that, in response, Mr. Conn asserted he had “a team of occupational therapists at his law firm who reviewed the claimants’ medical files,

July 17, 2007: CLF025065-76; CLF030115-27; CLF030146-57; and CLF030159-70. The following exams were dated November 29, 2007: CLF024291-302; CLF025901-12; CLF025989-99; and CLF028471-82. The following exams were dated December 6, 2007: CLF025888-99; CLF027717-23; CLF027758-68; and CLF028604-15. Exhibit 47.

³²⁹ April 4, 2013 Committee interview of Dr. Brad Adkins.

³³⁰ *Id.*

³³¹ *Id.*

³³² The Eric C. Conn Law Firm, <http://hegetsthejobdone.com/?p=230> (last visited Nov. 21, 2012).

³³³ April 4, 2013 Committee Interview of Dr. Srinivas Ammisetty.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

interpreted Dr. Ammisetty's findings, and prepared the RFCs." Dr. Ammisetty indicated that he never met, nor knew the name, of any occupational therapist used by Mr. Conn to prepare the RFCs, but based on Mr. Conn's assertion, Dr. Ammisetty signed the RFCs.³³⁸ Dr. Ammisetty told the Committee that he never requested that any of the RFCs be changed prior to his signing them.

The Committee reviewed 10 medical opinions signed by Dr. Ammisetty for cases before Judge Daugherty. Of those, nine contained pre-filled RFC forms identical to those submitted by other doctors used by Mr. Conn.

RFCs Signed by Dr. Ammisetty for Cases before Judge Daugherty

RFC Version	Lifting / Carrying	Standing/Walking	Sitting / Without Interruption	Number of Claimants with same RFC
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	2
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	1
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	2
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	2
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	1
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	1
Total				9

Just as cited above, the RFC asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with of the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration. All of these categories were marked in the exact same manner, as described above with other doctors.

The remaining RFC was handwritten by Dr. Ammisetty, while the above nine were computer generated.

To prepare his opinion of each claimant, Dr. Ammisetty told the Committee that he spent from 5 to 40 minutes with each individual. He said he typically reviewed the patient's past medical history, which was provided to him by Mr. Conn's office staff, and dictated a summary of the claimant's conditions based on the information in the file.³³⁹ He said he used information from the claimants' files to determine what questions he would ask, and he sometimes performed a physical exam if it was needed. If the claimant had no medical records, Dr. Ammisetty recorded the claimant's medical history based on the information provided. Dr. Ammisetty stated he

³³⁸ *Id.*; see also The Conn Law Firm's RFC form signed by Dr. Ammisetty. Exhibit 48.

³³⁹ *Id.*

never performed any additional medical testing, but said he could look at the patients and tell what their conditions were.³⁴⁰ He charged Mr. Conn \$400 to review each claimant.

Dr. Ammisetty stated that he stopped performing exams for Mr. Conn in October 2011, because he was too busy, and also because of the news coverage Mr. Conn was receiving.³⁴¹

SSA Reviewed Dr. Ammisetty's Opinions. In the SSA Division of Quality report mentioned above, the agency audited 12 cases in which Dr. Ammisetty provided independent medical opinions on behalf of Mr. Conn.³⁴²

The agency's report made several findings regarding Dr. Ammisetty's medical evaluations, including that the doctor consistently copied and pasted material from the claimant's other medical records. It noted that Dr. Ammisetty typically copied background information on the claimant and findings from prior consultative examination reports from doctor opinions procured by the Disability Determination Services.³⁴³ It also noted that Dr. Ammisetty never cited the prior exam as the source, but instead passed the findings off as his own.³⁴⁴ In addition, the reports he copied always found the claimant was physically capable of more activity and less restricted than Dr. Ammisetty would ultimately conclude in his findings.³⁴⁵ The use of copy and paste insertions also suggested to the Division of Quality that Dr. Ammisetty's examinations were incomplete or that he may have failed to examine the claimant at all.³⁴⁶ Such a finding is consistent with Dr. Ammisetty telling the Committee that he dictated his medical opinions from prior medical evidence.³⁴⁷

The agency noted "on at least one occasion, Dr. Ammisetty copied from multiple independent consultative examination reports, which produced internally inconsistent notes, such as reporting in one sentence no previous surgery, then reporting another sentence a recent surgery."³⁴⁸ Finally, the Division of Quality report noted that other medical evidence in the record did not support Dr. Ammisetty's findings of disability, and his ultimate conclusions were not supported by substantial evidence.³⁴⁹

Judge Daugherty adjudicated all 12 cases reviewed by the Division of Quality and awarded disability benefits to each claimant over the span of two days.³⁵⁰ The Division report noted that Judge Daugherty relied exclusively on Dr. Ammisetty's reports, never cited any other evidence, and always included the same stock language, which appeared in a different font from the rest of the opinion: "having considered all of the evidence, I am satisfied that the information provided

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ April 4, 2013 Committee interview of Dr. Srinivas Ammisetty.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

by Dr. Ammisetty most accurately reflects the claimant's impairments and limitations. Therefore, claimant is limited to less than sedentary work at best."³⁵¹

A separate SSA memorandum documented another agency review of nineteen disability determinations where Dr. Ammisetty's submitted medical reports mirrored the information contained in previous consultative examination reports. Again, the memorandum noted the use of copy and paste insertions from past consultative examination reports without crediting the source.³⁵² The memorandum also stated that the heavy use of copy and paste insertions made it difficult to determine which part of the evaluation included Dr. Ammisetty's notes as opposed to copied content from other sources.³⁵³ Moreover, when a consultative examination was absent from the file, it noted that Dr. Ammisetty's reports were much more cursory and the findings less detailed. In all but one case reviewed, Dr. Ammisetty opined the claimant was completely disabled.³⁵⁴

c. Other Doctors Provided Reviews of Claimants at the Request of Mr. Conn

i. Phil Pack, M.S.

Mr. Pack was affiliated with East Kentucky Psychological Services, Inc. during the period of Committee review. The practice had offices in three Kentucky locations: Paintsville, Pikeville, and Harlan. While not a medical doctor, he provided psychological assessments for clients of Mr. Conn, which he submitted as evidence of mental impairments for his clients. Mr. Pack stated he is licensed as a psychologist in the state of Kentucky.³⁵⁵

Mr. Pack began performing evaluations for Mr. Conn as long as 15 years ago. However, he said the claimants he reviewed at that time were "flat out malingerers"³⁵⁶ and he called Mr. Conn's office and said they needed to do a better job screening clients because they were not going to like the reports he was sending them. He said Mr. Conn stopped calling him at that point to ask for assessments.³⁵⁷

Mr. Pack began performing assessment for Mr. Conn again in the last ten years, and also provided assessment on behalf of the agency. Mr. Conn paid him \$225 per exam, while the agency paid \$150.³⁵⁸ He estimated that roughly 80 percent of his work was done for the agency, with 20 percent done on behalf of attorneys, including Mr. Conn.³⁵⁹

³⁵¹ *Id.*

³⁵² According to the review, Dr. Ammisetty's use of copy and paste was evident from the following: "verbatim word usage in full narrative paragraphs; matching chronology of the reports; identical medical findings, including blood pressure and weight despite several months or a year between exams; inclusion of identical test results for atypical examinations such as arm measurements; alternating use of "patient" and "claimant" between reports." Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ April 2, 2013 Committee interview of Mr. Phil Pack, M.S.

³⁵⁶ Malingering is a term used to describe the fabrication or exaggeration of symptoms.

³⁵⁷ April 2, 2013 Committee interview of Mr. Phil Pack, M.S.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

Mr. Pack stated Mr. Conn never provided him with a template form to sign, and that he was never pressured to change the results of any of his reports.³⁶⁰

Agency Analysis of Mr. Pack. The agency also reviewed 30 claimant reports submitted by Mr. Pack, most of which were submitted at the request of Mr. Conn. Mr. Pack, however, also submitted reports on behalf of the agency as well at the DDS level. While the reports appeared to be original, the findings were boilerplate. For example, the agency determined that “of 28 cases in which Mr. Pack provided assessments, he found the claimant had poor ability (markedly limited) in demonstrating reliability 28 times (100%).”³⁶¹

The agency noted in three of the cases reviewed, Mr. Pack was the examining source for both the agency at the DDS level and Mr. Conn at the appeals level. This meant Mr. Pack would be in the unusual situation of reviewing his own work. In one of these cases, Mr. Pack found the claimant not credible when he evaluated the claimant for SSA at the DDS level, but completely credible when he evaluated the same claimant at the request of Mr. Conn on appeal to an ALJ. In another report, Mr. Pack made clear the claimant had a problem with substance abuse at the DDS level, while in his report on the same claimant for Mr. Conn made no mention of such an issue when the case was appealed to an ALJ.³⁶² Overall, the agency found Mr. Pack’s reports for Mr. Conn always found the claimant disabled and unable to work.³⁶³

ii. Dr. Syed Ikramuddin

Dr. Ikramuddin received his medical degree in 1964 from Osmania Medical School in India, and came to America as a general surgeon. He first received his license to practice medicine in New York in 1976, and then received his license to practice in Kentucky two years later at which time he began practicing in Prestonsburg, Kentucky.³⁶⁴

License Suspended in Kentucky. On December 14, 1994, the Kentucky Board of Medical Licensure (“KBML”) suspended Dr. Ikramuddin’s license for gross negligence and failure to conform to the “standards of accepted and prevailing medical practice within the Commonwealth of Kentucky.”³⁶⁵ The KBML’s decision was based on two separate grievances filed against Dr. Ikramuddin.

The first grievance involved a tonsillectomy performed by Dr. Ikramuddin on a forty-two year old male patient in 1986.³⁶⁶ The patient died six days later from cardiac arrest due to left arterial tonsillar hemorrhage and secondary shock.³⁶⁷ KBML determined that not only was

³⁶⁰ *Id.*

³⁶¹ Social Security Administration, DRAFT: Report of the Division of Quality’s Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ Ky. Rev. Stat. Ann. § 311.595(8)(1994); Ky. Bd. of Med. Licensure v. Ikramuddin (Commonwealth of Ky. State Bd. of Med. Licensure Dec. 14, 1994) (agreed order). Sealed Exhibit.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

tonsillectomy unnecessary, but also Dr. Ikramuddin's actions (or inactions) during and post-surgery were directly responsible for the patient's death.³⁶⁸ Dr. Ikramuddin inflicted a wound during the surgery that resulted in postoperative bleeding. He then failed to properly manage the bleeding, which resulted in hypovolemic shock and the patient's death.³⁶⁹

The second grievance involved Dr. Ikramuddin removing part of a ten-year old female patient's left breast to perform a biopsy.³⁷⁰ Like the previous case, the Board found the procedure was not medically necessary or even appropriate.³⁷¹ Moreover, the Board concluded the patient would never develop a normal breast as a result of the operation conducted by Dr. Ikramuddin.³⁷²

New York Revokes Dr. Ikramuddin's License. As a result of continuing misconduct in Kentucky, Dr. Ikramuddin's license to practice in New York was revoked on November 10, 1997.³⁷³ The New York Board based its decision on a 1997 Order issued by the KBML.³⁷⁴ The conduct in Kentucky by Dr. Ikramuddin, as indicated by the Order, included: failure to provide appropriate treatment; failure to order appropriate tests; ordering inappropriate tests or treatment; failure to perform adequate physical exams; failure to take adequate patient histories; a lack of basic surgical knowledge; and falsification of a medical record.³⁷⁵ The Order also documented instances of gross negligence and deviations from the standard of care required in Kentucky.³⁷⁶

Dr. Ikramuddin died on December 29, 2011.

iii. The Potter Clinic

According to a former employee of Mr. Conn, the Potter Clinic provided x-rays of Mr. Conn's claimants with no analysis of the actual x-ray. Mr. Conn requested certain clients receive x-rays from the clinic, with the form stating "WE DO NOT WANT THE FILMS READ BY

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² In addition to filing grievances with the KBML, both the female patient and the estate of the male patient filed malpractice suits against Dr. Ikramuddin. The ten-year old girl's claim was settled with Dr. Ikramuddin's insurance carrier for approximately \$485,000,³⁷² while the man's estate won a jury verdict of around \$1 million, which was later affirmed by the Kentucky Court of Appeals. See *Ky. Bd. of Med. Licensure v. Ikramuddin* 7 (Commonwealth of Ky. State Bd. of Med. Licensure Dec. 14, 1994) (hearing officer's proposed findings of fact and conclusions of law) at 32-33.

³⁷³ New York Dep't of Health State Bd. for Prof'l Medical Conduct, Determination and Order for Syed Ikramuddin M.D., (Nov. 10, 1997)[hereinafter Revocation Order]. New York law allows the State Board for Professional Medical Conduct (NY Board) to revoke a doctor's license for misconduct committed in other states. Under New York Education Law § 6530(9)(d), if a medical professional licensed in the State of New York has had disciplinary action taken against them by an authorized professional disciplinary agency of another state, and those actions would constitute professional misconduct under New York law, then that professional is subject to disciplinary action by the New York State Board for Professional Medical Conduct. N.Y. Educ. Law § 6530(9)(d), available at http://www.health.ny.gov/professionals/office-based_surgery/law/6530.htm

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

ANYONE!!!!”³⁷⁷ Once the x-rays were provided to Mr. Conn, he would provide the analysis of the x-ray from disabling descriptions on the Internet of x-ray films. Dr. Huffnagle would then sign the opinion.³⁷⁸ Some of these descriptions prepared by Mr. Conn, which did not match the x-ray, according to Ms. Slone, were submitted to Judge Andrus to support an on-the-record FIT decision.³⁷⁹

d. Mr. Conn’s Attorney Explained the Use of Supplemental Medical Opinions

Through his attorney, Mr. Conn explained his use of these supplemental medical opinions:

In certain cases, the Conn Law Firm procures a supplemental *medical opinion* in order to advocate for its client and explain why the SSA record supports a favorable decision. Such medical opinions are supplementary only. They are based on the same “medical records” already in the SSA file (sometimes twice) that any SSA medical opinion is based. They are not required and are not procured for every client. Each supplemental medical opinion procured by the Conn Law Firm is submitted to the SSA and stored in the SSA’s [database] system.

The decision to procure a supplemental medical opinion is based on factors specific to each case and could include the conclusion by the Conn Law Firm that the underlying medical records don’t fully reflect the client’s disability, the medical opinion obtained through the SSA assigned doctor is not fulsome, the preference of the SSA decisionmaker, and/or the type of SSA case involved. If during its representation the Conn Law Firm obtains medical records that for some reason were not obtained by the SSA, it is the firm’s practice to submit those records to the SSA as well.³⁸⁰

Mr. Conn, through his law office, would initially pay for the medical evaluation as required under SSA regulations prohibiting representatives from charging for additional exams. However, contrary to agency rules, each claimant was later required to reimburse the firm for the cost of the examination.³⁸¹ To ensure this was the case, Mr. Conn required all of his clients to sign an affidavit stating they would reimburse CLF for the cost of the examination, while another employee filmed the claimant signing the affidavit.³⁸² Indeed, a document produced by Mr.

³⁷⁷ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16); *see also, e.g.*, CLF031230; CLF031232; CLF031234; CLF031236; and CLF031250. Exhibit 41.

³⁷⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

³⁷⁹ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

³⁸⁰ May 17, 2012 Letter from Pamela J. Marple, Esq., attorney for Eric C. Conn, to the Permanent Subcommittee on Investigations. Exhibit 9.

³⁸¹ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 8 (Exhibit 16). *See also* 20 C.F.R. §404.1720 Fee for representative’s service. That provisions mandates the amount of the representative’s fee is determined by the agency and “a representative must not charge or receive any fee unless we [the agency] has authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.”

³⁸² June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 8 (Exhibit 16).

Conn's law firm noted whether the claimant had signed an affidavit related to their appointment with Dr. Huffnagle.³⁸³

e. Judge Daugherty Appeared to Rely Exclusively on the Opinions of Mr. Conn's Doctors to Award Disability Benefits

The prior list of doctors is not an exhaustive list of every medical professional hired by Mr. Conn, though they provided a key piece of evidence in overwhelming majority of the cases reviewed by the Committee. Despite problems with the medical evidence they produced, however, Judge Daugherty appeared to rely exclusively on the opinions of these doctors to award benefits to Mr. Conn's clients.

Judge Daugherty's actions are in stark contrast to expectations created by top agency officials for ALJ decision-making. According to agency policy, as laid out in the *SSA Hearings, Appeals and Litigation Law Manual* (HALLEX), an ALJ is required to take careful steps each time a case is heard to carefully weigh the evidence and make an accurate decision. Accordingly, it requires every ALJ to include in every decision, "[a] discussion of the weight assigned to the various pieces of evidence in resolving conflicts in the overall body of evidence; e.g., conflicts between treating and nontreating sources, including a statement of which evidence is more persuasive and why."³⁸⁴ More than a cursory reference to the various pieces of evidence in the case file, this requires ALJs to provide a robust discussion of the weight they assign each piece.

Moreover, if an ALJ is unsatisfied with the amount of medical evidence in the file, he or she can request an additional consultative exam. Only, the additional exams should be requested through official agency channels and be directed to the SSA doctors in each state. HALLEX says "the ALJ may request a CE(s) and/or test(s) through the State agency."³⁸⁵

Judge Daugherty did not appear to follow these requirements in cases represented by Mr. Conn. As detailed in the following section, many of these cases involved claimants with little or no medical evidence to support their disability claim. To overcome this problem, Judge Daugherty did not go through the agency, but directly alerted Mr. Conn to the evidence needed to rule in favor of the claimant, which Mr. Conn's doctors then provided.

The interaction between Mr. Conn and Judge Daugherty was the same each month. Once the DB List for the month was created, one of Mr. Conn's employees would call the claimants on the list and request they come to the office for a medical evaluation. Depending on whether Judge Daugherty indicated the claimant needed a "mental" or "physical" evaluation would dictate what doctor the claimant was scheduled to see to provide an opinion the claimant was disabled.³⁸⁶

³⁸³ See Frederic T. Huffnagle Schedule, CLF033403-04. Exhibit 49.

³⁸⁴ HALLEX I-2-8-25. Writing the Decision. Can be found at http://www.ssa.gov/OP_Home/hallex/I-02/I-2-8-25.html.

³⁸⁵ HALLEX I-2-5-20. Consultative Examinations and Tests. Can be found at http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-20.html.

³⁸⁶ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 7 (Exhibit 16).

When writing his decisions, Judge Daugherty appeared to rely solely on this attorney-bought medical opinion to award disability benefits. Not only did he do this nearly 100 percent of the time for Mr. Conn's clients, but in the decisions reviewed by the Committee he would routinely ignore all of the other evidence in the file, appearing to give it no weight at all. For example, in Huntington Case 74³⁸⁷ where Mr. Conn provided an opinion by Dr. Huffnagle, Judge Daugherty opined:

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 sedentary work at best.

This same language was present in most, if not all, of Judge Daugherty's cases. For some opinions, this language was in a different font than the rest of the decision, which could be due to material being copied and pasted into a document.³⁸⁸ Judge Daugherty then discounted the remainder of the medical evidence by stating:

The State agency medical consultants physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

Judge Daugherty then awarded the claimant disability benefits based solely on the one doctor's opinion who was paid by Mr. Conn, who only examined the patient once. This apparent disregard of the claimant's complete medical records was contrary to program rules and regulations.

f. Analysis of Cases Decided by Judge Daugherty on the "DB Lists"

i. Review of Claimants' Case Files on DB Lists

The Committee reviewed the analysis employed by Judge Daugherty in awarding benefits to the DB List claimants. To do so, the Committee reviewed a total of 110 case files, which included all claimants listed on the first and last full DB lists from January 2007 and July 2010, and additional DB Lists issued within that timeframe. In reviewing these cases, the Committee did not attempt to independently determine whether or not the claimants met the Social Security Administration's criteria for awarding benefits under the disability program. Rather, the Committee assessed the extent to which Judge Daugherty's decisions were supported by the full evidence included in each case file, including all of the medical records, results of consultative examinations, agency evaluations, and the claimants' subjective allegations as indicated on their application and other forms.

³⁸⁷ The Committee requested certain case files from the Social Security Administration. When the agency produced the case files to the Committee, each case file was assigned a number, which could be referenced but the claimant would remain anonymous.

³⁸⁸ Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

ii. Summary Analysis of Findings

Of the 110 cases reviewed, the Committee found reason to question the basis for the vast majority, or 100, of Judge Daugherty's decisions. In these 100 cases, the Committee reviewed all medical evidence available in the claimants' files and in each case, identified either a lack of objective evidence, or conflicting evidence that Judge Daugherty often appeared to ignore. Conversely, the Committee found a total of 10 cases in which Judge Daugherty's decisions to award benefits were supported by the medical evidence of record contained in the claimant's case file. These included two cases in which the claimant's met the medical listing criteria for mental disorders.

Every one of the cases reviewed was decided on-the-record without holding a hearing. Furthermore, geographic waivers which ensured the claim would be routed through the Prestonsburg Field Office, and then appealed to the Huntington ODAR, were present in 30 of these cases.

Furthermore, all but two of the 100 decisions questioned by the Committee were decided based on the agency's Medical-Vocational Guidelines, known as the vocational "grids." In such cases, the claimant's medical conditions alone were not severe enough to meet any of the agency's medical listings. Rather, the determination of disability was based on whether a claimant's medical symptoms caused a sufficient level of functional limitations that, in combination with the claimant's age; education level; transferability of job skills; and availability of jobs in the national economy; so limited the capacity to work that a determination of disability was warranted.³⁸⁹

For example, according to these Guidelines, an individual who cannot lift more than 10 pounds at a time, who cannot stand or walk for at least two hours in an eight hour workday, and who cannot sit for at least six hours in an 8 hour workday, is determined to be capable of "less than sedentary" work.³⁹⁰ The determination of the level of work an individual is capable of performing is based on an assessment of his or her abilities, as indicated by the Residual Functional Capacity (RFC), which according to Administration guidance identifies what an individual can do, and is based "primarily upon medical evidence, but may also include observation or description of limitations."³⁹¹

Once the individual's RFC is identified, the remaining factors noted above are taken into account to determine whether the individual is disabled. A finding that an individual is capable of performing only sedentary, or less than sedentary work is more likely - once other factors are taken into account - to lead to a finding of disability.

Of greatest concern in the 100 cases in which Judge Daugherty issued questionable decisions was the extent to which he relied exclusively on medical opinions provided by doctors hired by Eric Conn. In doing so, Judge Daugherty failed to account for other evidence in the claimant's

³⁸⁹ 20 C.F.R. Part 404, Subpart P, Appendix 2.

³⁹⁰ SSR 83-10, Titles II and XVI: Determining Capability to Do Other Work—The Medical Vocational Rules of Appendix II.

³⁹¹ DI 24510.001 Residual Functional Capacity (RFC) Assessment - Introduction.

files that in many cases, suggested the claimants were capable of working. This included evidence that either directly contradicted those opinions, differed significantly in assessing the severity of the claimant's alleged symptoms and conditions, or that identified other factors, such as the claimant's noncompliance with prescribed medication or physician advice, or indications of drug or alcohol abuse.

Judge Daugherty's reliance on a single piece of evidence to support his decisions stands in direct conflict with agency regulations that guide the evaluation process. Woven throughout SSA regulations is a consistent requirement to consider *all* of the available evidence in the case file.

For example, in describing how the agency is to evaluate symptoms, including pain, regulations state: "In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you."³⁹²

Agency policy notes that "...under no circumstances may the existence of an impairment be established on the basis of symptoms alone. Thus, regardless of how many symptoms an individual alleges, or how genuine the individual's complaints may appear to be, the existence of a medically determinable physical or mental impairment cannot be established in the absence of objective medical abnormalities; i.e., medical signs and laboratory findings."³⁹³

With regard to a claimant's credibility, agency policy states: "It is not sufficient for the adjudicator to make a single, conclusory statement that 'the individual's allegations have been considered' or that 'the allegations are (or are not) credible.' It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight."³⁹⁴

iii. Judge Daugherty Used Templated Language in Written Decisions

In 88 of the 110 decisions reviewed, Judge Daugherty relied on physical evaluations provided by Dr. Huffnagle. In 56 of these cases, Judge Daugherty wrote short decisions in which his description of the claimants' residual functional capacity and his basis for that determination were nearly identical.

The decisions all contained the same four paragraphs, which established the findings from Dr. Huffnagle's medical exams as the sole basis for determining the individual's residual functional capacity. The only part of this section that changed from one claimant to the next was the determination of whether the claimant was capable of *less than sedentary* or *sedentary* work in the second paragraph. For decisions that followed this format, this section of the decision never included analysis of other medical evidence in the claimants' files, as required by the agency.

³⁹² 20 CFR 404.1529 § (a).

³⁹³ SSR 96-4p.

³⁹⁴ SSR 96-7p.

The general template Judge Daugherty used for this section was as follows:

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p and 06-3p.

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.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants' physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

With the exception of the blanket statement that the medical opinions submitted by providers hired by Mr. Conn best reflected the claimants' conditions, Judge Daugherty provided no additional written explanation to demonstrate his consideration of all of the other evidence included in these cases. This fact is the primary reason why the Committee questioned the basis for Judge Daugherty's decisions in the majority of cases reviewed.

The Committee identified numerous cases in which Judge Daugherty appeared to either overlook or disregard without any explanation significant evidence included in the claimant's case files that called his finding of disability into question. For instance, in a number of cases, additional medical evidence from consultative exams or the claimants' treating physicians called into question the severity of the claimant's conditions. The Committee identified some cases in which Dr. Huffnagle diagnosed claimants with medical conditions that the claimants themselves did not identify in their applications, but which then formed the basis for Judge Daugherty's decision. Some case files included evidence of claimant noncompliance with treatment, or evidence of drug and alcohol abuse. While these factors may not have precluded a finding of disability, Judge Daugherty's decisions reflect no indication that he gave such factors the appropriate level of consideration to determine whether the claimants' conditions would warrant a finding of disability regardless.

Section 4 below summarizes one of the cases reviewed by the Committee, illustrative in that it provided an opportunity to compare Judge Daugherty's approach with that of another

Administrative Law Judge who evaluated the same claimant. Detailed summaries of a sample of additional cases reviewed by the Committee are presented in Appendix I.

iv. Judge Daugherty Overturned Prior ALJ Decisions

In some cases, Judge Daugherty awarded benefits to claimants who were previously denied by another Administrative Law Judge, but then reapplied. In these cases, the only additional medical evidence provided was from the physicians hired by Mr. Conn. With the exception of those opinions, Judge Daugherty awarded benefits on largely an identical body of evidence that a previous Administrative Law Judge found insufficient to merit a favorable decision.

Generally in such cases, a claimant can file a new application or in some cases re-open an old case, but are not allowed to receive benefits for any time before the date of their previous denial. This prevents someone from receiving benefits for a time period that the agency has already decided a person was not disabled, but allows benefits in the future if circumstances change. As such, when someone reapplies it is typical for them to allege an onset date on the day immediately following the date of the previous ALJ decision.

After being denied benefits again at the initial and reconsideration decisions by the agency, these cases were presented to Judge Daugherty with largely the same body of medical evidence that was reviewed by the previous Judge, with the exception of an additional medical opinion from the physicians hired by Eric Conn.

Case A: On June 1, 2010, Judge Daugherty awarded benefits to a claimant he determined was only capable of performing less than sedentary work due to sciatica, disc herniation, and diabetes.³⁹⁵ However, less than a year prior the claimant was denied benefits on a prior application by another judge in the Huntington, West Virginia ODAR.³⁹⁶ Judge Daugherty's written decision made no mention of the claimant's past application, but instead relied only on the evaluation performed by Dr. Huffnagle, which he again concluded was most consistent with the evidence as a whole.³⁹⁷ However, the decision did not cite or discuss any other evidence from the file that would support that finding.³⁹⁸

On August 27, 2009, less than a year before, Administrative Law Judge Andrew Chwalibog denied benefits to the claimant, concluding that while he could not return to his previous job, "the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of 'not disabled' is therefore appropriate ..."³⁹⁹ Judge Chwalibog's decision contained a detailed examination of the medical evidence and determined that despite having several severe limitations, including obesity, he did not meet the requirements of the program.⁴⁰⁰

³⁹⁵ See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 3 and 5.

³⁹⁶ See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 9.

³⁹⁷ See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 3-4.

³⁹⁸ *Id.* at 3-4.

³⁹⁹ See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 9.

⁴⁰⁰ *Id.* at 3-9.

His detailed, nine-page decision made 57 references to the claimant's medical exhibits, and assigned weights to the opinion of various sources.⁴⁰¹ Of particular importance was the evidence Judge Chwalibog gained from the hearing he held on June 9, 2009.⁴⁰² For example, while the claimant said that his right foot was a major problem, the judge wrote, "the claimant did not mention his right foot during the hearing. Therefore, the undersigned finds the claimant's tendonitis of the right foot does not constitute a severe impairment."⁴⁰³

Judge Chwalibog also referred to the testimony of a vocational expert who testified, "that given all of these factors the individual would be able to perform the requirements of representative occupations nationally/regionally at the light level."⁴⁰⁴

Four days after the decision, on August 31, 2009, the claimant hired Eric Conn as his attorney and applied for benefits once more.⁴⁰⁵ The claimant changed his alleged onset date from July 2007, as it was in his prior application, to August 25, 2009 – a date two days *prior* to the Chwalibog denial.⁴⁰⁶ He listed the same conditions for which he had just been denied, including, "type 2 diabetes, back pain, neck pain, herniated discs in back, muscle spasms, fatigue, depression, anxiety, nervousness, trouble sleeping, tendonitis in right foot, and hypertension."⁴⁰⁷

When the agency considered the new application, documents note that no new medical evidence was submitted, and as a result, the initial decision was denied on November 9, 2009.⁴⁰⁸ The examining official wrote: "This claimant has a residual functional capacity for light work, is a younger individual, has a high school education, and work experience ... There are a significant number of occupations for which this claimant qualifies ... Since the claimant has the capacity to perform other work, disability is not established."⁴⁰⁹ This decision to deny benefits was upheld on March 8, 2010 upon reconsideration by the agency.⁴¹⁰

Claimant Added to DB List. Following the reconsideration decision, the claimant requested an ALJ hearing on March 24, 2010.⁴¹¹ Mr. Conn and Judge Daugherty also placed the claimant on the May 2010 "DB List."⁴¹²

On April 27, 2010, the claimant was seen by Dr. Huffnagle.⁴¹³ The exam notes indicate that the claimant's current medical symptoms or problems included: "low back pain with left hip pain,"

⁴⁰¹ *Id.* at 3-8.

⁴⁰² *Id.* at 1.

⁴⁰³ *Id.* at 4.

⁴⁰⁴ *Id.* at 9.

⁴⁰⁵ See Exhibit A-3, August 31, 2009 Appointment of Representative and Fee Agreement at 1-2 and see Exhibit F-4, Disability Report – Adult Form SSA-3368 at 9.

⁴⁰⁶ See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 1 and see Exhibit A-4, Disability Report – Adult Form SSA-3368 at 2.

⁴⁰⁷ *Id.* at 2.

⁴⁰⁸ See Exhibit A-5, October 5, 2009 Request for Medical Advice at 1; Exhibit A-6, March 5, 2010 Physical Residual Functional Capacity at 2 and see Exhibit A-7, November 10, 2009 Notice of Disapproved Claim.

⁴⁰⁹ See Exhibit A-8, Simplified Vocational Rationale at 1.

⁴¹⁰ See Exhibit A-9, March 5, 2010 Notice of Reconsideration at 1.

⁴¹¹ See Exhibit A-10, Request for Hearing by Administrative Law Judge at 1.

⁴¹² Exhibit A-11, DB OTR List (May) CLF030713.

which he added, “came on gradually over time.”⁴¹⁴ Dr. Huffnagle diagnosed the claimant with “sciatica, possible L4-L5 disc herniation, and diabetes” with no mention of the claimant’s right foot in the diagnosis.⁴¹⁵ On the same day, he signed Conn Law Office RFC version #4.⁴¹⁶

Claimant Awarded Benefits. Judge Daugherty’s fully favorable decision a month later on June 1, 2010 found that the claimant’s severe and disabling limitations were “sciatica, disc herniation and diabetes” – the same identified by Dr. Huffnagle; although Judge Daugherty dropped the adjective “possible” from Dr. Huffnagle’s description of the claimant’s disc herniation.⁴¹⁷

His decision failed to mention how the claimant had previously applied and was denied, and instead gave exclusive weight to the exam performed by Dr. Huffnagle, writing: “Having considered all of 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” and therefore disabled according to the Medical Vocational Guidelines.⁴¹⁸

⁴¹³ See Exhibit A-12, April 27, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

⁴¹⁴ *Id.* at 1.

⁴¹⁵ *Id.* at 4.

⁴¹⁶ *Id.* at 5-8.

⁴¹⁷ See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 2.

⁴¹⁸ *Id.* at 3-5.

XI. ALJS, LAWYERS, AND DOCTORS ALL PERSONALLY BENEFITED FROM THE APPROVAL OF HIGH NUMBERS OF CLAIMS

As Huntington ODAR became one of the top producing hearing offices agency employees, Mr. Conn, and his doctors enjoyed a range of personal benefits. For Huntington ODAR management and ALJs, these included financial bonuses as well as increased stature within SSA.⁴¹⁹ For Mr. Conn and the doctors he hired, the financial benefits were significant, earning them millions of dollars as their clients were approved for disability benefits.”

a. Mr. Conn Earned Over \$4.5 Million in Attorney Fees From the DB Lists and Became the Third Highest Grossing Disability Attorney Nationwide

Mr. Conn’s work representing claimants seeking to receive disability benefits proved to be a lucrative choice, earning him millions of dollars. Based on a review of DB Lists dated June 2006 through July 2010, the chart below provides the number of claimants listed in each list and the total amount Mr. Conn earned each month in fees from the Social Security Administration for the claimants on each list.

Year	No. of Claimants on DB List	Amount Paid by SSA in Fees
2006	227	\$637,947.46
2007	535	\$1,314,710.90
2008	437	\$987,913.63
2009	365	\$888,162.06
2010	259	\$679,508.18
Total	1,823	\$4,508,242.23⁴²⁰

Total Earnings by Mr. Conn. In a newspaper interview from 2005, Mr. Conn stated that he “saw a lot of people practicing Social Security law, but you can either do it or do it well. It’s a very complicated area, and I saw a need that I needed to fill. Some attorneys don’t understand all areas in which people can win. I didn’t plan to become the Social Security lawyer, but it seemed to fit.”⁴²¹

Over the years, Mr. Conn became increasingly successful in winning cases for his disability practice. In 2001, the agency paid Mr. Conn \$87,738.13 in attorney fees based on his successful representation of disability claimants.⁴²² The amount Mr. Conn received in total attorney fees peaked in 2010 when he received over \$3.9 million from the agency.⁴²³

⁴¹⁹ The Huntington ODAR sought to be recognized by the agency for its processing of cases in its request to receive the Team Award in 2010. In its submission, the office noted “[t]he Huntington Hearing Office provides its claimants with the one-two punch of 2.93 dispositions daily per ALJ along with an extremely fast average processing time of 180 days.” Huntington ODAR Submission for Team Award nomination. Exhibit 50.

⁴²⁰ Claimants and amounts obtained by Mr. Conn through the DB Lists are broken down by month in Appendix II.

⁴²¹ Attorney, Eric Conn, “Eric C. Conn, Beyond the Billboard,” Excerpts from the Medical Herald Leader, 8/8/2005, www.mrsocialsecurity.com.

⁴²² Information provided by the Social Security Administration.

⁴²³ *Id.*

Year	Amount Mr. Conn Received in Attorney Fees from SSA ⁴²⁴
2001	\$87,738.13
2002	\$681,915.44
2003	\$989,277.81
2004	\$941,726.83
2005	\$1,341,003.42
2006	\$1,602,234.57
2007	\$1,917,092.29
2008	\$2,469,665.75
2009	\$3,539,054.22
2010	\$3,987,906.82
2011	\$1,855,630.20
2012	\$2,223,904.55
2013 to date	\$1,062,436.62
Total	\$22,699,586.65

The amount received in fees by Mr. Conn dropped following an article by *The Wall Street Journal* in May 2011 exposing Mr. Conn's practices and the retirement of Judge Daugherty.

b. Judge Daugherty's Financial Records Include Unreported Income from An Undisclosed Source

Judge Daugherty played a critical role in Mr. Conn's ability to represent a large number of disability claimants, process their cases quickly, and obtain millions of dollars in attorney fees from SSA each year.

Under the Ethics in Government Act, ALJs are required to file annual Public Financial Disclosure Reports reporting their income, assets, and outside activities.⁴²⁵ The Office of Government Ethics ("OGE") has explained in its related guidance that the purpose of the disclosure forms is to ensure compliance with conflict of interest laws and standards of conduct.⁴²⁶

Each year, ALJs, like many other federal employees, are required to submit OGE Form 278 and disclose "certain interests in property and items of income."⁴²⁷ The reported items include,

⁴²⁴ Information provided by the Social Security Administration.

⁴²⁵ See 5 U.S.C. 101-11.

⁴²⁶ Specifically, the form is designed to: "A basic premise of the statutory financial disclosure requirements is that those having responsibility for review of reports filed pursuant to the Ethics in Government Act or permitted public access to reports must be given sufficient information by reporting individuals concerning the nature of their outside interests and activities so that an informed judgment can be made with respect to compliance with applicable conflict of interest laws and standards of conduct regulations." Instructions for Completing OGE Form 278, [http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-\(PDF\)/](http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-(PDF)/).

⁴²⁷ Instructions for Completing OGE Form 278, [http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-\(PDF\)/](http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-(PDF)/).

among other things, any income earned other than a government salary over \$200 and any outside “compensation” or “gift.”⁴²⁸

Unexplained Cash Deposits. For the seven-year period 2005 to 2011, while Judge Daugherty reported bank accounts in the name of himself and his wife, he did not report any income, compensation, or gifts outside of his government salary and benefits.⁴²⁹ From 2005 to 2010, he reported no transactions; gifts, reimbursements, travel expenses; liabilities; agreements or arrangements; positions held outside U.S. government; or compensation in excess of \$5,000 paid by one source. In 2011, he reported the purchase of a condominium in Myrtle Beach, South Carolina valued at \$50,000-\$100,000 and a 50% interest in a “House & Lot” in Huntington, West Virginia valued at \$50,000-\$100,000. That same year he also reported mortgages related to both properties as liabilities.⁴³⁰

Records obtained by the Committee regarding Judge Daugherty’s bank accounts raise questions, however, regarding certain unexplained cash deposits. Over the course of nine years, his bank records list a series of cash deposits totaling \$69,800, the source of which is unexplained in the judge’s financial disclosure forms. Given the value and frequency of these cash deposits, it would appear disclosure of the existence and source of these deposits may have been required.

Bank records show that Judge Daugherty made the \$69,800 in cash deposits into either a savings account opened in his name only or into a joint checking account he shared with his wife.⁴³¹

Cash Deposits Made to Judge Daugherty’s Accounts

Date	Amount	Account
09.30.03	\$1,000	Savings Account
10.06.03	\$1,000	Savings Account
10.28.04	\$5,000	Savings Account
11.26.04	\$4,000	Savings Account
01.31.05	\$2,900	Savings Account
02.16.06	\$1,500	Savings Account
02.24.06	\$3,000	Savings Account
06.09.08	\$2,000	Joint Checking Account
06.09.09	\$2,000	Joint Checking Account

⁴²⁸ Other items to be disclosed include: any asset owned for investment worth more than \$1,000; any “purchase, sale, or exchange” “of any real property, stocks, bonds, commodity futures, or other securities” worth more than \$1,000; “gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$350; “travel-related cash reimbursements received from one source totaling more than \$350; any “liabilities over \$10,000 owed to any one creditor;” any “agreements or arrangements for continuing participation in an employee benefit plan, continuation of payment by a former employer, leaves of absence, and future employment; any positions held outside federal employment, regardless of whether the position is paid; and “sources of more than \$5,000 compensation received...for services provided” by the individual.⁴²⁸ See Instructions for Completing OGE Form 278, [http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-\(PDF\)/](http://www.oge.gov/Forms-Library/OGE-Form-278-Automated-(PDF)/).

⁴²⁹ In certain years, Judge Daugherty reported he owned automobiles and a boat. See 2005-11 Executive Branch Personnel Public Financial Disclosure Reports for David B. Daugherty. Sealed Exhibit.

⁴³⁰ See 2011 Executive Branch Personnel Public Financial Disclosure Report for David B. Daugherty. Sealed Exhibit.

⁴³¹ Committee analysis of records provided by Judge Daugherty’s financial institutions. Sealed Exhibit.

06.10.09	\$2,000	Joint Checking Account
07.20.09	\$3,000	Joint Checking Account
08.24.09	\$2,000	Joint Checking Account
08.24.09	\$2,000	Joint Checking Account ⁴³²
09.24.09	\$2,500	Joint Checking Account
09.24.09	\$1,500	Joint Checking Account
09.24.09	\$2,000	Joint Checking Account ⁴³³
05.15.10	\$2,000	Joint Checking Account
07.02.10	\$3,000	Joint Checking Account
07.08.10	\$3,000	Joint Checking Account
08.19.10	\$400	Savings Account
09.28.10	\$1,000	Joint Checking Account
10.19.10	\$4,000	Savings Account
10.25.10	\$4,000	Savings Account
11.09.10	\$4,000	Savings Account
11.10.10	\$2,000	Savings Account
11.16.10	\$4,000	Joint Checking Account
11.16.10	\$4,000	Savings Account
01.21.11	\$1,000	Savings Account
Total Amount of Cash Deposits to Both Accounts		\$69,800

Very few cash deposits were made into either account during the years 2007 and 2008. During that same period, however, similar cash deposits were made to the personal checking account of Judge Daugherty's daughter, Amy Daugherty.⁴³⁴ Bank records show that those cash deposits were made primarily between July 2007 and October 2008, the same period during which she was running for the office of Cabell County, West Virginia Magistrate in an election scheduled to take place in November 2008.

The bank records list cash deposits to Ms. Daugherty's account that, together, total another \$26,200. The bank records also show that, on most occasions after receiving a cash deposit, Ms. Daugherty wrote a check for a similar amount to "Trish Burns," who was then serving as her Campaign Manager. Campaign financial statements filed by Amy Daugherty with the State of West Virginia list Tresha or Trisha Burns as the campaign's Treasurer.⁴³⁵ Ms. Daugherty's campaign financial statements also indicated she loaned money to her campaign, memorialized in corresponding promissory notes.⁴³⁶

⁴³² The two cash deposits made on August 24, 2009 were made 17 minutes apart and at different tellers. Sealed Exhibit.

⁴³³ The three cash deposits made on September 24, 2009 were all made within 17 minutes and at different tellers. Sealed Exhibit.

⁴³⁴ Committee analysis of records provided by Ms. Daugherty's financial institutions. Sealed Exhibit.

⁴³⁵ See State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2008 Election Year Reports filed by Amy Daugherty. Exhibit 51.

⁴³⁶ *Id.*

Transactions from Amy Daugherty's Personal Checking Account

Date	Amount	Description of Transaction
07.06.07	\$4,000	Cash Deposit
07.06.07	\$2,800	Amy Daugherty check to Judge Daugherty
07.20.07	\$4,000	Cash Deposit
07.23.07	\$4,000	Amy Daugherty check to Trish Burns
07.24.07	\$4,000	Promissory Note for Loan to Campaign
10.11.07	\$1,000	Cash Deposit
10.11.07	\$1,000	Amy Daugherty check to Trish Burns
10.15.07	\$1,000	Promissory Note for Loan to Campaign
10.29.07	\$2,000	Cash Deposit
10.29.07	\$2,000	Amy Daugherty check to Trish Burns
10.30.07	\$2,000	Promissory Note for Loan to Campaign
03.07.08	\$2,600	Cash Deposit
03.07.08	\$2,700	Amy Daugherty check to Trish Burns
03.11.08	\$2,700	Promissory Note for Loan to Campaign
04.11.08	\$3,000	Cash Deposit
04.11.08	\$3,000	Amy Daugherty check to Trish Burns noting "Loan to Committee to elect Amy Daugherty"
04.14.08	\$3,000	Promissory Note for Loan to Campaign
04.15.08	\$3,000	Cash Deposit
04.15.08	\$3,000	Amy Daugherty check to Trish Burns noting "Loan to Committee to elect Amy Daugherty"
04.17.08	\$3,000	Promissory Note for Loan to Campaign
04.21.08	\$2,000	Cash Deposit
04.21.08	\$2,000	Amy Daugherty check to Trish Burns noting "Loan to Committee to elect Amy Daugherty"
04.22.08	\$2,000	Promissory Note for Loan to Campaign
05.27.08	\$1,000	Promissory Note for Loan to Campaign
10.01.08	\$2,000	Cash Deposit
10.01.08	\$2,000	Amy Daugherty check to Trish Burns noting "Loan to Committee to elect Amy Daugherty"
10.01.08	\$2,000	Promissory Note for Loan to Campaign
12.21.10	\$900	Cash Deposit
02.25.11	\$1,700	Cash Deposit
Total Amount		\$26,200

Amy Daugherty's campaign was unsuccessful. Her final campaign filing reported that her campaign had received \$17,790 in total contributions and expended a total of \$37,095.05. The filing also stated that the campaign owed an outstanding loan balance to Amy Daugherty of \$19,700.⁴³⁷ Once Ms. Daugherty's campaign ended in November 2008, the cash deposits to her personal account also mostly ended. At that same time, the cash deposits resumed appearing in the bank records of Judge Daugherty.

⁴³⁷ *Id.*

The total amount in unexplained cash deposits from the accounts held by both Judge Daugherty and his daughter was \$96,000. The Committee was unable to determine the origin of the cash deposits or why they were not reported on Judge Daugherty's financial disclosure forms. When questioned by the Committee about the cash deposits, Mr. Daugherty refused to explain the source of the cash or to answer other questions about the deposits.⁴³⁸

Mr. Conn Conducted Certain Business in Cash. When the Committee asked Mr. Conn about his use of cash, his legal counsel indicated that Mr. Conn's law firm routinely maintained cash on hand and that "a variety of business expenses were paid for in cash." His legal counsel also disclosed that, "until very recently, the Conn Law Firm did not have a company credit card,"⁴³⁹ which presumably also led to the law firm dealing in cash payments.⁴⁴⁰

Documents produced by the Conn Law Firm indicated petty cash was used to reimburse employees when items were purchased for use by the firm.⁴⁴¹ Bank records also indicated Mr. Conn's law firm made regular cash withdrawals from its accounts, usually in increments of \$9,000 to \$10,000 up to twice a month.⁴⁴² The funds were typically described as needed for "petty cash" expenses. In fact, from November 2005 to May 2011, Pat Conn of Mr. Conn's Law Office withdrew a total of \$616,500 in cash through checks drawn on the law firm accounts, with every check noting that the funds were to be used for "petty cash."⁴⁴³

c. Mr. Conn's Doctors were Paid for Providing Medical Opinions

Doctors and medical professionals hired by Mr. Conn to examine his clients and provide opinions for use in disability claims were paid large sums of money for the services they performed. At times, this required minimal effort by some of the doctors, including signing forms previously filled out by Mr. Conn and passing off as their own previous reports filed by other doctors.

⁴³⁸ September 18, 2013 Email from David B. Daugherty to the Committee.

⁴³⁹ May 17, 2012 Memorandum from Pamela J. Marple, Esq., attorney for Eric C. Conn, to the Permanent Subcommittee on Investigations. Exhibit 9.

⁴⁴⁰ At least one bank, however, produced documents indicating as early as July 2007, Mr. Conn held a "business card" in the name of "Eric Conn PSC" with the address of 12407 S US HWY 23, Stanville, Kentucky, the address of his firm. Sealed Exhibit.

⁴⁴¹ The majority of receipts for petty cash appeared to be for office supplies, catering, and gas for vehicles. Exhibit 52.

⁴⁴² Committee analysis of records produced by Mr. Conn's financial institution. Sealed Exhibit.

⁴⁴³ See Appendix III.

Medical Professional	Date Range of Payments	Amount Paid by Mr. Conn⁴⁴⁴
Frederic Huffnagle, M.D.	January 2006 – September 2010	\$979,782
David Herr, D.O.	March 2008 to February 2012	\$600,465
Dr. Brad Adkins, Ph.D.	January 2006 to October 2011	\$198,800
Phil Pack, M.S.	November 2006 to April 2011	\$110,190
Srini Ammisetty, M.D.	May 2009 to February 2012	\$41,300

d. Huntington ODAR Employees Received Bonuses and Salary Increases

As a self-professed “numbers guy” specifically hired by Judge Andrus, Mr. Hall, the hearing office director, received several bonuses for moving cases through the Huntington ODAR. In total, from 2006 to 2010 Mr. Hall received \$11,432 in bonuses and awards. This was in addition to his salary that reached as much as \$112,804.⁴⁴⁵

As early as 2000, Judge Andrus noted in the description of Mr. Hall’s accomplishments and contributions on the awards nomination form that Mr. Hall “has made major contributions to the efficient running of the Huntington Hearing Office.”⁴⁴⁶ In nominating Mr. Hall for his 2006 bonus, Judge Andrus emphasized Mr. Hall’s ability to motivate staff to move cases through the Huntington ODAR.⁴⁴⁷

Greg Hall, Hearing Office Director, Salaries and Awards⁴⁴⁸

Year	Salary	Award Amount
2006	\$96,286	\$1,300
2007	\$98,026	\$2,132
2008	\$104,018	\$1,650
2009	\$107,681	\$3,150
2010	\$112,804	\$3,200

Mr. Hall also received national agency recognition, as the agency looked to him to help train other hearing office directors. In 2007, Mr. Hall “serve[d] on the the Hearing Office Director’s National Training Cadre; he helped to establish and organize the original national training packet for new Hearing Office Directors.”⁴⁴⁹

⁴⁴⁴ Committee analysis of records produced by Mr. Conn’s financial institution. Sealed Exhibit.

⁴⁴⁵ Information provided by the Social Security Administration.

⁴⁴⁶ ROC/CAS/OTS Awards Nomination Form for Gregory Hall, period covered 10/1/00 to 9/30/01. Exhibit 53.

⁴⁴⁷ Specifically, Judge Andrus noted “insures that our reports are timely and accurate, and his use of management information is excellent.” ROC/ECSA/ERA Awards Nomination Form for Greg Hall, period covered 10/05 to 9/06. Exhibit 53.

⁴⁴⁸ Information provided by the Social Security Administration.

⁴⁴⁹ Huntington ODAR Submission for Team Award nomination. Exhibit 50.

At the same time, the ALJs in the Huntington Office received high salaries in a city where the median household income is \$28,483.⁴⁵⁰

Annual Salaries for Certain Huntington ODAR Administrative Law Judges⁴⁵¹

ALJ	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Charlie P. Andrus	\$148,526	\$151,163	\$155,736	\$161,226	\$164,048	\$164,048
David B. Daugherty	\$148,526	\$151,163	\$155,736	\$161,226	\$164,048	\$164,048
William H. Gitlow	\$148,526	\$151,163	\$155,736	\$161,226	\$164,048	\$164,048
Algernon W. Tinsley	\$107,457	\$117,596	\$126,157	\$129,931	\$145,896	

Judge Andrus also enjoyed national recognition for the quick processing times at Huntington ODAR and was promoted to Assistant Regional Chief Administrative Law Judge in March of 2009.⁴⁵²

He was also tapped by the Agency to mentor other ALJs in a number of ways. Judge Andrus “was selected to serve as an instructor to the national Electronic Business Process training cadre, training in seven different offices around the country...Additionally, in November 2010, Judge Andrus served as a panel member to interview and recommend new judges to be hired by the Agency.”⁴⁵³ After the new ALJs were hired, “Judge Andrus served as instructor for [] two separate classes designed to teach the new hires how to become an ALJ for the Agency.”⁴⁵⁴

⁴⁵⁰ United States Census, Quickfacts, Huntington, West Virginia, <http://quickfacts.census.gov/qfd/states/54/5439460.html>

⁴⁵¹ Information provided by the Social Security Administration.

⁴⁵² March 18, 2009 Memorandum from Jasper J. Bede, Regional Chief Administrative Law Judge – Region III to All Region III HOCALJs. Exhibit 54.

⁴⁵³ Huntington ODAR Submission for Team Award nomination. Exhibit 50.

⁴⁵⁴ *Id.*

XII. THE AGENCY FAILED TO PREVENT ABUSES OF THE DISABILITY PROGRAMS IN HUNTINGTON ODAR

Despite the numerous abuses to the disability program by certain judges, lawyers and doctors, agency officials did little or nothing to stop them. The Committee investigation found agency officials were aware of many of the abuses as they were happening. These abuses included failing to comply with agency time and attendance rules and ignoring agency rules and regulations in deciding disability cases.

a. Judge Daugherty's Time and Attendance Problems Overlooked

According to Huntington ODAR staff, Judge Daugherty's time and attendance was a constant source of tension in Huntington ODAR and was found to be a problem by high-level agency officials. Since as early as 1997, Judge Daugherty would routinely sign in to work, but then leave immediately. He would later return to the office to sign out as if he had been in the office for an entire work day. However, despite knowing about this problem, and even documenting it thoroughly, agency officials failed to put a stop to it while Judge Daugherty wrote a high volume of decisions.

Many of the disputes over Judge Daugherty's time and attendance problems centered on time sheets used by ALJs to sign in and out of the office each day. Unlike other employees at Huntington ODAR, ALJs are required under their contract with SSA to use sign-in sheets for the times they are in the office. Stemming from the independent nature of their work ALJs were not eligible for performance bonuses, but were instead allowed to earn extra leave if they worked longer hours. It was therefore important to accurately record the hours an ALJ worked.

According to a number of staff, it was a running office joke that if you were looking for Judge Daugherty, you should not look in his office.⁴⁵⁵ When questioned about where they believed Judge Daugherty spent his days away from the office, staff and other ALJ's said they did not know.

The time and attendance problems grew to such a level that Judge Daniel Kemper, another ALJ within Huntington ODAR, filed allegations of misconduct against Judge Daugherty with the agency's Office of Inspector General. Judge Kemper believed because Judge Daugherty decided a high number of cases, which made the Huntington office look good with regard to its monthly disposition goals, Judge Andrus and agency management let Judge Daugherty do as he pleased.⁴⁵⁶

Internal agency memoranda and e-mails documented Judge Daugherty's time and attendance issues dating back to 2001. However, Judge Andrus told the Committee that, Judge Daugherty's compliance with agency time and attendance rules was problematic as far back as 1997.⁴⁵⁷

⁴⁵⁵ July 25-27, 2011 Committee interviews of Huntington ODAR employees, ALJs, and former ALJs.

⁴⁵⁶ July 26, 2011 Committee interview of Judge Daniel Kemper.

⁴⁵⁷ June 19, 2012 Committee interview of Judge Charlie Andrus.

2001. In one instance, Judge Daugherty failed to attend a morning of scheduled hearings, but later took credit for a full day's work. Mr. Hall recorded what happened in a memo dated May 10, 2001, in which he explained that the day before, on May 9, 2001, Judge Daugherty "had hearings scheduled at 10:00 AM; 10:30 AM; and another for 11:00 AM," but the Judge was nowhere to be found. Gregory A. Hall, a group supervisor at the time, "searched the building and could not find the judge. [The judge's] auto was not where it usually is parked." Mr. Hall reached Judge Daugherty by phone at his house and the judge "stated he had forgotten about the hearings. [Judge Daugherty] then came immediately into the office and conducted the three hearings."⁴⁵⁸

Despite being absent the morning before, "[o]n Thursday, May 10, 2001 [Mr. Hall] noticed that Judge Daugherty had shown eight (8) hours worked and also some credit hours worked. There was no mention of leave."⁴⁵⁹

2002. On June 18, 2002, Judge James Kemper emailed Judge Andrus and alerted him that the office timesheet showed Judge Daugherty signing in at 7:15 a.m., which was the same time Judge Judith Showalter signed in. Judge Showalter, however, "assured [Judge Kemper] that [Judge Daugherty] was nowhere in sight when she signed in at 7:15."⁴⁶⁰ Further, when Judge Showalter went downstairs at 8:10 a.m., Judge Daugherty's car was gone.

In the same correspondence, Judge Kemper explained one particular instance, noting it had been happening for "years:"

This is the usual procedure [Judge Daugherty] follows every day. When Judge Paris is here, he usually signs in at 6:30 and if no one signs in earlier than about 7:15, Daugherty will sign in directly below Judge Paris' name at the same time of 6:30. If you will speak with Judge Paris, I am sure he will tell you that he never sees Daugherty when he comes in. One of us will be sending you periodic E-mails to show you this pattern of cheating on time and attendance which, by the way, Judges Gitlow, Chwalibog, and I have consistently informed you about through the years.⁴⁶¹

As was often the case, Judge Andrus was reluctant to take action against Judge Daugherty. Judge Andrus forwarded the email to Judge Cristaudo at the Philadelphia regional office – carbon copying Valerie Loughran and Gregory Hamel – and reported that he checked with the Inspector General "a few days ago and they declined to get involved and suggested [Judge Andrus] go through [Judge Cristaudo.]" While Judge Andrus said he was willing to initiate an investigation, but felt reluctant to do so because he had "to live in this town and if [SSA] do[es] an investigation with documentation we had better be willing to do something."

⁴⁵⁸ See May 10, 2001 Memorandum from Gregory A Hall, Group Supervisor to Charlie Andrus, HOCALJ. Exhibit 55.

⁴⁵⁹ *Id.*

⁴⁶⁰ June 18, 2002 Email from Judge Daniel Kemper to Judge Charlie P. Andrus, PSI-SSA-96D2-003358. Exhibit 56.

⁴⁶¹ *Id.*

The next day Valerie Loughran responded to Judge Cristaudo and made clear Judge Andrus as HOCALJ was responsible for ensuring Judge Daugherty properly documented his time and attendance:

First of all, The IG should not and will not get involved in Time and Leave problems. This is absolutely absurd. This is a clear cut administrative action and the responsibility of the HOCALJ. Second, bargaining unit employees and that includes other judges, and security guards do not investigate time and leave problems, nor should they be asked to document abuse by other employees. This is a management issue and responsibility. (period, period, period.) As I said previously, if this judge's conduct is so egregious and occurs so frequently that everyone else observes it, it should be very simple for management to document it. He allegedly goes to breakfast every morning. Please – how hard can this be. I believe that Judge Andrus wants someone else to do his job. This is not going to happen. And even if it did, it would not hold up anywhere. I believe if Judge Andrus wanted to do something, he could have done it long ago. But he doesn't. He is just waiting for something to happen and/or trying to shift the responsibility to someone else. It simply doesn't work. I also believe that the mitigating factors in the recent outburst by this judge, weakens the case considerably. As far as I recall there have been no actions against this judge in many years, so there is no progressive pattern of behavior here (that is documented). Judge Andrus needs to counsel him and put it in writing. That is my recommendation. We have bigger fish to fry than this and we do little in the big cases, what are the chances in this one, particularly when the HOCALJs only role is to duck any real responsibility to take appropriate action.⁴⁶²

As such, Judge Cristaudo responded to Judge Andrus and advised he “believe[s] you need to investigate this matter by doing some checking yourself based on the allegations that you have received. If it is as routine as alleged it should not be that difficult to determine firsthand the violations.”⁴⁶³ Judge Cristaudo then laid out a plan of action if Judge Andrus determined that Judge Daugherty was violating time and attendance rules, suggesting that the problems could lead to termination:

If you are satisfied that Judge Daugherty is violating the rules of conduct, I suggest you work with Howard Goldberg [on the employee relations team]⁴⁶⁴ to draft a counseling memo that you would present to Judge Daugherty both orally and in writing. If Judge Daugherty engages in further time and attendance abuses, we will have a better chance of having the Associate Commissioner or Chief Judge issue a letter of reprimand. And if the problem persists beyond that, it is more likely the agency would consider a suspension and eventually a termination

⁴⁶² June 19, 2002 Email from Valerie Loughran to Frank Cristaudo and Gregory Hammel, PSI-SSA-96D2-003356-57. Exhibit 56.

⁴⁶³ June 19, 2002 email from Frank Cristaudo to Charlie P. Andrus, Jesse Butler, George Lowe, Valerie Loughran, Gregory Hamel, and Howard Goldberg, PSI-SSA-96D2-003146-49. Exhibit 57.

⁴⁶⁴ See Philadelphia Region, Office of the Regional Commissioner, <http://www.ssas.com/wp-content/uploads/2012/01/philadelphia.pdf>.

action. I think we need to proceed progressively here. I do not recall if we counseled or reprimanded Judge Daugherty in the past for time and attendance abuses. If we have, the progressive discipline should be moved to the next level, i.e, reprimand or suspension.⁴⁶⁵

A little over a week later on June 28, 2002, Judge Kemper emailed Judge Andrus again regarding Judge Daugherty improperly logging his time on the sign-in sheet:

This is another memo sent to you regarding Judge Daugherty's continuing practice of cheating on time and attendance. On this date (June 28, 2002) I arrived at the office at 7:15 a.m. and noted that Judge Showalter had signed at 7:05 and Daugherty had signed in just below her name at the same time. She did not see him when she arrived. His car was not parked in front and he was not in his office when I arrived at 7:15. I turned out his light at that time. Thereafter, Judge Gitlow noted that Daugherty was not in his office when he signed in at 7:30. At 7:50, I went downstairs and noted that his car was still not in front. At 8:30 Judge Gitlow and Judge Showalter informed me that the car was still not parked in front or anywhere on either side of the street. Finally, at 9:30, he was seen in the building. It is clear, therefore, that he was gone from the office from at least 7:15 to 9:15, a period of two hours. Will he be taking leave or use credit hours like everyone else is required to do?⁴⁶⁶

Judge Andrus once again forwarded the email from Judge Kemper to Judge Cristaudo and stated the following:

I did not ask these judges to do any investigation, but I did receive this memo. I checked the serial time and attendance sheet and Judge Daugherty signed out without accounting for this absence. I was in a hearing this week, and I have not had the opportunity to investigate the allegations that Judge Daugherty left the office after signing in to go to breakfast. I plan to do so starting Monday unless you advise me not to []. I plan to arrive early and personally observe whether or not the judge leaves after signing in without notation on the sign-in sheet.

I will advise you as to the results.⁴⁶⁷

Judge Cristaudo responded on July 7, 2002, memorializing the discussion between he and Judge Andrus about a plan to document whether Judge Daugherty misrepresented his time and attendance:

As we discussed, please confront Judge Daugherty this morning about your observations of this morning about apparent failure to comply with time and

⁴⁶⁵ June 19, 2002 email from Frank Cristaudo to Charlie P. Andrus, Jesse Butler, George Lowe, Valerie Loughran, Gregory Hamel, and Howard Goldberg, PSI-SSA-96D2-003146-49. Exhibit 57.

⁴⁶⁶ June 28, 2002 Email from James Kemper to Charlie P. Andrus, William H. Gitlow, and Judith Showalter, PSI-SSA-96D2-003391-92. Exhibit 58.

⁴⁶⁷ *Id.*

attendance rules, and send us an email today outlining your observations and the results of your investigatory discussion with Judge Daugherty.⁴⁶⁸

A conference call was arranged for the next day “to discuss the action [that] should be taken.”⁴⁶⁹ It is unclear if this call took place.

Four months later, Judge Andrus had still not resolved the matter, prompting renewed attention from the regional office. On November 8, 2002, Judge Cristaudo emailed Judge Andrus regarding Judge Daugherty’s continued alleged failure to properly document his time and attendance. He emphasized that it was Judge Andrus’s responsibility to document any such abuses by Judge Daugherty, and noted the failure to follow up:

You have often mentioned that Judge Daugherty fails to comply with time and attendance rules. We asked you to monitor his compliance with the time and attendance rules and to deal with any failures to comply. Please let me know of the status of his compliance with the time and attendance rules.

Only by actually documenting incidence of unapproved absences will there be any opportunity to take action for such abuse. Therefore I am asking you to monitor the timesheet and whereabouts of Judge Daugherty. If he cannot be located in his private office or elsewhere in the office environment, you should leave a note in his office asking him to see you as soon as he returns. You of course should keep detailed notes to document periods of absences and times you left notes for him, etc. If he cannot be located in the office and has no approved leave for that time period, you need to direct someone from the management team to watch for his return to the office. The first time he is absent without approved leave, you should give him a leave slip and caution him that further time and attendance abuse will lead to AWOL assessments and disciplinary action. It is very important that you document each instance with notes and copies of leave slips as well as a summary of each incident and the discussion with him. If he persists with abuse of the time and attendance rules, with the record you will have created we will seek disciplinary action against him.⁴⁷⁰

Judge Kemper, meanwhile, continued to document Judge Daugherty’s time and attendance abuse by sending a letter outlining his concerns to the Assistant Inspector General for Investigations on November 18, 2002.⁴⁷¹ Judge Kemper sent a three-page detailed letter that specifically described his observations of Judge Daugherty abusing time and attendance on November 8 and 9, 2002. Judge Kemper alleged Judge Daugherty inaccurately recorded when he arrived and left for the day on the timesheet, spent hours away from the office without preparing leave slips, and represented having worked full eight-hour days, including additional credit hours.

⁴⁶⁸ July 1, 2002 Email Chain from Frank Cristaudo to Charlie P. Andrus, Valerie Loughran, Howard Goldberg, and Gerri Polito, PSI-SSA-96D2-003391. Exhibit 58.

⁴⁶⁹ *Id.*

⁴⁷⁰ November 8, 2002 Email from Frank Cristaudo to Charlie P. Andrus, Valerie Loughran, Gregory Hamel, Howard Goldberg, PSI-SSA-96D2-003589. Exhibit 59.

⁴⁷¹ November 18, 2002 Memorandum of Record from James D. Kemper, Jr. to Assistant Inspector General for Investigations, Attention: Mr. Paul Ragland. Exhibit 60.

Judge Kemper noted he believed the continued failure to stop the abuses was directly related to Judge Daugherty's high volume of cases.

It appears the primary reason that no action has been taken is because Judge Daugherty puts out the largest number of cases in the Office. How does he do this? He grants, or finds an individual disabled and entitled to permanent disability benefits, on many cases without ever seeing the individual claimant at a hearing. When he does have hearings, the vast majority of such hearings are held in less than 10 minutes, hardly enough time to evaluate any individual properly. His "numbers" therefore make the administration look good. At the end of the fiscal year, he signed over 100 cases in a one month period. Most of these were favorable, and a large number of these were decided on-the-record, without ever seeing the claimant.⁴⁷²

It is unclear what action, if any, the IG took in response to Judge Kemper's allegations.

2005. Several years later the problems continued. In April 2005, Judge Kemper contacted Ms. Loughran at the regional office directly to complain about Judge Daugherty's continued alleged falsification of time sheets. Judge Kemper told Ms. Loughran that "he ha[s] talked to Judge Andrus, [Judge Cristaudo] and [Office of Inspector General] and no one has ever done anything about his blatant fraud."⁴⁷³ She relayed her conversation with Judge Kemper in an email to Judge Cristaudo, and said the agency needed to "do something":

[Judge Kemper] says that Judge Daugherty continues to do as he has always done. He falsifies timesheets; when he does come in he disappears for long stretches without signing out and without charge to leave; and no one really seems to care. He feels that this is a totally wrong and unfair situation since no one else in the office is allowed to do this. (Not to mention, it is illegal.)

He says that Judge Daugherty parks in the alley, where he really isn't supposed to park, comes in and then leaves. One assumes that if his car is gone, then he is gone as well. I think we need to do something.⁴⁷⁴

On April 18, 2005, Ms. Loughran continued to urge that something be done about Judge Daugherty and his alleged absences:

I had suggested that the timesheets be moved to where they can be visible to someone in management, but that has not happened. This might keep him from falsifying the time sheets. We have an allegation that an employee is leaving the office regularly, without charge to leave. We need to have someone establish

⁴⁷² *Id.*

⁴⁷³ April 18, 2005 email from Valerie Loughran to Frank Cristaudo, PSI-SSA-96D2-004395. Exhibit 61.

⁴⁷⁴ *Id.*

whether this is true or not true and if it's true, we need to take appropriate action. If it is not true, we need to document our findings and close the book.⁴⁷⁵

She went on to note the “timesheets are right outside Greg Hall’s [Hearing Office Director] office, and he could see someone signing in, but I stood at the sign in sheet twice this morning and he did not notice me.” Therefore, Ms. Loughran suggested asking Mr. Hall to “note exactly when Judge Daugherty signs in.”⁴⁷⁶

Judge Cristaudo “agree[d] something needed to be done” and noted how he “directed Judge Andrus on several occasions to take care of this.” He concluded Judge Andrus “is either unwilling or unable to handle the situation.”⁴⁷⁷ To remedy the situation, Judge Cristaudo questioned whether he “should ask Judge Kemper if he wants to be appointed the Acting [Hearing Office Chief Judge] to deal with the situation if Judge Andrus refuses to do so.”⁴⁷⁸

In response, Ms. Loughran explained “Judge Andrus went on and on about how he has tried to do something but no one supports him.” She also “told [Judge Andrus] that nothing has ever been documented sufficiently to address this matter” and she believed he “is a master at wiggling out of things he doesn’t want to do and aggressive in getting into things he does want to do.”⁴⁷⁹ Further, Ms. Loughran noted that “the other reason Judge Andrus said he didn’t want to do anything, was that he was subjected to [the] false allegation that he was sniffing or smoking cocaine in his office.”⁴⁸⁰

On May 23, 2005, Judge Cristaudo emailed Judge Andrus to let him know that he had “received another complaint about Judge Daugherty’s alleged abuse of the time and attendance rules. As you know, this is not the first time we have received such a complaint” and noted his “concern[] these allegations continue to surface.”⁴⁸¹ Judge Cristaudo requested a conference call with Judge Andrus and his staff to discuss the complaint and the need for an investigation. Following such an investigation, Judge Cristaudo requested Judge Andrus send him a “written report of [his] findings and recommendations” by June 3, 2005.⁴⁸²

Judge Andrus emailed Judge Cristaudo his investigatory findings on June 16, 2005, nearly two weeks after the deadline he was given, writing:

I have conducted an investigation into the allegations made by Judge Kemper regarding Judge Daugherty signing in at the wrong time. Judge Daugherty related that he had come in and started working at his computer and forgot to sign in on the roster. He then went to the sign in sheet and signed in for the time he arrived in the office.

⁴⁷⁵ *Id.*

⁴⁷⁶ April 19, 2005 email from Valerie Loughran to Frank Cristaudo, PSI-SSA-96D2-004395. Exhibit 61.

⁴⁷⁷ April 20 email from Frank Cristaudo to Valerie Loughran, PSI-SSA-96D2-004394. Exhibit 61.

⁴⁷⁸ April 20, 2005 email from Valerie Loughran to Frank Cristaudo, PSI-SSA-96D2-004395. Exhibit 61.

⁴⁷⁹ April 21, 2005 email from Valerie Loughran to Frank Cristaudo, PSI-SSA-96D2-004395. Exhibit 61.

⁴⁸⁰ *Id.*

⁴⁸¹ May 23, 2005 email from Frank Cristaudo to Charlie Paul Andrus, Valerie Loughran, Gregory Hamel, Howard Goldberg, PSI-SSA-96D2-004408-09. Exhibit 62.

⁴⁸² *Id.*

I spoke with him on the importance of accuracy in the sign in sheet and that the incident had been brought to my attention. I also reviewed his 7B file and there were no current memos in the file. The last time we had specific problems was three years ago.⁴⁸³

With regard to the proper response to Judge Daugherty's actions, Judge Andrus "decided that oral counseling is sufficient to cover this incident."⁴⁸⁴ He also said that he would "send an e-mail to all judges reminding everyone of the importance of accurate sign in and sign out whenever they are out of the office."⁴⁸⁵ Before concluding, however, Judge Andrus pointed out that "Judge Kemper does not bother to sign out when he takes a long lunch, but he does not claim the time when he works late to cover the long lunch."⁴⁸⁶

2007. By spring of 2007, Judge Kemper concluded the agency was not going to take any action regarding his claim against Judge Daugherty for abusing time and attendance policies as he prepared to retire. Judge Kemper expressed his frustration in an email to a fellow ALJ, Robert Habermann in the Roanoke, Virginia ODAR:

Unfortunately, there were a lot of complaints from several of the judges here in the past, but no one has the backbone (I would like to use a less delicate term) to back me up if push comes to shove. I will be retiring about October 1, 2007 so if no one cares about Daugherty's conduct but me, then so be it. As far as your colleague's comment about personal animosity, if by reporting fraudulent conduct (putting out 100 cases per month and spending less than 30 hours in the office, cheating on time and attendance, etc.) amounts to personal animosity, then I am guilty of this. However, I would do the same whether the judge was Daugherty, John Doe, or your colleague if I observed such behavior on a daily basis...As far as falsifying his time and attendance, everyone in this Office has seen him do this. (Entering the earliest possible time on arrival and the latest time on departure and leaving the Office for hours at a time without reporting annual leave. Several years ago, he forged my initials on a time and attendance sheet when I was the first one in the Office at 8:00 a.m. He tore off the original sheet that showed me as the first in the Office that morning, put his initials on line one of the new sheet, entered his arrival time as 6:30, and forged my initials on line 2 as coming in at 8:00).⁴⁸⁷

Judge Kemper noted that the implications of Judge Daugherty's actions were broader than the public's perception of one ALJ and stated "[u]nfortunately, in the long run, this type of performance and conduct by a judge, whether it be Daugherty or anyone else, can only hurt the reputation of ALJ's everywhere. More importantly, it hurts the integrity of the entire disability program."⁴⁸⁸

⁴⁸³ June 16, 2005 email from Charlie P. Andrus to Frank Cristaudo and Howard Goldberg, PSI-SSA-96D2-004416-17. Exhibit 63.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ April 30, 2007 email from James D. Kemper, Jr. to Robert S. Habermann, PSI-SSA-95-032853-55. Exhibit 64.

⁴⁸⁸ *Id.*

2008. Judge Daugherty's alleged abuse of time and attendance policy continued for an additional three years. On October 14, 2008, Huntington ODAR Senior Case Technician Sarah Carver informed Judge Andrus:

An employee was looking for ALJ Daugherty to sign something at 3:20 today, I went to the sign out sheet and he had signed out at 3:30 and it was only 3:20. Apparently someone was looking for him on Friday also, Vicky mentioned that [Judge Daugherty] forgot to sign out on Friday, however, she could not find him all day and he claimed 8 hours.⁴⁸⁹

2009. Despite Judge Andrus's inability to determine if Judge Daugherty was abusing time and attendance policies, the agency designated him as Assistant Regional Chief Administration Law Judge for the Philadelphia region in March 2009.⁴⁹⁰ This brought increased responsibility to oversee and manage the affairs of the region, including increased oversight of the regions ALJ's. In doing so, Judge Cristaudo's successor, Regional Chief Judge Bede, praised Judge Andrus for bringing a "wealth of management and leadership experience" to his new assignment.⁴⁹¹

b. Judge Andrus Used Time and Attendance to Push a Low Producing ALJ out of the Agency

While Judge Daugherty's time and attendance problems dragged on for nearly a decade without any disciplinary action, similar problems with another Huntington ALJ, Algernon Tinsley, were dealt with swiftly.

In both cases, it came to Judge Andrus' attention that the judges may have improperly signed in and out on their time sheets. And in both cases as well there was evidence not only that the infractions had taken place, but also that they occurred in the same general time period. However, Judge Daugherty, a high-producing ALJ, was never reprimanded and Judge Tinsley, a low-producing ALJ, was suspended for a month.

Judge Gitlow explained that management went after Judge Tinsley for his low production, which he said was directed from the top of the agency.⁴⁹² He added that then-Commissioner Michael Astrue was "creative as hell" in dealing with low producers, but "looks the other way" for high producers.⁴⁹³

Over the course of his career as an ALJ, which began in 2005 and ended in 2010, Judge Tinsley was known as a "low producer" in the Huntington ODAR office.⁴⁹⁴ According to Judge Andrus, Judge Tinsley struggled to produce twenty cases per month – or approximately 240 per year –

⁴⁸⁹ October 14, 2008 email from Sarah Randolph [Carver] to Charlie P. Andrus. Exhibit 65.

⁴⁹⁰ March 18, 2008 Memorandum from Jasper Bede, Regional Chief Administrative Law Judge – Region III to All Region III HOCALJs. Exhibit 54.

⁴⁹¹ *Id.*

⁴⁹² July 26, 2011 Committee interview of Judge William Gitlow.

⁴⁹³ *Id.*

⁴⁹⁴ July 26, 2011 Committee interview of Judge William Gitlow.

which fell well short of the agency's 500-700 case-per-year goal.⁴⁹⁵ In his final year at the agency, Judge Tinsley wrote 148 decisions by the time he retired at the end of February 2010.⁴⁹⁶ Coming half way through the fiscal year, he was on pace to decide a little over 300 cases.

Judge Tinsley's time and attendance problems arose in 2007, when on three occasions he was scheduled to hear cases at the office's remote site in Prestonsburg, Kentucky. Since it was more than an hour away from the Huntington ODAR office, judges would typically stay in a hotel during weeks they heard cases at the remote site. This meant that instead of signing in and out for the day on the sheet in Huntington, the judges would fill out time sheets and submit them upon their return. After Judge Andrus discovered some possible discrepancies, the agency filed a case with the U.S. Merit Systems Protection Board (MSPB) to suspend Judge Tinsley.

The first incident occurred over a few days from Tuesday, May 15 through Friday, May 18, 2007. According to MSPB records, Judge Tinsley submitted time cards for both May 16th and 18th stating he signed out at 5:30 p.m.⁴⁹⁷ According to an affidavit provided by Judge Andrus, "[o]ne of my management support assistants who was charged with preparing Judge Tinsley's travel voucher, [that individual], came to me and indicated he could not prepare the voucher as Judge Tinsley had requested because of some inconsistencies that he saw."⁴⁹⁸ And so, he went on, "I conducted an investigation."⁴⁹⁹

Unlike when similar allegations surfaced about Judge Daugherty, Judge Andrus thoroughly investigated Judge Tinsley. "The first thing I did," he explained, "was go into the electronic file and ascertain what time the hearings ended."⁵⁰⁰ He discovered that Judge Tinsley rescheduled all of his hearings originally set for Wednesday, May 16 and that his hearings on Friday, May 18 ended at 4:00 p.m. Immediately, he became suspicious about Judge Tinsley's time sheet, which showed he signed out at 5:30 p.m. from the Prestonsburg office on both days.⁵⁰¹

To confirm his suspicions, Judge Andrus turned next to the building security logs, which recorded when the last person left each day. "Our hearing site has a security alarm to it," said Andrus, "The guard does not have a code to activate or deactivate it, nor does he have a key. So he leaves when the last SSA employee or contract hearing reporter leaves. His sign out sheet indicated that he left before 5:30 [on both days]."⁵⁰² According to the MSPB records, the last guard signed out at 5:15 p.m. on Wednesday and 4:00 p.m. on Friday.⁵⁰³ This created discrepancies between the security logs and Judge Tinsley's time sheet of 15 and 90 minutes respectively.

⁴⁹⁵ July 27, 2011 Committee interview with Judge Charlie Andrus.

⁴⁹⁶ Social Security Administration, FY 2010 – ALJ Disposition Data, http://www.ssa.gov/appeals/DataSets/Archive/03_FY2010/03_September_ALJ_Disp_Data_FY2010.html.

⁴⁹⁷ U.S. Merit Systems Protection Board, Social Security Administration v. Algernon W. Tinsley, Statement of Charges and Specifications, PSI-SSA-96D2-018249-54. Exhibit 67.

⁴⁹⁸ Undated Affidavit of Charlie P. Andrus regarding Equal Employment Opportunity Complaint of Algernon Tinsley. Exhibit 68.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ U.S. Merit Systems Protection Board, Social Security Administration v. Algernon W. Tinsley, Statement of Charges and Specifications, PSI-SSA-96D2-018249-54. Exhibit 67.

After confirming the time with the guard, Judge Andrus said he “first spoke with Judge Tinsley about his actions in June 2007, right after the first incident.”⁵⁰⁴ Judge Tinsley claimed he signed out at 5:30 p.m. both days because he was at his hotel working until then. However, Judge Andrus said judges do not get credit for such work and so “he falsified the time sheets.”⁵⁰⁵ “He wasn’t at the hearing site when he said he was,” added Judge Andrus, concluding, “[b]y doing that, it’s a felony.”⁵⁰⁶

The second and third incidents were similar, happening in August 2007 and again in the following October. In both, Judge Tinsley heard cases in the Prestonsburg office and signed out approximately 90 minutes after the guard was shown to have left the building.⁵⁰⁷

Judge Andrus reported Judge Tinsley to the Philadelphia regional office and subsequently to the chief judge of the agency, who at the time was Judge Frank Cristaudo.⁵⁰⁸ Calling it “a very serious offense,” Judge Andrus said, “I reported it each time. After the third time, I recommended suspension.”⁵⁰⁹

In March 2008, Judge Tinsley was given a 30-day suspension by the agency, which he challenged at the MSPB.⁵¹⁰ The suspension was upheld and he appealed to federal district court, where it was discovered that the policy disallowing credit for work in hotel rooms was never issued in written form. According to the court records:

During cross-examination, ALJ Andrus stated that it is the Agency’s policy that a judge working at a remote site may work on cases in a hotel room, but they cannot claim credit hours for time spent outside the building where the hearings are held. When pressed on the issue, ALJ Andrus further stated he did not know if the policy was written down anywhere and he had no knowledge of the policy ever being disseminated in writing to the ALJs. He did say, however, that he orally advised [Judge Tinsley] he must be at the hearing building to earn credit hours.⁵¹¹

Despite this, the court upheld the agency’s suspension, which Judge Tinsley finally served in May 2009.⁵¹² According to Judge Tinsley, the suspension without pay cost him \$10,000.⁵¹³

⁵⁰⁴ Undated Affidavit of Charlie P. Andrus regarding Equal Employment Opportunity Complaint of Algernon Tinsley. Exhibit 68.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ U.S. Merit Systems Protection Board, *Social Security Administration v. Algernon W. Tinsley*, Statement of Charges and Specifications, PSI-SSA-96D2-018249-54. Exhibit 67.

⁵⁰⁸ Undated Affidavit of Charlie P. Andrus regarding Equal Employment Opportunity Complaint of Algernon Tinsley. Exhibit 68.

⁵⁰⁹ *Id.*

⁵¹⁰ *Algernon W. Tinsley v. Michael J. Astrue*, Civil Action No. 3:09-0600, Memorandum and Order (S.D.W.V. Dec. 7, 2010). Exhibit 69.

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ July 26, 2011 Committee interview with Judge Algernon Tinsley.

Explaining the difference between the time and attendance problems with Judge Tinsley to those of Judge Daugherty, Judge Andrus said he handled them in the same way. The difference was that he was never able to catch Judge Daugherty abusing the rules, and that after the problems first surfaced in 2001 they never came up again:

Time and attendance issues have come up before with other judges, but not involving travel status. It came up with Judge Dougherty [sic] in Huntington several years ago, before 2001. I conducted an investigation in a comparable way to the investigation I conducted with regard to Judge Tinsley, except that I didn't have to contact the alarm service because it was before we had an alarm system. I personally observed it. Judge Dougherty [sic] did not refute it, he admitted it. I forwarded it to Judge Cristaudo, who was then the Regional Chief Judge, and from our conversations, I understand he sent it to Judge Boyer, then the National Chief Judge. I did not recommend a penalty as I was asked to just submit a report. Nothing happened after that, to my knowledge. I have no idea if there was any recrimination. It has not come up since. Allegations have been made about Judge Dougherty, but when I go to check the time and attendance records, there is no evidence of abuse.⁵¹⁴

Several months after his suspension ended, in late 2009, Judge Tinsley said he was approached by Judge Andrus and asked to attend a conference in Washington D.C. for retiring federal employees.⁵¹⁵ This was a surprise to Judge Tinsley, though, since he was not preparing to retire.⁵¹⁶

Judge Tinsley was then approached by Eric Conn, who said Judge Andrus told him Judge Tinsley was retiring.⁵¹⁷ According to Judge Tinsley, Mr. Conn said they were trying to build a case against him to force retirement, commenting that, "the barbarians are gathering at the gates."⁵¹⁸ In the following months, Judge Tinsley would discuss the possibility of a job with Mr. Conn, which he would ultimately take in early 2010. As explained below, the details about how this came about, however, are a matter of dispute.

Judge Tinsley believed Judge Andrus and Mr. Conn brokered a deal aimed at getting him out of his job, while also benefiting Mr. Conn's law practice. At some point before the end of 2009, Judge Tinsley said Mr. Conn offered him a job at his law firm representing clients in front of Huntington ODAR ALJ's.⁵¹⁹ Judge Andrus subsequently approached him to discuss it, he said, and immediately took Judge Tinsley off of all of Mr. Conn's cases.⁵²⁰ He said at this point he was still not planning to retire.

⁵¹⁴ Undated Affidavit of Charlie P. Andrus regarding Equal Employment Opportunity Complaint of Algernon Tinsley. Exhibit 68.

⁵¹⁵ July 26, 2011 Committee interview with Judge Algernon Tinsley.

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

When asked about the incident, Judge Andrus said that in November 2009 he was approached by Mr. Conn about his interest in hiring a judge, which would be something he could use in his advertising.⁵²¹ He responded to Mr. Conn, saying, “[i]f you talk to my judges, it needs to be only in the most hypothetical. If you get serious, I need to take that judge off the job.”⁵²²

The following month, Judge Andrus said Mr. Conn called him and said he had settled on Judge Tinsley. “I just got done with Judge Tinsley at dinner and made him an offer,” Mr. Conn explained, adding that he accepted.⁵²³ The next day, he said, he called Judge Tinsley to take him off of Mr. Conn’s cases and also called the general counsel’s office at SSA for advice.⁵²⁴

A third account of the incident, however, was provided by Jamie Slone, the former office manager for Mr. Conn’s law practice. Ms. Slone said she was present for several conversations between Mr. Conn and Judge Andrus, which took place in the hearing room at the Prestonsburg remote site.⁵²⁵ During one of the conversations, she said, Judge Andrus said to Mr. Conn about Judge Tinsley, “I want him out now. I can’t put up with him.”⁵²⁶ Mr. Conn then asked Ms. Slone to contact Judge Tinsley about a job, and even to help him complete his retirement papers.⁵²⁷ He asked her to hurry as well, because “Andrus is chewing my butt out for it.”⁵²⁸

By early 2010, Judge Tinsley claimed he was given an ultimatum through another staff member that Judge Andrus wanted him to sign retirement papers by the end of February.⁵²⁹ At that point, he explained, he “saw the writing on the wall.”⁵³⁰ At the end of February, Judge Tinsley retired. On March 8, 2010 Mr. Conn issued a press release announcing that “[j]ust a day after his retirement as a judge from the local Social Security Administration Hearing Office, Al Tinsley joined the Eric C. Conn Law Firm.”⁵³¹ The press release stated

Former Social Security Judge Tinsley is enthusiastic about his return to the private practice of law. Tinsley added, “I have seen the quality of the work from the Eric C. Conn Law Firm and I am excited about joining their already successful practice.” Conn added that “I have respected Former Judge Tinsley for many years as a lawyer regularly appearing before him in the representation of my Social Security Disability and SSI clients.

Tinsley retires from the local Social Security Administration Hearing Office, which covers a large part of the Tri-State Area which includes Huntington,

⁵²¹ July 27, 2011 Committee interview with Judge Charlie Andrus.

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶18 (Exhibit 16).

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ July 27, 2011 Committee interview with Judge Algernon Tinsley.

⁵³⁰ *Id.*

⁵³¹ Press Release, Retired Social Security Judge Al Tinsley Joins Eric C. Conn Law Firm (March 8, 2010), <http://www.ereleases.com/pr/retired-social-security-judge-al-tinsley-joins-eric-conn-law-firm-32714>.

Ashland, Pikeville, and Prestonsburg. In a time when most firms are shrinking the Eric C. Conn law Firm is continuing to grow.⁵³²

Mr. Tinsley is no longer employed by Mr. Conn.

c. The Agency was Aware of Judge Daugherty's Conduct for Years, but Took No Action

SSA officials were aware of allegations that Judge Daugherty regularly side-stepped agency rules and failed to decide his cases properly. It was well known, for example, that Judge Daugherty held hearings scheduled in 15 minutes increments, while other judges held hearings lasting 45 minutes to an hour.⁵³³ This allowed Judge Daugherty to conduct a large number of hearings over a very short period of time, helping support his high case load.

Judge Daugherty's approach was unusual, Judge Gitlow explained, because he would bring in a large number of claimants to the Prestonsburg, Kentucky hearing office at 9 or 9:30 am and then call them in one after the other, rather than set hearing times like other ALJs.⁵³⁴

As Judge Kemper explained to a colleague:

You certainly saw the manner in which Daugherty conducts "hearings" when you were with him in Prestonsburg, Ky. several years ago. His conduct has not changed, as evidenced by my most recent trip there last week. People coming in and out of the hearing room in five minute intervals after being told that their case would be granted.⁵³⁵

During these hearings, Judge Daugherty would go on the record, state his name, and announce to the claimant that he was approving the claimant for disability benefits. He would schedule these hearings 15 minutes apart, but many times claimants would show up first thing in the morning and wait for their turn in front of the Judge, since he moved through hearings so quickly. Judge Daugherty would schedule up to 20 hearings per day.⁵³⁶

While the claimant and his or her attorney were present at these hearings, the agency also employed vocational experts to attend the hearings at a rate of \$121.00 for the first hearing and \$83.00 for each hearing after.⁵³⁷ Therefore, a VE in one day would cost the agency \$1,698.00 for 20 hearings. The vocational expert rarely, if ever, spoke and since little happened at the hearings, the court reporter had little to transcribe. A typical day before any other judge, who held hearings lasting 45 minutes to an hour, would be much less.

⁵³² Press Release, Retired Social Security Judge Al Tinsley Joins Eric C. Conn Law Firm (March 8, 2010), <http://www.ereleases.com/pr/retired-social-security-judge-al-tinsley-joins-eric-conn-law-firm-32714>.

⁵³³ Schedule Information for Judge David Daugherty produced by the Social Security Administration.

⁵³⁴ May 29, 2012 Committee interview of Judge William Gitlow.

⁵³⁵ April 30, 2007 email from James D. Kemper, Jr. to Robert S. Habermann, PSI-SSA-95-032853-55 (Exhibit 64).

⁵³⁶ Schedule Information for Judge David Daugherty produced by the Social Security Administration.

⁵³⁷ For additional hearings, the VE is paid \$44.00 to review the claimant file and \$39.00 to appear at the hearing for a total of \$83.00. See Table C-1, Social Security Office of Inspector General, "Availability and Use of Vocational Experts, Report No. A-12-11-11124, May 2012.

XIII. AGENCY RESPONSE TO PUBLIC ALLEGATIONS OF MISCONDUCT IN HUNTINGTON

In mid-May 2011, problems within the Huntington ODAR office were exposed to a wider audience when the *Wall Street Journal* ran a news story about the seemingly inappropriate relationship between Judge David Daugherty and attorney Eric Conn. This article set in motion a range of responses across the agency, including attempts by some to cover over past inappropriate actions and even to target individuals with retaliation.

a. The Wall Street Journal Exposed Judge Daugherty's Relationship with Mr. Conn

On May 5, 2011, *Wall Street Journal* reporter Damian Paletta reached out by email to Judge Andrus, as HOCALJ, to ask a number of questions about Judge Daugherty. Judge Andrus responded to the questions the next day, May 6. When questioned as to why Judge Daugherty's approval rate was so high, Judge Andrus responded "I do not know why the rate is high, nor would I as a manager question a judge about how he or she may decide a case. Under the Administrative Procedures Act a judge has independence in how to decides [sic] a case."⁵³⁸

Regarding Mr. Paletta's questions about Mr. Conn, Judge Andrus responded with several bullet points:

- Mr. Conn has a large percentage of cases in the Prestonsburg Kentucky service area.
- I directed Mr. Conn's cases to be assigned to the judges in strict rotation as soon as they arrived in the office; as he had so many cases that it was hard to schedule, and to insure that each judge had an equal amount of this workload.
- I was informed on one occasion that a staff member had not assigned these cases as soon as they came into the office and Judge Daugherty had decided them as they were not assigned. I had the supervisor take corrective action to insure that the cases were assigned as soon as they arrived.
- I was informed some months later that Judge Daugherty had changed judicial assignments [of cases]. I spoke with him and reminded him of the office policy that Eric Conn cases are not to be reassigned to another judge on a routine basis. He agreed.
- About one year later I was notified that this happened again. I went to Judge Daugherty and he related that he did not know it was assigned to another judge as he did not know where to look in our computer system for the information. I asked him to go through a supervisor when any cases were to be reassigned to him.

⁵³⁸ May 6, 2011 Email from Charlie P. Andrus to Jasper J. Bede forwarding answers to WSJ questions. (Exhibit 70).

- About a year later I was informed that this happened once again. At that time, on April 29, 2011, I issued a written directive that no case was to be reassigned between judges by anyone unless I gave specific permission.⁵³⁹

The same day Judge Andrus forwarded his answers to the reporter's questions, May 6, he called and requested to speak with Mr. Conn at his office.⁵⁴⁰ When reminded of this phone call by the Committee, Judge Andrus claimed he could not remember the subject of the discussion with Mr. Conn, but asserted he did not discuss the *Wall Street Journal* article with him prior to its publication.⁵⁴¹ The same "incoming call log" that documented Judge Andrus's call to Mr. Conn had the name of Mr. Conn's attorney written at the top of the page.⁵⁴² Since no information regarding the WSJ story was publicly available, it is unclear why Mr. Conn would reach out to his attorney on this day.

Mr. Palleta also sent a similar questionnaire to Judge Daugherty, who responded in the following way (in pertinent part):

- Every decision I make is fully supported by relevant medical reports and physical and/or mental residual functional capacity assessments from treating or examining doctors or other medical professionals. And in all of my hearings, there is also competent testimony of a vocational expert.
- The agency has, for years, ask [sic] the ALJs to review assigned and unassigned cases for possible on-the-record decisions in an effort to reduce the serious backlog of cases pending before us nationally. In all of those cases, I weigh the evidence in the same manner as in cases requiring a hearing. In addition, disposing of a case on-the-record saves the agency a great deal of money and work hours.
- I have always been under the impression that an ALJ may review all assigned and unassigned cases for possible on-the-record decisions, so long as no other ALJ has seen or reviewed the file. I was recently reminded that that is no longer true and I promptly returned those said cases to the original assignees. All of my career, all of my efforts have been to help my office reach its "numbers" goals each month.
- It has always been my opinion that if an ALJ spends 10 working days (about half of his/her time) in the courtroom each month, it is virtually impossible to adequately do the many, many other things we must do to move a case through the system. Some do, others do not. I am dyslexic and I simply cannot spend that much time in the courtroom. The agency has also asked us to try to handle cases wherein the files have not been worked up by a clerk

⁵³⁹ *Id.*

⁵⁴⁰ See Conn Law Firm Incoming Call Log, CLF00085. Exhibit 71.

⁵⁴¹ June 19, 2012 Committee interview of Judge Charlie Andrus.

⁵⁴² See Conn Law Firm Incoming Call Log, CLF00085. Exhibit 71.

(raw form – nothing in order). I have been doing that for years. To my knowledge, no other ALJs in my office do it. This, of course requires more time for review and preparation for a hearing or an OTR. Thus, it is necessary to schedule all of my hearings (about 60-80 per month) on 4 or 5 days during the month. This allows me sufficient time to review and prepare for hearings, resulting in full and complete knowledge of the documents in the case prior to hearing.⁵⁴³

On May 19, 2011, the *Wall Street Journal* published an article about Judge Daugherty and Mr. Conn entitled “Disability-Claim Judge Has Trouble Saying ‘No.’”⁵⁴⁴ The article reported that in fiscal year 2010, Judge Daugherty “decided 1,284 cases and awarded benefits in all but four. For the first six months of fiscal 2011, Mr. Daugherty approved payments in every one of his 729 decisions, according to the Social Security Administration.”⁵⁴⁵

The same article exposed the fact that Judge Daugherty gave special treatment to cases represented by Mr. Conn. It stated that “judges, staff, and local attorneys began complaining about the volume of case brought before the judge by one Kentucky lawyer,” identifying that lawyer as Mr. Conn.⁵⁴⁶ The article further relayed that “[j]udges and staff in the Huntington office [] complained to supervisors that Mr. Daugherty assigns himself Mr. Conn’s cases, including some that were assigned to other judges.”⁵⁴⁷

According to Judge Andrus, following the release of the article, the office went into “chaos and production took a nosedive.”⁵⁴⁸ The WSJ story was widely circulated within SSA, including to top agency management.⁵⁴⁹

Once a formal investigation had begun, Judge Daugherty’s computer was seized and its files searched. A document on Judge Daugherty’s hard drive with a creation date of September 24, 2007 offered his take on the situation:

Because I love my work,
Because I do numerous OTRs (the agency has, for years, ask us to do so),
Because most of my decisions are in cases wherein the files are not worked-up
(likewise, the agency has, for years, ask us to do so),
Because I write many of my own decisions,
Because I do much of my own scanning,

⁵⁴³ Response by Judge Daugherty to questions from *Wall Street Journal*. Exhibit 72.

⁵⁴⁴ Damien Paletta, *Disability-Claim Judge Has Trouble Saying ‘No,’ Near-Perfect Approval Record: Social Security Program Strained*, The Wall Street Journal, May 19, 2011, <http://online.wsj.com/article/SB10001424052748704681904576319163605918524.html>.

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ June 19, 2012 Committee interview with Judge Charlie Andrus.

⁵⁴⁹ Top agency management weighed in on the WSJ story, including Commissioner Astrue. In response to a summary of the WSJ story sent by Mr. Paletta to the agency the day before it ran, Commissioner Astrue commented “[a]ll told though it could have been much worse.” Commissioner Astrue also stated he “would have liked [Mr. Paletta] to note that ALJ allowances are down on my watch, but he’s been fair.” May 19, 2011 Email from Michael J. Astrue to Mark Lassiter, PSI-SSA-96D3-000952-53. Exhibit 73.

Because I issue more than 100 decisions per month, and
Because I tend to be a little energetic, if not aggressive, about my production,

I find myself defending my work ethic because of allegations made against me by two of our most unreliable and unproductive employees. One finds it difficult not to feel some degree of resentment under the circumstances.

Yes, there have been times that I have assigned other ALJ's cases to myself, or had someone else assign them to me. I was under the distinct impression that it was OK to do that if the other ALJ had not seen the file. When I was informed by Judge Andrus that I should not do it, I immediately stopped.

I was the first ALJ in our office to volunteer to handle electronic cases. Only four of our ALJs are now doing them, and these cases are accumulating rapidly, resulting in noticeable backlogs.

One particular lawyer in eastern Kentucky handles probably 2 of every 3 Kentucky cases. This means that each ALJ should be trying to schedule, or otherwise address, this lawyer's cases, accordingly. It is quite difficult to accomplish this, but I have always tried.

One of my accusers scheduled Prestonsburg cases for me last summer. A had about a half dozen cases penciled in on one particular day of my itinerary for another particular lawyer, but when I began my hearings that day, I discovered that she had added about 5-6 more of his cases, none of which I had reviewed, or even seen. I have since learned that both of my accusers are, and have been, particularly partial toward said lawyer. I didn't say anything because I was able to dispose of them without any problems. If it had been most any other ALJ, something likely would have been said or done.

The other one of my accusers has for months bugged me to schedule, or do OTRs in, cases for that same lawyer. I have done nothing but try to accommodate her.

It seems as though you just cannot be nice to some people, especially those who will use anything or anyone in order to have their way.⁵⁵⁰

In an interview with a local reporter, Judge Daugherty explained his reasoning for deciding disability claims without a hearing stating, "[i]f the documentary evidence is there, I find no reason to waste time and money holding a hearing, delaying benefits they're so deserving of."⁵⁵¹

⁵⁵⁰ Undated document stored on Judge David Daugherty's harddrive with creation date of September 24, 2007 recovered from Judge Daugherty's SSA computer hard drive. Exhibit 74.

⁵⁵¹ WSAZ News Staff; The Associated Press, "New Info: EKy Attorney, Former Htn Judge Accused of Fraud in Lawsuit, March 1, 2013, http://www.wsaz.com/news/headlines/Local_Social_Security_Judge_Under_Scrutiny_122259399.html.

When the reporter questioned Judge Daugherty about when he approved so many cases, he responded “[b]ecause I can. I enjoy the job. I’m a workaholic; I love the job.”⁵⁵²

The Committee requested information from Judge Daugherty, but through his attorney, he refused to cooperate.

b. Mr. Conn and Judge Daugherty Continued to Communicate, Potentially By Pre-paid Cellular Phones

In the year before the release of the article, former employee of the Conn Law Firm, Jamie Slone, questioned Mr. Conn about his interactions with Judge Daugherty.⁵⁵³ She said to Mr. Conn she “had a theory about [him], I think that you go and meet [Judge Daugherty] once a month,” to which he replied, “Where there’s smoke there’s fire,” which she said she interpreted as an admission of guilt.⁵⁵⁴ Following the article, she told the Committee Mr. Conn said to her he was scared he could end up going to jail. According to Ms. Slone, Mr. Conn added, “I was never dumb enough to leave a paper trail.”⁵⁵⁵

In the days immediately following the article’s publication, Judge Daugherty frequently called the Conn Law Firm, sometimes up to three times a day, and requested to speak with Mr. Conn.⁵⁵⁶ Mr. Conn, however, refused to speak with Judge Daugherty on CLF phones.

One Sunday afternoon, Judge Daugherty left a message on Mr. Conn’s home voicemail and stated only, “we need to talk.”⁵⁵⁷ Judge Daugherty later left another message on Mr. Conn’s home answering machine and insisted on speaking to Mr. Conn right away.⁵⁵⁸ Judge Daugherty left a third message on Tuesday afternoon, which he stated:

OK. There are those of us who know the D.A [District Attorney]. There are those of us who know the circuit judge. There are those of us who have an inside track and hear some things. We need to talk. If you don’t want to, it’s your loss. You need to contact me. I gave David [Hicks] the phone number. You need to do it. There are things you need to know. Good-bye.⁵⁵⁹

It is unknown if Mr. Conn returned this call to Judge Daugherty.

However, according to former CLF staff, Mr. Conn and Judge Daugherty developed a system of communication through prepaid cellular telephones.⁵⁶⁰ Mr. Conn used these phones, purchased at the nearby Family Dollar and Dollar General, to communicate with Judge Daugherty.⁵⁶¹ For

⁵⁵² *Id.*

⁵⁵³ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶4.

⁵⁵⁴ February 22, 2012 Committee interview of Jamie Slone.

⁵⁵⁵ *Id.*

⁵⁵⁶ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 21 (Exhibit 16).

⁵⁵⁷ Voicemail produced by Mr. Conn.

⁵⁵⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 22 (Exhibit 16).

⁵⁵⁹ Voicemail produced by Mr. Conn.

⁵⁶⁰ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 21 (Exhibit 16).

⁵⁶¹ *Id.*

example, on May 20, 2011 – the day following the Wall Street Journal Story – Mr. Conn purchased a TRACFONE LG 420 at the Betsy Layne, Kentucky Family Dollar.⁵⁶² According to Ms. Martin, he bought the phones so the two could speak without being tracked.⁵⁶³

c. Judge Daugherty Placed on Administrative Leave

Judge Daugherty was placed on administrative leave beginning on May 26, 2011. After placing Judge Daugherty in this status, Judge Andrus reported to Judge Bice:

As instructed, I read the statement to Judge Daugherty and was with him until he left the office...I directed him not to come into the office, nor is he to do any government work. I told him if he needed any personal effects to request them in writing to me and we would get them to him. I have directed the timekeeper to put him on administrative leave as of today.⁵⁶⁴

The next day, the Wall Street Journal (“WSJ”) reported the agency placed Judge Daugherty on administrative leave. According to the article, Judge Daugherty spoke via telephone to the reporter and “he said he had ‘no idea’ why he was placed on leave, but said it would probably last until the investigation was complete.”⁵⁶⁵ When the reporter questioned Judge Daugherty about his approving “all of [his] cases in the first six months of the year,” Judge Daugherty asserted it was “pretty much coincidence.”⁵⁶⁶ In defending his record, Judge Daugherty explained “lawyers are just so extremely well-prepared, and the medical evidence was all there...There’s not a soul in this tri-state area, not a lawyer...who would tell you I would award benefits to somebody unless the medical evidence is plump up right there in the file.”⁵⁶⁷ He went on to state “lawyers have ‘discovered the combination to the lock.’”⁵⁶⁸

In another interview Judge Daugherty gave after the WSJ story, he explained he approved a high number of cases, “[b]ecause I can. I enjoy the job. I’m a workaholic; I love the job.”⁵⁶⁹ When questioned about his practice of deciding claims on the record, Judge Daugherty responded “[i]f the documentary medical evidence is there, I find no reason to waste time and money holding a hearing, delaying benefits they’re so deserving of.”⁵⁷⁰

Judge Daugherty officially retired from the agency on July 13, 2011.

⁵⁶² See CLF01022, May 20, 2011 receipt from purchase of TRACFONE LG 420. See also CLF01036, receipt for the purchase of two TRACFONE LG 420s on April 28, 2011. Exhibit 75.

⁵⁶³ February 23, 2012 Committee interview with Melinda Martin.

⁵⁶⁴ May 26, 2011 Email from Charlie Paul Andrus to Debra Bice, PSI-SSA-10-027678. Exhibit 76.

⁵⁶⁵ Damian Paletta, Disability Judge Put on Leave From Post, Wall Street Journal (May 26, 2011), <http://online.wsj.com/article/SB10001424052702303654804576347790598676096.html>.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ New Info: EKy Attorney, Former Htn Judge Accused of Fraud in Lawsuit, March 4, 2013, http://www.wsaz.com/news/headlines/Local_Social_Security_Judge_Under_Scrutiny_122259399.html.

⁵⁷⁰ *Id.*

d. Chief Administrative Law Judge Debra Bice Removed Judge Andrus as Hearing Office Chief Administrative Law Judge

In response to the WSJ article on May 23, 2011, Marsha Stroup, Regional Chief Administrative Law Judge for Denver, emailed Chief Administrative Law Judge Debra Bice and noted the long term problems exposed by the WSJ, stating

the agency should have stopped this years ago but raw numbers have been valued too much and the claimants obviously love this kind of judge...Judges shouldn't be allowed to troll for OTRs anymore and should only be scheduled, say no more than 60-80 cases a month. I'd be interested in seeing the quality of writing on [Judge Daugherty's] cases. I also wondered how many cases with the same attorney.⁵⁷¹

With regard to Judge Andrus specifically, Judge Stroup suggested "[d]epending on what the [OIG Report] says, I'd take a hard look on how Andrus has been running the office. I like Charlie but there are a lot of questions swirling around in the field about him now." In response, Chief Judge Bice commented she "like[d Judge] Andrus but I think there is going to be some fallout from this – unfortunately. I'm not sure any office could withstand this scrutiny."⁵⁷²

Judge Bice stated she relied on the local HOCALJs to bring any issues in their particular office to her. When she questioned Judge Andrus about Judge Daugherty he "couldn't give an honest assessment of what was going on." Judge Bice decided Judge Andrus should step down.⁵⁷³

Judge Bice traveled to Prestonsburg, Kentucky on June 8, 2011 to speak with Judge Andrus, who was at the satellite location for hearings. Judge Bice told Judge Andrus she had "lost confidence in his ability to serve as HOCALJ."⁵⁷⁴ According to Judge Andrus, he was told that SSA Commissioner Michael Astrue personally requested he step down on a temporary basis.⁵⁷⁵ She reported Judge Andrus "agreed to step down temporarily as HOCALJ" and gave him the option of resigning to save face.⁵⁷⁶ She then "went to the Huntington office and spoke with Greg Hall and then the staff. [Judge Bice] told them Judge Andrus had requested to step down temporarily and [she] had approved his request."⁵⁷⁷ According to Judge Andrus, 20 minutes after Judge Bice's announcement a reporter from the WSJ "called my home gloating about my losing my job."⁵⁷⁸

The next day, Judge Andrus emailed Huntington ODAR and explained

[a]s HOCALJ I carry a full load of cases as a judge as well as having administrative duties in the office. Recent events have added even more stressful

⁵⁷¹ May 23, 2011 Email between Debra Bice to Marsha Stroup, PSI-SSA-100-030524-25. Exhibit 77.

⁵⁷² *Id.*

⁵⁷³ August 3, 2012 Committee interview of Chief Judge Debra Bice.

⁵⁷⁴ *Id.*

⁵⁷⁵ June 19, 2012 Committee interview with Judge Charlie Andrus.

⁵⁷⁶ June 8, 2011 Email from Debra Bice to Jasper J. Bede and John Allen, PSI-SSA-100-030480. Exhibit 78.

⁵⁷⁷ *Id.*

⁵⁷⁸ June 9, 2011 Email from Charlie Paul Andrus to Debra Bice, PSI-100-030471-2. Exhibit 79.

duties. After my heart surgery I have been very cognizant of the stresses in my life. Some of you have expressed concern with things you have seen indicating I am adversely reacting to the stress.⁵⁷⁹

Judge Andrus continued by asserting his removal was only temporary and at his request:

Given my doctor's warning about too high levels of stress, I requested that Judge Bice relieve me of the HOCALJ responsibilities on a temporary basis until the investigation is over...Judge Bice agreed to my request. When the extra stressors are resolved, I plan to reassess the situation and in conjunction with my doctor, decide if I could safely request to resume HOCALJ duties.⁵⁸⁰

Judge Bice previously approved the above cited email.⁵⁸¹

After Judge Andrus was removed as HOCALJ, the agency installed a series of temporary HOCALJs from other offices. In August 2011, Judge Michael Devlin served as the Huntington HOCALJ and emailed his concern to Judge Bice that "at lunch [], Charlie Andrus mentioned that he can't wait for things to get back to normal so he can run the office again."⁵⁸² Judge Devlin questioned whether Judge Andrus "is delusional or whether [Judge Bice] or Judge Bede have given him some assurance that he would return as HOCALJ."⁵⁸³ Judge Devlin indicated he planned to make some changes in the Huntington office and was concerned because he thought Judge Andrus was "capable of being a mean SOB. He has been cordial and pleasant with me, but then again we have not had any disagreements yet."⁵⁸⁴

Judge Bice responded to Judge Devlin "while no promises have been made to Charlie Andrus, at the same time he has not been given any assurances that he will return." Judge Bice confirmed Judge Devlin had the authority to make changes to the office and noted "if Andrus starts to act up let me know and I will take care of it."⁵⁸⁵

In October 2011, Judge Bice told Judge Andrus that he would not be returning to the position of Huntington HOCALJ.⁵⁸⁶ In September 2013, the agency placed Judge Andrus on administrative leave.

e. Judge Andrus and Mr. Conn Worked Together to Target a Perceived Whistleblower

Following the *Wall Street Journal* article, Judge Andrus and Mr. Conn worked together to target Sarah Carver, an employee of Huntington ODAR they believed to be responsible for the story.

⁵⁷⁹ June 9, 2011 Email from Charlie Paul Andrus to Huntington, WV ODAR, Jasper J. Bede, and John Allen, PSI-SSA-95-031007-08. Exhibit 80.

⁵⁸⁰ *Id.*

⁵⁸¹ June 9, 2011 Email from Charlie Paul Andrus to Debra Bice, PSI-SSA-100-030472. Exhibit 79.

⁵⁸² August 27, 2011 Email from Michael Devlin to Debra Bice, PSI-SSA-10-029427. Exhibit 81.

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ June 19, 2012 Committee interview of Judge Charlie Andrus.

Using Mr. Conn's employees to conduct video surveillance of Ms. Carver, they attempted to build a case for having her fired for allegedly violating SSA's work-at-home rules. While the plan was ultimately unsuccessful, the surveillance operation last several months. When asked about it by the Committee, Judge Andrus at first denied, but then later admitted in a written statement to the SSA his role in the effort to discredit Ms. Carver.⁵⁸⁷

Mr. Conn and Judge Andrus Target Ms. Carver. The effort to discredit Ms. Carver began with a telephone call between Mr. Conn and Judge Andrus. One of Mr. Conn's employees, Melinda Martin, was present for the conversation. She told the Committee that Mr. Conn and Judge Andrus wanted to try to catch Ms. Carver not working during the days she said she was working from home.

In a signed statement, Judge Andrus provided further details of the arrangement:

It started off – we were having a general conversation – Eric Conn had mentioned that Sarah Carver and Grover Arnett and retired Judge Kemper had met with the Wall Street Journal reporter about Judge Daugherty. And he was not happy with Sarah Carver. I had mentioned that she was probably not performing time and attendance while on flexiplace; that generally it was very difficult to do anything. She couldn't be disciplined unless there was video sent to her supervisor. Eric Conn said he'd be willing to hire a private investigator to check.

Then I got real stupid and said that sounds like an idea.”⁵⁸⁸

After Mr. Conn spoke with Judge Andrus, Mr. Conn explained the plan to Ms. Martin. According to Ms. Martin's sworn affidavit, Mr. Conn stated, “Judge Andrus called me and we have to do something about Sarah Carver, so here's what we came up with.”⁵⁸⁹ According to Ms. Martin, Mr. Conn explained that they would place Sarah Carver under video surveillance on the days she worked from home or her “flex-day.”

Judge Andrus Recruits Ms. Nease. To assist in the plan to discredit Ms. Carver, Judge Andrus looked for help from Sandra Nease, one of his subordinates. A few months earlier, on November 19, 2010, despite “many very qualified applicants from both inside and outside the office,” Judge Andrus had promoted Ms. Nease “to be the new paralegal writer.”⁵⁹⁰ After promoting her, Judge Andrus recruited her to assist in the plan to retaliate against Ms. Carver.

⁵⁸⁷ In the presence of officials from both SSA and SSA OIG, Judge Charlie Andrus signed a statement related to his involvement in working with Mr. Conn regarding a plan to film Sarah Carver. See January 15, 2013 Statement of Judge Charlie Andrus. Exhibit 82.

⁵⁸⁸ *Id.*

⁵⁸⁹ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶¶ 22-23 (Exhibit 17).

⁵⁹⁰ The selection of Ms. Nease was the subject of an Equal Employment Opportunity (“EEO”) complaint filed by another office employee Brandee E. McCoy. Ms. McCoy, who had a law degree, alleged the selection of Ms. Nease over her was due to racial discrimination. Despite being the highest producing Senior Case Technician and the only applicant with a law degree, Ms. McCoy did not make the list of 27 eligible candidates. See Equal Employment Opportunity Complaint filed by Ms. Brandee McCoy dated March 28, 2011. Sealed Exhibit. In making the selection of Ms. Nease, Judge Andrus indicated it would be controversial. In an email to Mr. Hall, Judge Andrus stated: “Let the games begin – those of us who [are] about to die salute you!” November 19, 2010 Email from Charlie P. Andrus to Gregory Hall. Exhibit 83.

As he later explained in his written statement, he thought of Ms. Nease during his initial telephone call with Mr. Conn:

Then we discussed how to let him [Mr. Conn] know when she was on flexiplace since it was not on a regular basis. He asked if there was anyone on staff who would be willing to call him – and I thought of Sandra Nease, a writer, because she had had personal problems with Sarah Carver and Sandra Nease agreed.

Eric Conn gave me a note for Sandra Nease indicating a cell number of a contact in his office and I gave it to Sandra Nease. She said she would call the person when she knew that Sarah Carver was on flexiplace.⁵⁹¹

When the Committee interviewed Ms. Nease, she explained that, prior to the news story's publication, her relationship with Ms. Carver was strained. "I don't like Sarah," she said, calling her a "snake" and one of the office "malcontents."⁵⁹² Ms. Nease also explained that it was unfair for Ms. Carver to make allegations against Judge Daugherty, and the surveillance operation was simply to "level the playing field." When asked if she thought it was appropriate, Ms. Nease responded, "everybody operates in different shades of gray."⁵⁹³

To ensure Mr. Conn knew Ms. Carver's "flexiplace" days, Judge Andrus asked Ms. Nease to call Ms. Martin to report the days Ms. Carver planned to work from home.⁵⁹⁴ If Ms. Nease could not reach Ms. Martin, she left a voicemail.⁵⁹⁵ According to Ms. Martin, the first time Ms. Nease called to report Ms. Carver's flex-day, Ms. Martin was in Mr. Conn's office. Ms. Martin answered the call on speakerphone and Ms. Nease spoke directly to Mr. Conn. Ms. Nease stated Judge Andrus wanted Ms. Martin and Mr. Conn to know the following information regarding Ms. Carver: the date of Ms. Carver's flex-day; Ms. Carver's address; the types of cars that Ms. Carver and her husband drove; directions to Ms. Carver's house; and that the house was surrounded by a tall privacy fence that might be difficult to record over. Ms. Nease also stated that Ms. Carver's children had band practice at a certain time, which might create an opportunity to record her.⁵⁹⁶

For several months, Ms. Nease continued to call Ms. Martin when Ms. Carver was out of the office on her flex-day. According to Ms. Martin, on at least seven occasions, Ms. Nease left messages on Ms. Martin's personal mobile phone.⁵⁹⁷ On February 10, 2012, Ms. Nease left the following voicemail message, which Ms. Martin said was typical:

⁵⁹¹ January 15, 2013 Statement of Judge Charlie Andrus. Exhibit 82.

⁵⁹² June 13, 2012 Committee interview of Sandra Nease.

⁵⁹³ *Id.*

⁵⁹⁴ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 24 (Exhibit 17); January 15, 2013 Statement of Judge Charlie Andrus. Exhibit 82.

⁵⁹⁵ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 24 (Exhibit 17).

⁵⁹⁶ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 25 (Exhibit 17).

⁵⁹⁷ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 26 (Exhibit 17).

Melinda this is Sandy, just going to let you know the children are going to be out of school on Monday, February the 13th [2012], thought that you might want to know, give me a call if you need anything else. Bye.⁵⁹⁸

Ms. Nease explained the phrase “the children are going to be out of school” was code for the days on which Ms. Carver was working from home.⁵⁹⁹

On February 13, 2012, Ms. Nease called again and left the following message on Ms. Martin’s personal mobile phone:

Melinda, this is Sandy, I was just calling to let you know that I believe that Sarah is in Washington, D.C., that’s what I heard today on the floor, apparently. I am not sure why she is there. But, just wanted to let you know. Thank you. Bye.⁶⁰⁰

When asked by the Committee why she made these phone calls, Ms. Nease stated Judge Andrus “inferred” she should call Mr. Conn’s employee. She added she could not remember how she acquired Ms. Martin’s phone number.⁶⁰¹

When questioned by the Committee whether he asked Ms. Nease to call Mr. Conn’s employee, Judge Andrus stated: “not that he could recall.”⁶⁰² In his later signed statement, however, Judge Andrus confirmed he gave the number on a note to Ms. Nease “by hand, in her office.”⁶⁰³

In the same signed statement, Judge Andrus said he approached Ms. Nease “shortly after the conversation with Eric Conn.”⁶⁰⁴ His statement also documented the topics discussed with Ms. Nease:

We discussed what might happen to Sarah Carver once management found out about her time and attendance abuse. We had a discussion about – because there was a video of some kind – it would be more difficult for Sarah Carver to claim retaliation as a basis for any action.⁶⁰⁵

Mr. Conn’s Employees Follow and Film Ms. Carver. On the days Ms. Nease alerted Ms. Martin that Ms. Carver was working from home, Mr. Conn had his employees follow Ms. Carver to attempt to film her performing activities other than work.⁶⁰⁶ After several attempts, however, Mr. Conn was unable to successfully film Ms. Carver on her flex-day.

Instead, a secondary plan was hatched simply to film Ms. Carver during non-work hours and then use a fabricated video to assert she was violating agency rules during work hours. To do so,

⁵⁹⁸ Voicemail provided by Ms. Melinda Lynn Martin.

⁵⁹⁹ June 13, 2012 Committee interviews with Melinda Martin; June 13, 2012 Committee interview of Sandra Nease.

⁶⁰⁰ Voicemail provided by Ms. Melinda Martin.

⁶⁰¹ June 13, 2012 Committee interview of Sandra Nease.

⁶⁰² June 19, 2012 Committee of Judge Charlie Andrus.

⁶⁰³ January 15, 2013 Statement of Judge Charlie P. Andrus. Exhibit 82.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.*

⁶⁰⁶ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 27 (Exhibit 17).

an employee of Mr. Conn hid in the parking lot across the street from the Huntington ODAR office and filmed Ms. Carver as she walked into work one day. To make it appear as if it was being videotaped on one of Ms. Carver's flex-days, the employee held up a newspaper with the same date in view of the camera.⁶⁰⁷ To further the deception, he then played a recording of a National Public Radio ("NPR") show from the same day.⁶⁰⁸

In his statement, Judge Andrus explained what he believed to be on the video: "[Mr. Conn] saw her leave her house, pick up her son, and go shopping. In another incident, she left for the afternoon and went to a law office. She stayed there for some time and came out with a sheaf of papers."⁶⁰⁹ It is unclear whether he knew the date of videotaped activity had been altered.

According to his statement to the agency and OIG, Judge Andrus told Mr. Conn the video "should go to her first line supervisor and then OIG. [Mr. Conn] asked for the address of the senate committee who was investigating at the time; I gave him the address."⁶¹⁰ Judge Andrus did not directly know if Mr. Conn sent the video, but "assumed he did" because "OIG later interviewed [Judge Andrus] about [it] – indicating that they got it."⁶¹¹

Stephen Hayes, the current Huntington ODAR Hearing Office Director, told the Committee the video of Ms. Carver was, in fact, sent to the Huntington ODAR office. He stated the office received the DVD wrapped in a computer print-out of a NPR article about penguins; the document indicated the story played on NPR the same day as one of Ms. Carver's flex-days.⁶¹²

Mr. Hayes told the Committee that he watched the video at the time and that it was a video of Ms. Carver taken by an individual sitting in the driver's seat of a vehicle. The background audio was the same penguin-related NPR story wrapped around the DVD, which was intended to establish Ms. Carver was not working on her flex-day. According to Mr. Hayes, he gave the DVD to Acting HOCALJ Michael Devlin, but no action was taken by the agency in response to the video.⁶¹³

Mr. Hayes stated the receipt of the video followed an anonymous phone call the Huntington ODAR office received in Fall of 2011 from a Kentucky mobile phone number in which the caller reported Ms. Carver was not working on her flex-days. The caller refused to identify themselves. Mr. Hayes stated he reported the call to Acting HOCALJ Devlin.⁶¹⁴

In his statement, Judge Andrus confirmed he "told Sandra Nease what [Mr. Conn] had said about filming Ms. Carver:

⁶⁰⁷ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 28.

⁶⁰⁸ *Id.*; see also June 13, 2012 Committee interview of Hearing Office Director Stephen Hayes.

⁶⁰⁹ January 15, 2013 Statement of Judge Charlie Andrus.

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

⁶¹² It appears a story did run on NPR on February 12, 2012 on penguins. See NPR Staff, "Virtual Penguins A Prescription for Pain?," Feb. 12, 2012, <http://www.npr.org/2012/02/12/146775049/virtual-penguins-a-prescription-for-pain>.

⁶¹³ June 13, 2012 Committee Interview of Hearing Office Director Stephen Hayes.

⁶¹⁴ *Id.*

I related that [Mr. Conn] told me that they had video tape about her shopping and the incident where she went to the law office – [Judge Andrus and Ms. Nease] speculated why she was there, Ms. Nease thought she was moonlighting. I said I had no clue.

Judge Andrus explained why Ms. Nease stopped calling Mr. Conn’s employee: “There wasn’t anything happening and then [Ms. Nease] had the discussion with the Senate Committee staffers. That’s when it dawned on me how incredibly stupid this had been.”⁶¹⁵

When the Committee interviewed Judge Andrus, he was specifically asked if he was part of a plan to have Sarah Carver followed; Judge Andrus said: “No.”⁶¹⁶ When asked if he ever directed, or implied, that Ms. Nease call Mr. Conn’s office about Ms. Carver’s flex-days, he replied: “Not that I can recall.”⁶¹⁷ “I can’t recall ever knowing” that Ms. Nease was repeatedly calling Ms. Martin, he said, adding, “it wouldn’t surprise me the way she and Sarah got along.”⁶¹⁸ His statements to the Committee directly contradict his later written statement to the SSA.

f. Mr. Conn Destroyed Disability Claimants’ Medical Records and Office Computers

Following the WSJ article on May 19, 2011, Mr. Conn either personally destroyed documents, including medical records for active disability claims, or directed one of his employees to destroy the documents.⁶¹⁹ Documents were also destroyed following the SSA Office of Inspector General’s interview of Mr. Conn, which took place on the grounds of the Conn Law Firm.⁶²⁰ According to correspondence provided by Mr. Conn’s attorney, the SSA Inspector General’s office visited Mr. Conn “regarding a situation involving an apparent OIG investigation being conducted out of the Huntington, WV office” in spring of 2011.⁶²¹

Prior to these events, the Conn Law Firm had no document retention policy containing a schedule for destroying documents. As such, none of these documents were destroyed in the normal course of business.⁶²²

Ms. Martin stated she witnessed Mr. Conn destroy a wide range of documents, including financial records maintained by the former Conn Law Firm Office Manager, Mr. Conn’s mother Pat Conn. Mr. Conn also ordered an employee to hand over to him all hard copies of “DB Lists” and he immediately shredded the lists in the office shredder.⁶²³ Mr. Conn also instructed each Conn Law Firm employee to delete everything on their computers related to DB Lists. Ms.

⁶¹⁵ January 15, 2013 Statement of Judge Charlie Andrus. Exhibit 82.

⁶¹⁶ June 19, 2012 Committee interview with Judge Charlie Andrus.

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

⁶¹⁹ June 13, 2012 Affidavit of Melinda Lynn Martin; ¶¶ 29-34 (Exhibit 17).

⁶²⁰ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶¶ 31; 32 (Exhibit 17).

⁶²¹ May 17, 2012 Letter from Pamela J. Marple, Esq., attorney for Eric C. Conn, to Richard A. Rohde, Assistant Inspector General for Investigations. Exhibit 9.

⁶²² June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 29 (Exhibit 17).

⁶²³ *Id.*

Martin's computer had a number of DB Lists saved electronically on its hard drive. Mr. Conn asked Ms. Martin to take her computer home and destroy it.⁶²⁴

With regard to the other computers within the Conn Law Firm, over the course of 2011 Mr. Conn replaced the majority of the computers in the office. In July 2011, Mr. Conn directed an employee to remove the hard drives from all the old computers currently not being used and destroy the hard drives with a hammer.⁶²⁵ Ms. Martin watched as the employee destroyed the hard drives as Mr. Conn requested. The employee, at Mr. Conn's direction, then burned the computers and what was left of the hard drives, which left a patch of scorched grass for weeks behind one of the CLF mobile homes.⁶²⁶

Mr. Conn also contracted with Shred-All Documents ("Shred-All"), a shredding company located in Pikeville, Kentucky. On June 23, 2011, Shred-All sent Mr. Conn an invoice for destroying 26,532 pounds of documents for the Conn Law Firm, the equivalent of 2.65 million sheets of paper.⁶²⁷ To destroy these documents, Shred-All invoiced CLF for \$3,183.84.⁶²⁸ Around six months later, January 9, 2012, Shred-All destroyed an additional 8,821 pounds of documents for CLF, or around 882,100 pages of documents. CLF paid Shred-All \$1,058.52 to destroy these documents.⁶²⁹

On both invoices, Shred-All certified "that all materials for confidential destruction throughout the proceeding schedule of services were confidentially handled, completed destroyed beyond recognition and recycled."⁶³⁰

Prior to the WSJ article, Shred-All destroyed documents for Mr. Conn in much smaller batches in the following increments and on the following dates:

- 5,612 pounds of documents on June 8, 2010 at a cost of \$673.44;
- 5,881 pounds of documents on September 30, 2010 at a cost of \$705.72; and
- 7,256 pounds of documents on November 15, 2010 at a cost of \$870.72.⁶³¹

Therefore, the amount of documents destroyed by CLF following the WSJ article was significantly larger than those destroyed prior to the article. Both Ms. Slone and Ms. Martin made clear that following the WSJ article and the meeting with the Office of Inspector General, Mr. Conn destroyed a wide range of documents.⁶³²

⁶²⁴ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 31 (Exhibit 17).

⁶²⁵ June 13, 2012 Affidavit of Melinda Lynn Martin, ¶ 33 (Exhibit 17).

⁶²⁶ *Id.*

⁶²⁷ Calculations based on 500 sheets of 20 pound bond paper. See <http://home.howstuffworks.com/question329.htm>.

⁶²⁸ Shred-All Documents invoice dated June 30, 2011, PSI-Shred_All_Docs-01-0015. Exhibit 66.

⁶²⁹ Shred-All Documents invoice dated January 9, 2012, PSI-Shred_All_Docs-01-0017. Exhibit 66

⁶³⁰ Shred-All Documents invoices dated June 30, 2011 and January 9, 2012, PSI-Shred_All_Docs-01-0015 and 0017. Exhibit 66.

⁶³¹ Shred-All Documents invoices dated June 6, 2010, September 30, 2010, and November 30, 2010, PSI-Shred_All_Docs-01-0001-0014. Exhibit 66.

⁶³² June 12, 2012 Affidavit of Jamie Lynn Slone ¶¶28-33 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin ¶¶ 29-34 (Exhibit 17).

g. SSA Approved the Purchase of Shredders for Huntington Management

On July 6, 2011, several weeks after the *Wall Street Journal* article was published and in the middle of investigations by OIG and this Committee, Huntington ODAR requested authorization from Region 3 to purchase five cross-cut shredders.⁶³³ Region 3 authorized the purchase from Huntington's supply budget and the shredders arrived onsite on July 11, 2011.⁶³⁴ The Committee learned the shredders were located in the offices of all group supervisors, the Hearing Office Director, and the acting HOCALJ.

While Committee investigators were in Huntington conducting interviews on July 27, the acting HOCALJ, was questioned regarding the purchase of the shredders in the middle of two investigations into the office. He stated that he had not considered the implications of purchasing shredders at a time when the agency was required to preserve all relevant documentation.

On July 28, 2011, the Chairman and Ranking Member of the Permanent Subcommittee on Investigations sent a letter to Commissioner Astrue informing him that "[i]t has come to our attention that some SSA staff in the Huntington, West Virginia Office of Disability Adjudication and Review Field Office may be engaged in the destruction of records related to this investigation, possibly in violation of several statutes, including the Federal Records Act and 18 U.S.C § 1505 relating to obstruction of an investigation by a Congressional Committee."⁶³⁵ As such, the Committee requested the Commissioner "provide confirmation that you have taken appropriate steps to ensure the preservation of these documents at all SSA offices" and "ensure no documents are shredded at the Huntington Field Office outside the normal document retention policies and procedures."⁶³⁶

The next day, on July 29, a SSA OIG criminal investigator entered the office and confiscated the shredders, preventing any further shredding of documents by members of management and Judge Andrus. The SSA Inspector General reported the agent reviewed the available materials that were shredded and stated the materials "were appropriate for destruction."⁶³⁷ "With cross cut shredders, however, it is impossible to actually review the shredded material by piecing it together and determine what was shredded."⁶³⁸ Unable to review materials shredded by the cross-cut shredders, the OIG agent was limited to interviewing the individuals in possession of the shredders, including former HOCALJ, Charlie Andrus.

On August 1, 2011, Commissioner Astrue responded, saying he "directed that all documents, of any type and regardless of our other policies, be preserved in the Huntington Hearing Office and that any shredders immediately be moved out of the building to another Social Security facility until further notice."⁶³⁹

⁶³³ July 6, 2011 Email from Bridgette Campbell to Vickie Moreland. Exhibit 84.

⁶³⁴ See Order Conformation dated July 8, 2011. Exhibit 85.

⁶³⁵ July 28, 2011 Letter from Sens. Levin and Coburn to Commissioner Astrue. Exhibit 86.

⁶³⁶ *Id.*

⁶³⁷ See August 1, 2011 Letter from Commissioner Astrue to Sens. Levin and Coburn. Exhibit 87.

⁶³⁸ August 2, 2011 Email from the SSA Office of the Inspector General to Committee Staff. Exhibit 88.

⁶³⁹ August 1, 2011 Letter from Commissioner Astrue to Sens. Levin and Coburn. Exhibit 87.

XIV. MR. CONN SOUGHT TO GAIN FAVOR WITH HUNTINGTON ALJS AND KENTUCKY STATE COURT JUDGES

Mr. Conn used the income he earned to finance certain acts to gain favor with Huntington ALJs and Kentucky state court judges who could decide cases involving Mr. Conn.⁶⁴⁰

a. Mr. Conn Produced a Music CD for a Sitting Kentucky State Court Judge

Mr. Conn provided gifts and contributions to a district court judge with responsibility for cases directly related to his disability practice.

Darrel H. Mullins was the Chief District Judge for Pike County resident in Pikeville, Kentucky, during the period under review by the Committee.⁶⁴¹ Mr. Conn not only hired Judge Mullins to play at the reception for one of his weddings, Mr. Conn also financed the production and distribution of a compact disc (“CD”) of Judge Mullin’s music.

The CD is titled “The Eric C. Conn Law Complex Presents We the People: Songs by Darrel Mullins and Dan Huff.” The internal cover of the CD specifically noted “[t]hanks to Eric C. Conn for making this project possible, for his service as a veteran, and for believing in American and in us for telling our stories in songs.”⁶⁴² The back cover of the CD makes clear that Judge Mullins is responsible for “[a]ll lead and background vocals, harmonica, and rhythm guitar” on certain tracks.⁶⁴³

While Mr. Conn received payment directly from SSA when his claimants were approved for benefits, he also required reimbursement by the claimant of any expenses related to securing a review of the claimant by one of his chosen physicians. Mr. Conn’s physicians would provide an opinion on the claimant’s ability to work given their alleged disability.⁶⁴⁴ Each claimant evaluated by Mr. Conn’s doctor would sign a contract stating they would reimburse the firm for

⁶⁴⁰ Federal ALJ’s are prohibited from accepting gifts from outside sources, just like all other federal employees. See Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. §2635, Subpart B, Gifts from Outside Sources. Both Judges Gitlow and Andrus admitted to taking gifts from Mr. Conn. Judge Gitlow requested Mr. Conn have his tailor, located in Thailand, make custom shirts for the Judge. According to Jamie Slone, former Conn employee, Judge Gitlow sent his measurements straight to Mr. Conn’s tailor in Thailand. When Mr. Conn returned from Thailand with the shirts, however, Judge Gitlow said he refused them because the shirts did not fit properly. Judge Gitlow never paid Mr. Conn for the shirts. Judge Gitlow estimated the shirts cost Mr. Conn around \$20 a piece. On October 31, 2010, Mr. Conn returned from Thailand and declared \$600 worth of men’s suits and \$100 in men’s shoes to the U.S. Department of Homeland Security. Former employees of Mr. Conn confirmed these were items Mr. Conn brought back from Thailand for Judge Gitlow. As mentioned above, Mr. Conn offered to take Judge Andrus to Brazil and Russia at his expense. Judge Andrus also admitted in his signed statement he accepted a package of DVD’s “for the office” that he believed were “probably pirated from Thailand” and claimed he “shredded them.”

⁶⁴¹ Kentucky Court of Justice, Address List, <http://apps.courts.ky.gov/ContactList/Addresslist.aspx?County=Pike>.

⁶⁴² Internal CD Jacket, The Eric C. Conn Law Complex Presents We the People: Songs by Darrel Mullins and Dan Huff. Exhibit 89.

⁶⁴³ Back CD Jacket, The Eric C. Conn Law Complex Presents We the People: Songs by Darrel Mullins and Dan Huff. Exhibit 89.

⁶⁴⁴ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶8 (Exhibit 16).

the cost of the evaluation.⁶⁴⁵ Another firm employee would film the claimant signing the contract promising to reimburse the firm for the cost.⁶⁴⁶

If the claimant was awarded disability benefits, but refused to reimburse Mr. Conn for the cost of the physician, Mr. Conn would file a lawsuit against them in Kentucky District Court, where Judge Mullins served as Chief Judge.

b. Mr. Conn Attempted to Skirt State Election Campaign Laws

In Kentucky, state election law directs “no person...shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate...in any one election.”⁶⁴⁷ In order to get around the law and contribute to Will T. Scott’s campaign for Kentucky Supreme Court Justice, Mr. Conn ordered an employee to purchase 10 money orders in the amount of \$1,000 each.⁶⁴⁸ At the direction of Mr. Conn, a firm employee filled out the money orders in the name of ten different firm employees. The campaign returned the money orders to the individuals whose names appeared on the order.⁶⁴⁹

After the return of the money orders, David Hicks, an attorney at CLF, requested another money order for \$1,000 from CLF funds that he stated would be used for his wife to write a check to the Will T. Scott Campaign.⁶⁵⁰ Mr. Conn also instructed Ms. Slone to give another individual \$1,000 for him to write a check to the Scott campaign.⁶⁵¹

Documents filed Franklin County, Kentucky Circuit Court confirm “[o]n February 8-09, 2013, the defendant [Mr. Conn] attempted to make a gift of money to another person to contribute to a candidate for the Kentucky Supreme Court on his behalf.”⁶⁵²

Court documents indicated Mr. Conn was initially charged with a Class D Felony of “making a gift of money to another person to contribute on his behalf. In Kentucky, the authorized maximum term of imprisonment for a Class D felony is between one and five years.”⁶⁵³ The charges against Mr. Conn, however, were amended to “criminal attempt to make a gift to another person to contribute to a candidate on his behalf,” which is a Class A Misdemeanor. Mr. Conn pled to the lesser charge and was sentenced to “twelve months, conditionally discharged for two years” and was ordered to “make restitution in the amount of \$5,600.00 to the Office of the Attorney General for investigative costs.”⁶⁵⁴

⁶⁴⁵ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶8 (Exhibit 16).

⁶⁴⁶ *Id.*

⁶⁴⁷ Kentucky Revised Statutes §121.150(6).

⁶⁴⁸ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶35b (Exhibit 16).

⁶⁴⁹ *Id.*

⁶⁵⁰ June 12, 2012 Affidavit of Jamie Lynn Slone, ¶35c (Exhibit 16).

⁶⁵¹ *Id.*

⁶⁵² *Commonwealth of Kentucky v. Eric C. Conn*, Case No. 13-CB-00231 (Franklin Cir. Ct. Sept. 9, 2013). Exhibit 90.

⁶⁵³ Kentucky Revised Statutes §532.060 Sentence of imprisonment for felony.

⁶⁵⁴ *Commonwealth of Kentucky v. Eric C. Conn*, Case No. 13-CB-00231 (Franklin Cir. Ct. Sept. 9, 2013). Exhibit 90.

A local newspaper reported that, through his attorney, “Mr. Conn said he deeply, deeply regrets this mistake and apologizes.”⁶⁵⁵

⁶⁵⁵ Bill Estep, Lexington Herald-Leader, *Kentucky disability lawyer pleads guilty to campaign-finance violation*, September 23, 2013, <http://www.kentucky.com/2013/09/23/2839382/kentucky-disability-lawyer-eric.html#>.

**APPENDIX I:
SUMMARY OF A SAMPLE OF ERIC CONN CLAIMANT CASE FILES
DECIDED FAVORABLY BY JUDGE DAUGHERTY**

1. Medical Opinions Procured by Mr. Conn Were Inconsistent with Other Medical Evidence

Most of Judge Daugherty's written decisions stated that the opinions of the consulting doctors paid by Mr. Conn were "more consistent with the record as a whole." As such, Judge Daugherty adopted Dr. Huffnagle's findings, including his residual functional capacity assessments, as the basis for determining that the claimants could not work. However, the Committee found many instances in which Dr. Huffnagle's opinions differed significantly from other evidence contained in the claimants' case files, a fact that Judge Daugherty always failed to address.

Case B: Judge Daugherty awarded benefits in August 2010 to a claimant who had previously been denied because the agency determined he could work.⁶⁵⁶ While several doctors contributed to the agency's determination, Judge Daugherty based his fully favorable decision solely on a single examination by Dr. Huffnagle, which described injuries suffered by the claimant in a traffic accident that occurred the year before.⁶⁵⁷

The seriousness of his injuries was thrown into some question, however, since he did not seek medical attention until the day after his accident.⁶⁵⁸ Medical records from St. Mary's Medical Center dated the day after his accident stated:

This is a young man who apparently presents with a history [of a traffic accident]. He was able to get up, move around, he went home. As a matter of fact, he mowed his yard.⁶⁵⁹

Exam notes indicated that, because of his fractures, "He will require an MRI in the morning and a brace with a cervical collar with a chest extension and a TLSO brace on his dorsal spine for 6 weeks."⁶⁶⁰ Records also indicated that the claimant was not wearing a helmet.⁶⁶¹ He saw his regular physician 6 days later, who noted the claimant was wearing a "hard brace and cervical collar" and made a notation "off work – disability- 4 weeks."⁶⁶²

Later that month, the claimant saw the same physician who treated him while in the hospital, and exam notes from that visit state that the claimant was still wearing his hard brace and cervical

⁶⁵⁶ See Exhibit B-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

⁶⁵⁷ *Id.* at 3. and see Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D.

⁶⁵⁸ See Exhibit B-3, June 2009 Medical Records at 1.

⁶⁵⁹ *Id.* at 1.

⁶⁶⁰ *Id.* at 1.

⁶⁶¹ *Id.* at 3.

⁶⁶² See Exhibit B-4, June 2009 Medical Records at 1.

collar, and that “X rays show good alignment in the cervical and dorsal spine.”⁶⁶³ The patient was advised to “take Tylenol #3 and I will see him back here with x-rays in [six weeks].”⁶⁶⁴

He hired Eric Conn as his attorney a few months after his accident and applied for disability benefits on the same day.⁶⁶⁵

Subsequent visits with the claimant’s treating physician indicate that the claimant was still experiencing back and neck pain during subsequent months in 2009 as a result of the accident, but also that he was receiving pain relief as a result of medications.⁶⁶⁶

In November 2009, the claimant was sent by DDS for a consultative exam in which the physician said that the claimant had few work-related limitations, concluding:

As far as the claimant’s work capabilities are concerned, he certainly hears and understands normal conversational tone. He moves about the exam room today using no assistive devices and without any obvious gait disturbance. He does not complain of chest pain. He has normal strength and dexterity in both upper extremities, although with his tender wrist, repetitive heavy use of his hands may be prohibitive. He should be able to lift 10-15 pounds, but heavier lifting may bother his back. Walking is not a problem and mobility should not be an issue with this patient. He should be able to ambulate a reasonable distance. However, bending and stooping may present problems as well because of the back difficulties.⁶⁶⁷

His application was denied in January 2010 following the consultative exam and then again on May 17, 2010 upon reconsideration.⁶⁶⁸ An examiner at the DDS level explained, “This claimant has a residual functional capacity for light work, is a younger individual, has a high school education, and work experience as a contractor ... There are a significant number of occupations for which this claimant qualifies.”⁶⁶⁹

Claimant Added to DB List. The claimant was placed by Mr. Conn and Judge Daugherty on the July 2010 “DB List,” marked as needing a “physical” examination and scheduled to see Dr. Huffnagle.⁶⁷⁰ He was seen by Dr. Huffnagle on June 24, 2010, who concluded the claimant was not only experiencing a number of severe conditions, but faced significant functional limitations as well.⁶⁷¹

⁶⁶³ See Exhibit B-5, June 2009 Medical Records at 1.

⁶⁶⁴ *Id* at 1.

⁶⁶⁵ See Exhibit B-6, August 26, 2009, Appointment of Representative and Fee Contract at 1 and 2.

⁶⁶⁶ See Exhibit B-7, August 2009 and September 2009 Medical Records at 1 and 2.

⁶⁶⁷ See Exhibit B-8, November 2009 Consultative Examination at 4-5.

⁶⁶⁸ See Exhibit B-9, January 13, 2010 Notice of Disapproved Claims and Exhibit A-10, May 17, 2010 Notice of Reconsideration.

⁶⁶⁹ See Exhibit B-11, Simplified Vocational Rationale at 1.

⁶⁷⁰ See Exhibit B-12, DB July 2010, CLF030809.

⁶⁷¹ See Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4, 5-9.

However, in diagnosing the claimant he got key pieces of information wrong. According to Dr. Huffnagle, the claimant was involved in a “severe” traffic accident in which he fractured C1 to T11, L5-S1. Upon leaving her hospital, “he was in a body cast and a halo.”⁶⁷² The claimant’s records, however, do not show that he was in a “body case and a halo,” but rather in a cervical collar and TLSO brace.⁶⁷³ While the former restricts the neck and back from any movement at all – and often requires extreme bed-rest – the latter allows for mobility, including the ability to walk around.

On the same day, Dr. Huffnagle also signed the Conn Law Firm’s residual functional capacity (RFC) form Version #3 on behalf of the claimant.⁶⁷⁴ As previously described, Mr. Conn’s clients were assigned one of 15 RFC’s used by the law firm, which were signed by doctors he hired. His findings on the RFC, however, were inconsistent with Dr. Huffnagle’s exam notes. For example, the exam notes suggested the claimant could not return to construction or coal mining, but in the section of the RFC evaluating him for “moving machinery” said he could do so “constantly.”⁶⁷⁵ Again, the exam notes showed back pain with little flexibility, but the RFC showed the claimant could “constantly” perform “stooping,” “crouching” and “kneeling.”⁶⁷⁶

Claimant Awarded Benefits. Judge Daugherty issued a fully favorable decision on August 3, 2010, based solely on the exam conducted by Dr. Huffnagle.⁶⁷⁷ In the decision he concluded, “Having considered all of 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.”⁶⁷⁸

Case C: The claimant in this case alleged a number of physical ailments, including blindness in one eye, as well as depression.⁶⁷⁹ However, after several doctors determined that neither his physical or mental problems would not prevent him from working, he was sent by Mr. Conn to see Dr. Brad Adkins for a mental exam.⁶⁸⁰ Based on this exam, Judge Daugherty awarded full disability benefits for depression and anxiety.⁶⁸¹

Prior to applying for disability, the claimant worked as a mechanic for 25 years, but stopped in 2005.⁶⁸² He explained to one doctor, “he simply has been unable to continue due to orthopedic complaints.”⁶⁸³ A year later, on July 19, 2006, the claimant hired Eric Conn to represent him and applied for disability the next day.⁶⁸⁴

⁶⁷² *Id.* at 1.

⁶⁷³ See Exhibit B-3, June 2009 Medical Records at 1.

⁶⁷⁴ See Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frderic T. Huffnagle, M.D. at 5-9.

⁶⁷⁵ *Id.* at 9.

⁶⁷⁶ *Id.* at 7.

⁶⁷⁷ See Exhibit B-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

⁶⁷⁸ *Id.* at 3.

⁶⁷⁹ See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2.

⁶⁸⁰ See Exhibit C-2, January 9, 2007 Psychological Evaluation, Brad Adkins, Ph.D.

⁶⁸¹ See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Daugherty.

⁶⁸² See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2 and 3.

⁶⁸³ See Exhibit C-4, August 2006 Consultative Examination at 2.

⁶⁸⁴ See Exhibit C-5, July 19, 2006 Appointment of Representative and Fee Contract.

The claimant applied on the basis of the following conditions: “vision problems, right eye is legally blind, pain in wrist, right knee, both legs, back, hands shake, hands sweat, depression, 7th grade education, can’t read, learning disability.”⁶⁸⁵ He described his challenges with personal care, including that it took him longer to get dressed when his knee swelled up; that he had to step in to bathe with his left leg and put weight on the right leg because of pain; and that holding his arms up in the air to care for his hair caused pain.⁶⁸⁶

However, the claimant’s file contained conflicting evidence. His mother was also asked to fill out a questionnaire, which described the claimant’s abilities differently. She wrote that she saw her son every day, and that they ate together, went shopping, and did chores.⁶⁸⁷ She added that the claimant did not have any limitations in personal care, could drive himself around in a car, cook complete meals of “whatever he wants to eat that day,” do laundry, dishes, and some yard work, and could shop for food and clothes on average two days per week for about three hours.⁶⁸⁸

During the initial consideration of the case, the agency sent the claimant out for a consultative mental exam in August 2006, performed by Phil Pack, M.S., who also performed evaluations for Eric Conn’s clients. Mr. Pack noted at the beginning of the exam write up “On the formal testing, he tends to give up very easily on items. His scores may be an underestimation of his actual potential, given his general test behavior.”⁶⁸⁹ The exam notes also state “Regarding alcohol use, he tells me he drinks approximately 15 to 18 beers on Friday and Saturday nights, but does not see this as a particular problem.”⁶⁹⁰ Under the “Behavioral Observations and Validity of Testing” section, the examiner said:

“His chief complaint is multiple physical difficulties. He describes himself as being nervous or depressed and seems to use these terms interchangeably. He does not present with a clear pattern of affective disturbance. He has some worry and stress over his financial situation and lack of medical coverage. He does not report of any suicidal, homicidal, or psychotic symptoms. On the formal testing, he tends to give up somewhat quickly on tasks. His scores place him in the upper end of the mild range of mental retardation. He seems to present with significant reading deficits and alleges illiteracy. However, the Rey [a test for malingering] suggests a less than optimal effort. Some caution would be urged in interpretation on the following data, particularly in the absence of collateral information.”⁶⁹¹

The IQ test administered in this exam yielded a full scale IQ of 66, but the examining doctor reiterated his skepticism about the score because of a Rey test “score of 5, which indicates a less than valid effort on this task.”⁶⁹² He diagnosed the claimant with “life circumstance problems”

⁶⁸⁵ See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2.

⁶⁸⁶ See Exhibit C-6, Function Report-Adult at 2.

⁶⁸⁷ See Exhibit C-7, Function Report Adult Third Party at 2.

⁶⁸⁸ *Id.* at 3-5.

⁶⁸⁹ See Exhibit C-4, August 2006 Consultative Examination at 1-2.

⁶⁹⁰ *Id.* at 3.

⁶⁹¹ *Id.* at 3-4.

⁶⁹² *Id.* at 5.

and “mild mental retardation on today’s testing, more probable borderline intellectual functioning, reading disorder.”⁶⁹³

A consultative physical exam took place in September 2006, at which the physician concluded that other than blindness in his right eye, the claimant had no serious limitations.⁶⁹⁴ His blindness resulted from an injury in 1998, when the claimant had emergency surgery to repair his right eye.⁶⁹⁵

On October 11, 2006, the agency denied his initial application, noting: “We realize that your condition prevents you from doing some types of work, but it does not prevent you from doing work which is not demanding and requires little or no training.”⁶⁹⁶ No additional evidence was submitted for reconsideration, and as a result, the application was denied again on November 29, 2006,⁶⁹⁷ with the DDS examiner making the following conclusion:

The claimant has a limited education, is a younger individual, and retains the capacity to perform unskilled work ... Since the claimant has the capacity to perform a broad range of work activity, disability is not established.⁶⁹⁸

A week later the claimant appealed to have a hearing before an ALJ.⁶⁹⁹

Claimant Added to DB List. Mr. Conn and Judge Daugherty placed the claimant on the January 2007 “DB List.”⁷⁰⁰

On January 9, 2007, Eric Conn referred the claimant to see Dr. Brad Adkins for a second mental evaluation.⁷⁰¹ Dr. Adkins completed an exam report, which found the claimant to have severe mental limitations. However, the report also noted that the claimant had a “history of alcohol abuse.” Dr. Adkins detailed the claimant’s use of alcohol: “He has been arrested [multiple] times for public intoxication. He has a history of two arrests for DUI (Driving Under the Influence) about ten years ago. He said that he still drinks alcohol about [e]very two to three weeks on the weekend.”⁷⁰²

Dr. Adkins also administered an IQ test, which yielded a score of 77, placing him in the borderline range for mental retardation.⁷⁰³ Where the examining doctor several months earlier who found the claimant likely failed the IQ test on purpose, Dr. Adkins judged the results as valid.

⁶⁹³ *Id.* at 5.

⁶⁹⁴ See Exhibit C-8, September 2006 Internal Medicine Evaluation at 4.

⁶⁹⁵ *Id.* at 1.

⁶⁹⁶ See Exhibit C-9, October 11, 2006 Notice of Disapproved Claim at 1.

⁶⁹⁷ See Exhibit C-10, November 29, 2006, Notice of Reconsideration

⁶⁹⁸ See Exhibit C-11, Simplified Vocational Rationale.

⁶⁹⁹ See Exhibit C-12, December 5, 2006 Request for Hearing by Administrative Law Judge

⁷⁰⁰ See Exhibit C-13, D.B. January, CLF030654 at 2.

⁷⁰¹ See Exhibit C-2, January 9, 2007 Psychological Evaluation, Brad Adkins, Ph.D.

⁷⁰² *Id.* at 2-3.

⁷⁰³ *Id.* at 6.

In the section of Dr. Adkins' report titled "Summary and Conclusions" Dr. Adkins copied, word-for-word, the claimant's subjective information and allegations that were contained in the "Background" section and summarized the IQ test results.⁷⁰⁴ Based on this information, Dr. Adkins concluded that the claimant had "Major Depressive Disorder, Single Episode, Moderate; Generalized Anxiety Disorder; Pain Disorder Associated with Both Psychological Factors and a General Medical Condition" as well as "History of Alcohol Abuse."⁷⁰⁵ He did, however, add "R/O Panic Disorder," indicating that panic disorder should still be ruled out by further examination.⁷⁰⁶

Claimant Awarded Benefits. Two weeks after the claimant was examined by Dr. Adkins, Judge Daugherty issued a fully favorable decision on January 23, 2007, based solely on this exam.⁷⁰⁷ He concluded that the claimant had a large number of severe impairments, which were copied word-for-word from Dr. Adkins' exam report, including: "blind right eye; major depressive disorder, single episode, moderate; generalized anxiety disorder; pain disorder" and "history of alcohol abuse."⁷⁰⁸ In addition, he added that one of the claimant's severe limitations was "rule out panic disorder."⁷⁰⁹

Despite including a history of alcohol abuse in the claimant's list of conditions, Judge Daugherty provided no additional explanation as to whether that history was a factor in the other disabling conditions.

To support his conclusion he said the claimant had "moderate restriction of activities of daily living; mild difficulties in maintaining social functioning; mild difficulties in maintaining concentration, persistence, or pace; and no episodes of decompensation."⁷¹⁰ However, this information came from a mental exam conducted on November 20, 2006, by a doctor who concluded that a finding of disability would not be warranted.⁷¹¹

Judge Daugherty concluded, "The State agency medical opinions are given little weight," and that, "I find Dr. Adkins assessment to be reasonable and consistent with the medical evidence of record."⁷¹² However, other than those related to the claimant's eye surgery in the late 1990's, the only other medical records in the file were provided by agency State agency doctors.

Moreover, the judge added: "The State agency did not have the opportunity to observe the claimant but Dr. Adkins did. Therefore, I find the assessment of Dr. Adkins to be more persuasive and I will therefore adopt."⁷¹³ He made this claim, despite earlier in the paragraph

⁷⁰⁴ *Id.* at 7-8.

⁷⁰⁵ *Id.* at 8.

⁷⁰⁶ *Id.* at 8.

⁷⁰⁷ See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Dougherty at 1, 3-4, and 7.

⁷⁰⁸ *Id.* at 3.

⁷⁰⁹ *Id.* at 3.

⁷¹⁰ *Id.* at 3-4.

⁷¹¹ *Id.* at 3 and see Exhibit C-14, Mental Residual Functional Capacity Assessment at 12.

⁷¹² See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Dougherty at 5.

⁷¹³ *Id.* at 5.

referring to results of a state exam of the claimant. Indeed, the state agency sent the claimant to an in-person consultative mental exam in August 2006.⁷¹⁴

2. Awards Based on Medical Conditions Discovered by Mr. Conn's Doctors

In some cases reviewed by the Committee, Judge Daugherty awarded benefits on the basis of a medical condition the claimants themselves did not identify in their applications and which were unsupported in the other medical evidence included in the files. However, the conditions that formed the basis of the award were in each instance discovered by Dr. Huffnagle in exams conducted at the request of Mr. Conn.

Case D: Judge Daugherty awarded benefits to a claimant on the basis of osteoarthritis and a quintuple heart bypass surgery, which he concluded limited the claimant to “less than sedentary” work.⁷¹⁵ However, while the claimant’s heart surgery was well-documented in the file, there was nothing related to osteoarthritis until he was examined by Dr. Huffnagle.⁷¹⁶ Judge Daugherty based his decision solely on Dr. Huffnagle’s exam, but did not explain why prior evidence, or in this case, the lack of evidence, was disregarded.⁷¹⁷

In 2009, the claimant was hospitalized for chest pain and records from the visit indicate he had a history of hypothyroidism and hyperlipidemia, or high cholesterol.⁷¹⁸ The physician noted that the claimant had been “laid off and has been noncompliant with his cholesterol medications for economic reasons. The patient does follow up in my office on an erratic basis.” The claimant was diagnosed with an acute myocardial infarction, or heart attack, and was admitted to the Intensive Care Unit, where he was treated with a cardiac catheterization and angioplasty.⁷¹⁹

Approximately one month later, in August 2009, the claimant applied for disability.⁷²⁰ In his application, he cited “heart attack with upcoming open heart surgery” as the illness that limited his ability to work.⁷²¹

The next day,, the claimant underwent coronary artery bypass surgery.⁷²² According to the surgical report, the claimant tolerated the procedure well and there were no complications.⁷²³ The claimant’s discharge summary stated that the claimant was to:

“walk daily, increase distance gradually. Do not lift anything heavier than 10 pounds. Avoid pulling or pushing. Shower and wash incisions with mild soap. Daily weights and

⁷¹⁴ See Exhibit C-4, August 2006 Consultative Exam.

⁷¹⁵ See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

⁷¹⁶ See Exhibit D-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D.

⁷¹⁷ See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

⁷¹⁸ See Exhibit D-3, July 27, 2009 Medical Records at 1-2.

⁷¹⁹ *Id.* at 2 and see Exhibit D-4, August 2009 Discharge Summary at 1.

⁷²⁰ See Exhibit D-5, Application Summary for Disability Insurance Benefits at 1.

⁷²¹ See Exhibit D-6, Disability Report-Adult-Form SSA-3368 at 2.

⁷²² See Exhibit D-7, August 2009 Operative Report at 1.

⁷²³ *Id.* at 2.

daily temperatures. Continue breathing exercises. Wear TED hose during the day. Take medications exactly as ordered.”⁷²⁴

He was ordered to follow up with his cardiac and primary physicians over the course of the next few weeks, although there are no records of any such visits included in the claimant’s case file.⁷²⁵

In early 2010, the claimant underwent a DDS-level consultative exam that noted few limitations to his ability to move, and indicated upon physical exam that the claimant was able to walk and squat without difficulty.⁷²⁶ Nonetheless, the examiner found the claimant to be limited in his “ability to perform work-related activities like bending, stopping, lifting, crawling, squatting,” and other functions were impaired as a result of his heart disease.⁷²⁷ However, a DDS examiner looked at the exam record two weeks later and came to the opposite conclusion, writing, “As this is inconsistent with the medical evidence provided and obtained, this is given little weight.”⁷²⁸

As such, DDS denied his claim on February 2, 2010 and a few weeks later in February, he hired Eric Conn as his representative.⁷²⁹ His request for reconsideration was then also denied on May 7, 2010, with which the agency included the following explanation:

“The medical evidence shows you have been treated for your conditions. Although you had a heart attack and then open heart surgery, the medical evidence shows you are recovering well and there are no signs of complications at this time. Even though you are not able to work now, your condition is expected to improve. It will not prevent you from working for 12 months.”⁷³⁰

Claimant Added to DB List. On May 24, 2010, the claimant requested a hearing before an administrative law judge.⁷³¹ He was likewise included by Mr. Conn and Judge Daugherty on the July 2010 “DB List” and marked for a “physical” examination.⁷³²

Dr. Huffnagle saw the claimant on June 23, 2010 and concluded the claimant had degenerative arthritis, which was not previously documented by any doctor.⁷³³ He added that the claimant’s arthritis was not going to improve with time, also noting that the claimant was unable to afford medical care, and that his prognosis for the future was “guarded.”⁷³⁴

⁷²⁴ See Exhibit D-4, August 2009 Discharge Summary at 2.

⁷²⁵ *Id.* at 2.

⁷²⁶ See Exhibit D-8, January 2010 Internal Medicine Examination at 1 and 6.

⁷²⁷ *Id.* at 7.

⁷²⁸ See Exhibit D-9, Physical Residual Functional Capacity Assessment at 7 and 8.

⁷²⁹ See Exhibit D-10, February 2, 2010 Notice of Disapproved Claims and Exhibit C-11, February 22, 2010 Appointment of Representative and Fee Agreement

⁷³⁰ See Exhibit D-12, May 7, 2010 Notice of Reconsideration at 1.

⁷³¹ See Exhibit D-13, May 24, 2010 Request for Hearing by Administrative Law Judge at 1.

⁷³² See Exhibit D-14, DB July 2010 CLF030809 at 1.

⁷³³ See Exhibit D-2, June 23, 2010 Social Security Disability Medical Assessment at 4.

⁷³⁴ *Id.* at 4.

However, Dr. Huffnagle's exam notes were inconsistent with the rest of the claimant's medical record. He wrote the claimant "is having mid back pain. He is also having pain in the right and left shoulder ... This man's pain came on gradually after he had cardiac surgery in 2009."⁷³⁵ The evidence reflected the opposite, that the claimant reported no pain at all in his shoulders. At the time the claimant was hospitalized for his heart condition, exam records from July 27, 2009 indicate that the claimant "denies any acute or chronic joint pain" and from July 28, 2009 visit indicate "Musculoskeletal: No claudication [limping], edema [swelling], joint pain, or gait disturbance."⁷³⁶ Likewise, records from an emergency room visit for pneumonia on September 5, 2009 indicate no issues with any movement or pain in the claimant's extremities that might be expected with severe osteoarthritis.⁷³⁷ Furthermore, the claimant provided no indication of back or joint pain at the consultative examination performed in early 2010.⁷³⁸

Also on June 23, 2010, Dr. Huffnagle signed RFC form Version #5, which found the claimant to have extreme physical limitations.⁷³⁹

Dr. Huffnagle's conclusions in the RFC were significantly different from a DDS-level doctor who reviewed the claimant on May 6, only a month-and-a-half prior.⁷⁴⁰ While the DDS doctor concluded the claimant could lift 50 pounds occasionally and 25 pounds frequently, Dr. Huffnagle concluded the claimant could only lift 10 and five pounds respectively.⁷⁴¹ Also, while the DDS doctor found the claimant able to stand and walk for six hours a day, Dr. Huffnagle said it was not possible for the claimant to do so for more than an hour.⁷⁴²

Claimant Awarded Benefits. Judge Daugherty issued his fully favorable decision on August 3, 2010, writing: "Having considered all of 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."⁷⁴³

Case E: Judge Daugherty awarded benefits to a claimant who he said was limited to performing "less than sedentary" work due to degenerative arthritis and a dislocated patella.⁷⁴⁴ His decision solely cited the medical opinion of Dr. Huffnagle and disregarded the other medical evidence in the file.⁷⁴⁵ Prior to being seen by Dr. Huffnagle, however, the claimant's medical record contained no evidence to indicate that the claimant was ever diagnosed with degenerative arthritis.

⁷³⁵ *Id.* at 1.

⁷³⁶ See Exhibit D-3, July 2009 Medical Records at 4 and see Exhibit D-15, July 2009 Medical Records.

⁷³⁷ See Exhibit D-16, September 2009 Medical Records at 1-3.

⁷³⁸ See Exhibit D-8, January 2010 Internal Medicine Examination at 1-2.

⁷³⁹ See Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5 and 8.

⁷⁴⁰ See Exhibit D-17, Physical Residual Functional Capacity Assessment at 8.

⁷⁴¹ *Id.* at 2 and see Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5.

⁷⁴² See Exhibit D-17, Physical Residual Functional Capacity Assessment at 2 and see Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5.

⁷⁴³ See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 3.

⁷⁴⁴ See Exhibit E-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

⁷⁴⁵ *Id.* at 3.

In the fall of 2009 the claimant injured her knee while playing volleyball at a family reunion, and an MRI performed shortly after the injury indicated that her kneecap was dislocated.⁷⁴⁶ The claimant underwent arthroscopic knee surgery, and was ordered to attend physical therapy.⁷⁴⁷ She attended physical therapy sessions over the following months, and while she still had pain and some complications, was making progress.⁷⁴⁸ Notes from a visit about three months later state “[Patient] states Doctor wants her to finish the two visits left on her script and then hold on therapy and try doing normal activities at home. Doctor stated after visit with next time he may try to send her back to work at 4 hours per day.”⁷⁴⁹

Several days later on December 17, 2009 she filed her initial application and cited a “left knee injury, trouble walking, bulging disc in back and upper neck, pain in low back, numbness in arms, depression, anxiety, and trouble sleeping” as the illnesses and injuries that prevented her from able to work.⁷⁵⁰ The application made no specific mention of arthritis.⁷⁵¹ She hired Eric Conn as her attorney on December 23, 2009.⁷⁵²

Following a physical therapy session that month, the claimant remarked to her therapist, “she is having less pain ... and thinks she is stronger but still has a slight limp [when] walking.” During the sessions, she was able to use the treadmill for 12 minutes and an exercise bike for 15 minutes.⁷⁵³

Records from a follow-up appointment in February 2010 indicate that the claimant made slow progress, was continuing to complain of symptoms related to her knee cap, but also stated she had returned “back to work” despite being in the process of applying for permanent disability.⁷⁵⁴

Regarding her claim of a bulging disc in her upper back and neck, an MRI performed on February 23 showed only “mild degenerative disc disease with a “right paracentral disc protrusion [bulging disc] at the C5-C6 level”⁷⁵⁵ She also claimed numbness in her arms, but a nerve conduction study performed in March 2010 returned normal results.⁷⁵⁶ The claimant’s file did not include any records related to depression, but a consultative mental exam from February 2010 identified other mental impairments, stating that:

[T]he claimant has no impairment to understand, retain, and follow simple instructions. The claimant has no impairment to sustain concentration and persistence to complete tasks in a normal time. The claimant has marked impairment to maintain social interactions with supervisors, friends, and the public. The claimant has marked

⁷⁴⁶ See Exhibit E-2, September 2009 Medical Records at 1; see Exhibit E-3, February 2010 Consultative Examination at 1-2; and see Exhibit E-4, September 2009 Medical Records

⁷⁴⁷ See Exhibit E-5, September 2009 Operative Report at 1 and see Exhibit E-6, September 2009 Physical Therapy Evaluation at 2.

⁷⁴⁸ See Exhibit E-7, November 2009 Medical Records at 1.

⁷⁴⁹ See Exhibit E-8, Evaluation and Progress Notes at 1.

⁷⁵⁰ See Exhibit E-9, Disability Report-Adult-Form SSA-3368 at 2 and 9.

⁷⁵¹ *Id.* at 2.

⁷⁵² See Exhibit E-10, December 23, 2009 Appointment of Representative and Fee Contract at 1-2.

⁷⁵³ See Exhibit E-8, Evaluation and Progress Notes at 1.

⁷⁵⁴ See Exhibit E-11, February 2010 Medical Records at 1.

⁷⁵⁵ See Exhibit E-12, February 2010 Diagnostic Imaging Report at 1.

⁷⁵⁶ See Exhibit E-13, March 2010 Nerve Conduction Study Report at 1.

impairment to adapt and respond to the pressures of normal day-to-day work activity. Based on the claimant's statements, it appears she may have additional impairments resulting from physical problems.⁷⁵⁷

When the agency denied the initial SSDI application on April 21, 2010, it noted that while she had some limitations, she was still able to work:

You are somewhat limited by your knee, back and neck problems. Your ability to lift and carry objects is decreased. Although you do have some problems with your arms, you are still able to grasp, hold and use most objects effectively with normal breaks. Although you do have some concentration problems, you are still able to remember and follow simple instructions. The evidence does not show any other conditions which significantly limit your ability to work. ... We have determined that your condition is not severe enough to keep you from working.⁷⁵⁸

She appealed the decision several days later and asked for reconsideration.⁷⁵⁹ On May 17, 2010, a DDS examiner reviewed her file and found not only that she had minimal limitations, but had returned to work.⁷⁶⁰ The same day, she was denied again with the following rationale, "This claimant has a residual functional capacity for Medium work, is a younger individual, has a college education, and work experience ... there are a significant number of occupations for which this claimant qualifies."⁷⁶¹

Claimant Added to DB List. A week later she appealed to have her case heard before an administrative law judge.⁷⁶² Mr. Conn and Judge Daugherty put the claimant's name on the July 2010 "DB List" and indicated the need for a "physical" exam."⁷⁶³

During the application process the agency asked the claimant – in late April and again in late May – whether her condition had improved or was worsening, and each time she replied, "No."⁷⁶⁴ During her visit with Dr. Huffnagle on June 23, 2010, he discovered and diagnosed degenerative arthritis affecting her lumbar spine, cervical spine, and her knees, which was not mentioned by any other doctor in her file, along with the claimant's dislocated kneecap, for which she received treatment sufficient enough for her to go back to work.⁷⁶⁵

In his exam report he described her current medical symptoms the following way: "This woman is experiencing low back pain with pain in her right leg. She also has severe pain in her left knee. She has neck pain with pain that radiates into her right shoulder and headaches."⁷⁶⁶ He

⁷⁵⁷ See Exhibit E-3, February 2010 Consultative Examination at 7.

⁷⁵⁸ See Exhibit E-14, April 21, 2010 Notice of Disapproved Claim at 1.

⁷⁵⁹ See Exhibit E-15, April 26, 2010 Request for Reconsideration at 1.

⁷⁶⁰ See Exhibit E-16, May 17, 2010 Physical Residual Functional Capacity Assessment at 2-3 and 8.

⁷⁶¹ See Exhibit E-17, Simplified Vocational Rationale at 1.

⁷⁶² See Exhibit E-18, May 26, 2010 Request for Hearing by Administrative Law Judge at 1.

⁷⁶³ See Exhibit D-14, DB July 2010 CLF030809

⁷⁶⁴ See Exhibit E-19 Disability Report – Appeal-Form SSA-3441 at 2, 6, 7, and 10.

⁷⁶⁵ See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1 and 4.

⁷⁶⁶ *Id.* at 1.

noted as well that, “This woman’s work history is significant in that her job required her to lift...repetitively.”⁷⁶⁷

After diagnosing the claimant with degenerative arthritis, he concluded that her condition would not improve with time, noting that she would need medical care for the rest of her life.⁷⁶⁸ The same day, Dr. Huffnagle signed RFC Version #1.⁷⁶⁹ However, the findings of this RFC were inconsistent both with his own exam report as well as with the claimant’s medical record. For example, his exam report found, “She cannot walk on her heels. She cannot walk on her toes.”⁷⁷⁰ In the RFC signed by Dr. Huffnagle, though, it found she could stand and walk “without interruption” for 30 minutes and for three hours in an 8-hour work day.⁷⁷¹

Moreover, Dr. Huffnagle concluded the woman’s back and knee problems were so severe as to prevent her from bending or walking, yet the RFC he signed said she could “Constantly” perform “Balancing,” “Stooping,” “Crouching” and “Kneeling.”⁷⁷²

Finally, in a RFC completed by the agency in May, only a month prior to Dr. Huffnagle’s exam, the agency found the claimant able to lift 50 pounds occasionally, and 25 pounds frequently.⁷⁷³ Yet, Dr. Huffnagle’s RFC found her able to lift only 8 and 5 pounds respectively.⁷⁷⁴

Claimant Awarded Benefits. On August 2, 2010, Judge Daugherty issued a fully favorable decision, which gave Dr. Huffnagle’s exam exclusive weight relative to the other medical evidence.⁷⁷⁵ He concluded the claimant had two severe impairments, “degenerative arthritis and dilocated [sic] patella” – the same conclusion reached by Dr. Huffnagle.⁷⁷⁶

He failed, however, to explain that the claimant’s other medical files contained no reference to degenerative arthritis, indicated that she was recovering from her knee injury, and that she had gone back to work. In his opinion, he concluded, as he did in many of the cases reviewed by the Committee:

Having considered all of 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.⁷⁷⁷

⁷⁶⁷ *Id.* at 1.

⁷⁶⁸ *Id.* at 4.

⁷⁶⁹ *Id.* at 6 and 9.

⁷⁷⁰ *Id.* at 3.

⁷⁷¹ *Id.* at 6.

⁷⁷² *Id.* at 3 and 7.

⁷⁷³ See Exhibit E-16, May 2010 Physical Residual Functional Capacity at 2.

⁷⁷⁴ See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 6.

⁷⁷⁵ See Exhibit E-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1, 3, and 5.

⁷⁷⁶ *Id.* at 3.

⁷⁷⁷ *Id.* at 3.

Case F: Here, Judge Daugherty awarded benefits to a claimant for “osteoarthritis, sciatica, and diabetes,” which he determined limited her to performing sedentary work.⁷⁷⁸ However, the claimant’s case file contained no evidence at all of diabetes until she was seen by Dr. Huffnagle, who made that diagnosis without any indication of laboratory results to confirm the diagnosis.⁷⁷⁹ Of note, Dr. Huffnagle’s exam write-up bore similarities to his write-up for the claimant in case E above, whom he examined on the same day.

The claimant alleged on onset date of her symptoms of April 2, 2008, which she said was the day she stopped working due to back and hip pain, along with other symptoms.⁷⁸⁰ Despite her complaints of severe pain, her medical records do not clearly indicate a precise problem.

A lumbar X-ray performed two weeks after she left her job in April 2008 indicated no abnormalities.⁷⁸¹ A subsequent MRI performed in May of that year identified some issues that could have been causing the claimant’s pain, however, including a left lateral disc protrusion producing moderate foraminal stenosis [narrowing] affecting the exiting L4 nerve root.⁷⁸² At a subsequent visit in August, the claimant’s physician found her to be improving and wrote:

This lady was evaluated in May of this year with back and left leg pain. An MRI revealed a left lateral disc protrusion at L4-L5. She continues to have these symptoms, but has improved since being off work since 4.2.2008. She is now 50-70% better. ... I discussed options with her, including surgical intervention. Her sciatica seems to be improving and she has a resolving left L4 radiculopathy [nerve pain]. She will continue with conservative therapy and remain off work for six weeks.⁷⁸³

In November, this same treating physician wrote a letter clearing her to return to work, writing: “[The claimant] has been on medical leave for some time. Our most recent correspondence notes [she] may return to work with restrictions.....it is our recommendation that she complete a functional capacity evaluation to address specifics.”⁷⁸⁴ In December, 2008 she visited an orthopedist for testing, which found she could work: “The results indicate that [she] is able to work at the LIGHT Physical Demand Level” as well as that she could lift and carry 20 pounds.⁷⁸⁵

She applied for disability on September 1, 2009, claiming a large number of conditions: “complications from chronic varicosities, Raynaud’s phenomenon, posterior tibial tendon dysfunction, low back pain, hip pain, knee pain, osteoarthritis, hypertension, depression, anxiety, and sleep deprivation.”⁷⁸⁶ However, she did not allege diabetes.⁷⁸⁷

⁷⁷⁸ See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge Davud B. Daugherty at 3.

⁷⁷⁹ See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4.

⁷⁸⁰ See Exhibit F-3, Disability Report – Adult-Form SSA-3368 at

⁷⁸¹ See Exhibit F-4, April 2008 Medical Records at 1.

⁷⁸² See Exhibit F-5, May 2008 Medical Records at 1.

⁷⁸³ See Exhibit F-6, August 2008 Medical Records at 1-2.

⁷⁸⁴ See Exhibit F-7, November 2008 Medical Records at 1.

⁷⁸⁵ See Exhibit F-8, December 2008 Functional Capacity Evaluation at 1.

⁷⁸⁶ See Exhibit F-3, Disability Report – Adult-Form SSA-3368 at 2,

⁷⁸⁷ *Id.* at 2.

In November 2009, the agency sent her for a physical examination during which the claimant specifically denied having diabetes at all.⁷⁸⁸ In the exam notes explaining her past medical history, it was written: “Endocrine Hx [History]: Claimant denies diabetes.”⁷⁸⁹

The claimant’s initial application was denied on January 20, 2010, and then again at reconsideration on April 13, 2010.⁷⁹⁰ The agency determined she could work, but at a pace that was less physically demanding than her previous job as a medical assistant.⁷⁹¹ The reconsideration denial stated:

Although you are somewhat limited by your conditions, medical evidence shows you are still capable of doing some work related activities. ... We realize that your condition prevents you from doing any of your past work, but it does not prevent you from doing work which is less demanding and requires less physical effort.⁷⁹²

She appealed the decision the next day and requested a hearing in front of an administrative law judge.⁷⁹³ In a statement faxed to the agency at the same time she reiterated her conditions, but still made no mention of diabetes.⁷⁹⁴

Claimant Added to DB List. On May 14, 2010, she hired Mr. Conn as her representative.⁷⁹⁵ Mr. Conn and Judge Daugherty placed her on the July 2010 “DB List” and marked her as needing a “physical” exam.⁷⁹⁶

Dr. Huffnagle examined the claimant on June 23, 2010, and his exam notes found: “This woman is experiencing low back pain with pain into both the right and left leg. She has more pain in the right leg than in the left leg. She also has her right ankle wrapped up and tells us that she has stretched tendons in the right ankle that she is currently being treated for.”⁷⁹⁷

However, his exam notes bore a striking similarity with another claimant’s diagnosis. For the claimant discussed above in case D, who Dr. Huffnagle examined on the same day, he determined the claimant’s back issues related to her career, stating:

This woman’s work history is significant in that... her job required her to lift...repetitively. Her pain came on gradually over time.⁷⁹⁸

⁷⁸⁸ See Exhibit F-9, November 2009 Internal Medicine Evaluation at 1.

⁷⁸⁹ *Id.* at 1.

⁷⁹⁰ See Exhibit F-10, January 20, 2010 Notice of Disapproved Claim at 1 and see Exhibit F-11, Notice of Reconsideration at 1.

⁷⁹¹ See Exhibit F-11, April 13, 2010 Notice of Reconsideration at 1.

⁷⁹² *Id.* at 1.

⁷⁹³ See Exhibit F-12, April 14, 2010 Request for Hearing by Administrative Law Judge at 1.

⁷⁹⁴ See Exhibit F-13, April 13, 2010 Statement of Appeal Filing at 2.

⁷⁹⁵ See Exhibit F-14, May 14, 2010 Appointment of Representative and Fee Contract at 1 and 2.

⁷⁹⁶ See Exhibit D-14, DB July 2010 CLF030809 at 1.

⁷⁹⁷ See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

⁷⁹⁸ See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle M.D. at 1.

For both claimants as well, he wrote a nearly identical description of their conditions, in this case writing:

This woman's work history is significant in that she...repetitively lifted...during the course of her work. Her problems with her back came on gradually over time. She has osteoarthritis and degenerative arthritis.⁷⁹⁹

In addition, Dr. Huffnagle also diagnosed the claimant with diabetes, without the benefit of any objective diagnostic testing, which is not mentioned in any of the claimant's other medical records, and which she denied having only six months prior.⁸⁰⁰ He also diagnosed the claimant with "Osteoarthritis," "Degenerative arthritis," and "Sciatica."⁸⁰¹

Dr. Huffnagle signed the Conn Law Office's RFC Version #6 on the same day.⁸⁰²

Claimant Awarded Benefits. On August 3, 2010, Judge Daugherty wrote a brief, four-page fully favorable decision awarding benefits to the claimant.⁸⁰³ He based his decision solely on the findings of Dr. Huffnagle and found the claimant to have "the following severe impairments: osteoarthritis, sciatica and diabetes."⁸⁰⁴

He found the claimant disabled since April 2, 2008 when she last stopped working, though did not explain why this was the case in light of her being cleared to work several times after that date.⁸⁰⁵ His opinion did not also explain why he believed the claimant had diabetes in light of the evidence otherwise.⁸⁰⁶ He instead wrote that the agency doctors were "given little weight because another medical opinion is more consistent with the record as a whole" and concluded:

Having considered all of 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....Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform.⁸⁰⁷

3. Judge Daugherty Failed to Address Claimant Noncompliance

According to agency regulations, individuals are required to follow physician-prescribed treatments in order to qualify for disability benefits. This prevents someone with a treatable

⁷⁹⁹ See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

⁸⁰⁰ *Id.* at 4 and see Exhibit F-13, April 13, 2010 Statement of Appeal Filing at 2.

⁸⁰¹ See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4.

⁸⁰² *Id.* at 5 and 8.

⁸⁰³ See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 4.

⁸⁰⁴ *Id.* at 3.

⁸⁰⁵ *Id.* at 1 and see Exhibit F-7, November 2008 Medical Records at 1 and Exhibit F-8, December 2008 Functional Capacity Evaluation at 1.

⁸⁰⁶ See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3-4.

⁸⁰⁷ *Id.* at 3-4

condition from receiving benefits when they might otherwise work. Judge Daugherty failed to address this issue in the cases reviewed, and instead awarded benefits to individuals who may have been ignoring their doctors.

According to SSA rules: “Individuals with a disabling impairment which is amenable to treatment that could be expected to restore their ability to work must follow the prescribed treatment to be found under a disability, unless there is a justifiable cause for the failure to follow such treatment.”⁸⁰⁸ Failure to follow prescribed treatment is referred to as noncompliance. These rules prevent claimants from manipulating a manageable illness in order to qualify for benefits. At a minimum, in instances where the medical evidence of record reflects evidence of patient noncompliance, an ALJ is required to develop evidence around issues of noncompliance to determine whether or not it is justifiable in deciding whether to award benefits.⁸⁰⁹

The Committee found cases in which the medical evidence included indications of claimant noncompliance with prescribed treatment, yet Judge Daugherty’s written opinions provided neither discussion of that evidence, nor his evaluation of its relevance in choosing to award benefits.

Case G: In this case, Judge Daugherty awarded benefits to a claimant who injured his arm in a traffic accident, but based his decision on inaccurate information.⁸¹⁰ Whereas the claimant’s accident occurred in December 2009, Judge Daugherty awarded benefits as of April 2009 when the man stopped working – but confused the two dates.⁸¹¹ Moreover, the claimant failed to follow his doctor’s instructions following his accident, delaying surgery and failing to participate in physical therapy, which greatly inhibited his recovery.⁸¹²

When the accident occurred, the claimant was driving his truck through the woods, but injured his arm when it struck a tree outside of the window.⁸¹³

Notes from the emergency room visit on that date indicate that the claimant was diagnosed with fractures in both the radius and ulna bones in his left forearm.⁸¹⁴ The emergency room physician reset the fractures and put the claimant in a splint.⁸¹⁵ Since surgery was a strong possibility he was given the name and address of an orthopedic surgeon and instructed: “Be at his office at 8am in the morning. DO NOT EAT OR DRINK ANYTHING AFTER MIDNIGHT TONIGHT.”⁸¹⁶

⁸⁰⁸ SSR 82-59: Titles II and XVI: Failure to Follow Prescribed Treatment, http://www.ssa.gov/OP_Home/rulings/di/02/SSR82-59-di-02.html

⁸⁰⁹ Ibid.

⁸¹⁰ See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1.

⁸¹¹ See Exhibit G-2, December 2009 Medical Records at 1 and see Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1.

⁸¹² See Exhibit G-2, December 2009 Medical Records at 1.

⁸¹³ *Id.* at 2.

⁸¹⁴ See Exhibit G-3, December 2009 Medical Records at 1.

⁸¹⁵ *Id.* at 3.

⁸¹⁶ *Id.* at 5.

However, he failed to show up the next morning and did not see a surgeon for five more days.⁸¹⁷ Notes from the orthopedic physician state:

Patient, 5 days prior, was driving his truck in the woods. His truck started to slip down the hill...he was found in the Emergency Department to have a left both-bone forearm fracture. He was told to follow up 1st thing in the morning for a clinical evaluation and placed on the OR schedule given the severity of his injury. He did not show up in clinic. The clinical staff tried to contact him given the phone number as listed in the system and were unable to do so, since the numbers were unlisted. Patient showed up in clinic today 5 days out with severe pain in his left wrist, inability to flex and extend his fingers, and numbness in his fingers and hand. This is likely due to some degree of compartment syndrome, which was not treated secondary to the patient's refusal to follow up in a timely manner ... After the risks of surgery were discussed with the patient and the fact that since he did not follow up in a timely manner, he may not get recovery of his nerve or muscle function of his hand...⁸¹⁸

As such, the claimant's failure to show up the following morning exacerbated the medical condition which formed the basis for his subsequent application for disability benefits.⁸¹⁹

In a follow up visit in December 2009, the same orthopedic physician noted that the claimant was still experiencing stiffness in his arm, and said, "The necessity of PT [physical therapy] was also described although I doubt, given the financial status of the patient, that he will actually actively participate in PT..."⁸²⁰ In that same visit, the physician said, "It is anticipated that the patient will most likely be off work approximately 6 months from date of injury."⁸²¹

On December 30, 2009, the claimant hired Eric Conn as his representative.⁸²² The same day he requested his case be transferred to the Prestonsburg, Kentucky SSA office.⁸²³ In doing so, he signed a "Request for Transfer and Waiver of Travel Expenses," which allowed his case to be heard nearby Mr. Conn's law offices, but waived his opportunity to have SSA pay for his travel costs.⁸²⁴

The claimant filed for disability the next day on December 31, 2009, citing, "pain in arm, had two surgeries on left arm, can't use left hand, pain in knees and legs, and trouble breathing."⁸²⁵ However, in filing his application he said that his disability began on April 21, 2009, when he stopped working, rather than December, when medical records show he was injured.⁸²⁶

⁸¹⁷ See Exhibit G-2, December 2009 Medical Records at 1.

⁸¹⁸ *Id.* at 1-2.

⁸¹⁹ See Exhibit G-4, Disability Report – Adult – Form-SSA-3368 at 2.

⁸²⁰ See Exhibit G-5, December 2009 Medical Records at 1.

⁸²¹ *Id.* at 1.

⁸²² See Exhibit G-6, December 30, 2009 Appointment of Representative and Fee Agreement at 1-2.

⁸²³ See Exhibit G-7, December 30, 2009 Request for Transfer and Waiver of Travel Expenses at 1-2.

⁸²⁴ *Id.* at 1-2.

⁸²⁵ See Exhibit G-4, Disability Report – Adult-Form-SSA-3368 at 2.

⁸²⁶ *Id.* at 3.

Moreover, the only medical records he submitted were dated from December 2009 onward – there was nothing related to a disability beginning in April 2009.

As is typical when a claimant submits few medical records, the agency sent him to a consultative exam in March 2010.⁸²⁷ The doctor determined the claimant “should be able to sit, walk, and/or stand for a full workday with adequate breaks. He would have moderate restrictions in his ability to lift/carry objects due to his left arm pain, weakness and decreased range of motion. He can hold a conversation, respond appropriately to questions, carry out and remember instructions.”⁸²⁸

Less than two weeks later in April, however, another doctor concluded that even these moderate limitations were not valid and said the prior doctor’s view “is given no weight as it is regarding condition now,” and would not last more than 12 months.⁸²⁹ He added that a recent physical exam was “quite unremarkable except for left UE findings [referring to the claimant’s left arm injuries]and that “all-in-all, physical expected to resolve and then have no impact on the ability to do basic work-related activities.”⁸³⁰

The claimant’s initial application was denied on April 8, 2010, and then again on May 7, 2010.⁸³¹ In its reconsideration denial, the agency wrote:

You said you became disabled on 04/21/2009 because of problems with your left arm and hand, pain in your knees, and trouble breathing. The medical evidence shows that you have been treated for your conditions. Although you report some discomfort following your surgery, your medical records show good healing. Although you report pain in your hands, you are still able to do basic grasping and handling of objects with your right hand. Although you report breathing difficulties, you are able to breathe in a satisfactory manner. We have reviewed your claim and determined that your conditions are not considered disabling. Even though you are not able to work now, your condition is expected to improve. It will not prevent you from working for 12 months.⁸³²

Claimant Added to DB List. A week later he appealed to request a hearing before an ALJ.⁸³³ Mr. Conn and Judge Daugherty placed his name on the July 2010 “DB List” and marked him down for a “physical” exam.⁸³⁴

Dr. Huffnagle’s medical exam, conducted on June 23, 2010, described the claimant’s current medical symptoms the following way: “This man is experiencing low back pain. He also has

⁸²⁷ See Exhibit G-8, March 2010 Medical Records at 1.

⁸²⁸ *Id.* at 3.

⁸²⁹ See Exhibit G-9, April 2010 Case Analysis at 1.

⁸³⁰ *Id.* at 1.

⁸³¹ See Exhibit G-10, April 9, 2010 Notice of Disapproved Claim at 1 and see Exhibit G-11, May 7, 2010 Notice of Reconsideration at 1.

⁸³² *Id.* at 1.

⁸³³ See Exhibit G-11, May 18, 2010 Request for Hearing by Administrative Law Judge at 1.

⁸³⁴ See Exhibit D-14, DB July 2010 CLF030809 at 1.

right and left knee pain. He has neck pain with pain that radiates into the left shoulder. He is experiencing headaches, which he attributes to his cervical pain. He also has left wrist pain.”⁸³⁵

In his exam report, however, he also inaccurately said the claimant’s truck accident and injury occurred in April 2009 rather than in December 2009: “On 4/21/09 this man had his left arm resting on the door of his truck with the window down...which resulted in displacement of the bone in his left arm, and jarring of his left shoulder.”⁸³⁶ His description of the claimant’s surgical history was also inaccurate, which suggested the claimant had surgery the same day he was injured, rather than five days later, writing: “He was taken to [the hospital] and had surgery there and then a few days later had a second surgery.”⁸³⁷

Dr. Huffnagle diagnosed the claimant with “Traumatic arthritis,” “Fracture of the left arm,” and “Cervical sprain/strain.”⁸³⁸ Moreover, while several agency doctors said the claimant was sure to heal, Dr. Huffnagle concluded “this man’s traumatic arthritis is not going to improve with time. It is affecting his lumbar spine and his shoulder. He will need lifelong treatment for this.”⁸³⁹

On the same day, Dr. Huffnagle signed the Conn Law Office RFC Version #2.⁸⁴⁰

Claimant Awarded Benefits. Judge Daugherty issued his fully favorable decision on August 2, 2010 after concluding the claimant had several severe limitations, specifically, the same conditions diagnosed by Dr. Huffnagle: “traumatic arthritis, fracture of left arm and cervical strain/sprain.”⁸⁴¹ His written decision failed to account for the claimant’s noncompliance in showing up for his surgical appointment.⁸⁴² By failing to hold a hearing he was unable to question the claimant about why this happened.⁸⁴³

He based his determination solely on the opinion of Dr. Huffnagle, who he said most accurately represented the facts of this case.⁸⁴⁴ He did not, however, reconcile the numerous factual errors made by Dr. Huffnagle in his exam report.⁸⁴⁵

Judge Daugherty also determined the claimant’s disability began on April 21, 2009.⁸⁴⁶ This was supported only by the claimant’s own statements, and the factual inaccuracy in Dr. Huffnagle’s report, which said the claimant’s accident occurred in April 2009.⁸⁴⁷ However, he concluded:

⁸³⁵ See Exhibit G-13, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle M.D. at 1.

⁸³⁶ *Id.* at 1.

⁸³⁷ *Id.*

⁸³⁸ *Id.* at 4.

⁸³⁹ *Id.*

⁸⁴⁰ *Id.* at 5-8.

⁸⁴¹ See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3 and 5.

⁸⁴² *Id.* at 3-4.

⁸⁴³ *Id.* at 1.

⁸⁴⁴ *Id.* at 3.

⁸⁴⁵ *Id.* at 3-4

⁸⁴⁶ *Id.* at 1.

⁸⁴⁷ See Exhibit G-4, Disability Report-Adult-Form SSA-3368 at 3 and see Exhibit G-13, June 23, 2010 Social Security Disability Medical Assessment at 1.

Having considered all of 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.⁸⁴⁸

4. Judge Daugherty Failed to Assess Evidence of Drug and Alcohol Abuse

When evaluating cases in which evidence of drug or alcohol abuse is present, the ALJ is required to determine whether drug addiction or alcoholism is "a contributing factor material to the Commissioner's determination that the individual is disabled."⁸⁴⁹ The agency follows a sequential process to determine whether drug and alcohol abuse is a material contributing factor. In instances where such abuse is the only factor present, the claim must be denied. In instances where other impairments are also present, the agency must determine whether the individual would still be disabled if the drug or alcohol abuse, and the associated conditions caused by that abuse, went away. The agency's guidance notes that adjudicators, including an ALJ, "must provide sufficient information so that a subsequent reviewer considering all of the evidence in the case record can understand the reasons.....whenever drug or alcohol abuse is an issue."⁸⁵⁰

Despite such guidance, a number of Judge Daugherty's decisions failed entirely to account for and reconcile evidence in the case file of drug or alcohol abuse, and as with other case examples discussed here, relied solely on the opinions provided by Dr. Huffnagle and others to justify the award of benefits.

Case H: Judge Daugherty awarded benefits to a claimant for liver problems, among other conditions, who also had lifelong alcoholism, but failed to address the claimant's alcohol use in his decision.⁸⁵¹ The claimant applied for benefits on the basis of stomach problems, diabetes, fatigue, pain in feet, back, legs, and knees, depression, nervousness, and anxiety.⁸⁵² Judge Daugherty awarded benefits on the basis that the claimant had cirrhosis, shortness of breath, and pain that limited him to performing less than sedentary work.⁸⁵³ Judge Daugherty's decision relied exclusively on the medical opinion of Dr. Huffnagle, who never examined the claimant in person.⁸⁵⁴

Throughout the case file, the claimant's heavy alcohol use was well documented. According to the medical records,, it resulted in the claimant's temporary hospitalization.⁸⁵⁵ Records from the visit in early 2006 showed the claimant was "...admitted with 1 week history of diffuse upper abdominal pain. The pain got worse yesterday. The patient has been drinking very heavily for the past few weeks. He has a history of heavy alcohol abuse. He has been drinking all of his

⁸⁴⁸ See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

⁸⁴⁹ Check cite: 42 U.S.C. 1382(c)

⁸⁵⁰ http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2013-02-di-01.html (will fix citations for this paragraph and clean up language)

⁸⁵¹ See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1.

⁸⁵² See Exhibit H-2, Disability Report – Adult-Form SSA-3368 at 1.

⁸⁵³ See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 2.

⁸⁵⁴ *Id.* at 2 and see Exhibit H-3, January 12, 2007 File Review, Frederic T. Huffnagle at 1.

⁸⁵⁵ See Exhibit H-4, March 2006 Consultation at 1.

life, as per the family.”⁸⁵⁶ The physician noted that he drank a 12-pack per day for 30 years and smoked a pack and a half of cigarettes per day for 30 years as well.⁸⁵⁷ On this particular occasion the claimant’s blood alcohol level reached .209 and he was hospitalized for 10 days.⁸⁵⁸ Upon discharge, the claimant was diagnosed with multiple conditions, including alcoholism, and chronic pulmonary obstructive disease and was told to stop smoking, stop drinking, and to comply with a strict diet.⁸⁵⁹ The discharge instructions did not indicate that the claimant should stop working.⁸⁶⁰

The claimant was hospitalized again on several occasions in which his alcohol abuse either played a role, or was discussed with treating physicians, both before and after the incident described above. In an earlier hospitalization in 2004, the claimant was involved in a motor vehicle accident as a passenger, and admitted to the emergency room with a blood alcohol content of .31 and minor injuries.⁸⁶¹

On April 10, 2006 he hired Eric Conn as his attorney and applied for disability benefits, alleging: “stomach problems, diabetes, fatigue, pain in feet, back, legs and knees, depression, nervousness and anxiety.”⁸⁶² He said his problems began on January 15, 2004 when he stopped working.⁸⁶³

In late July 2006, the claimant was hospitalized for three days due to noncompliance with diabetes medication and acute gastroenteritis.⁸⁶⁴ The exam notes stated:

Because of his chronic alcoholism, he was offered detox, but he refused. He also refused any involvement with AA meetings. He stated that he is going to stop drinking on his own.....He was told at this point that he probably has cirrhosis of the liver. He had this diagnosis made in Hazard before with low platelets due to hypersplenism and his LFTs due to chronic alcohol cirrhosis. Again, he was told that he definitely needs to stop the ETOH [ethanol] abuse as mentioned above.⁸⁶⁵

Despite his doctor’s instructions to stop drinking, the claimant was again hospitalized in October 2006, admitted to the emergency room with abdominal pain and vomiting.⁸⁶⁶ During the exam the doctors found:

The patient is a known insulin dependent diabetic. He went to [another state] for 2 weeks and did not take his Humalog insulin. The patient also has history of chronic alcoholism. He drinks about ½ a case to 1 case a day, and smokes about 2

⁸⁵⁶ *Id.* at 1.

⁸⁵⁷ See Exhibit H-5, March 2006 History and Physical Examination at 2.

⁸⁵⁸ *Id.* at 2 and see Exhibit H-6, March 2006 Discharge Summary at 1.

⁸⁵⁹ *Id.*

⁸⁶⁰ *Id.*

⁸⁶¹ See Exhibit H-7, July 2004 Medical Records at 1 and 2.

⁸⁶² See Exhibit H-8, April 10, 2006 Appointment of Representative at 1 and see Exhibit H-2, Disability Report – Adult-Form SSA-3368 at 2.

⁸⁶³ *Id.* at 2.

⁸⁶⁴ See Exhibit H-9, July 2006 Discharge Summary at 1.

⁸⁶⁵ *Id.* at 2.

⁸⁶⁶ See Exhibit H-10, October 2006 Discharge Summary at 1 and 2.

packs a day. ... His blood sugar dropped to around the 200 range but the patient signed himself out against medical advice. He was advised to use Humalog insulin at 30 units a.m. and 30 units p.m. If he needs alcohol rehab, he will call and ask for an appointment. He signed himself out.⁸⁶⁷

During the application process, however, the claimant failed to attend several consultative exams requested by the agency, despite being contacted several times.⁸⁶⁸ According to a letter provided to the claimant on December 6, 2006, the agency denied his application for benefits over his failure to appear at these exams: “Due to a lack of medical information regarding your depression, nervousness, and anxiety, you were scheduled for a special medical examination...on Saturday, November 18, 2006. You were notified and reminded of this exam, but you did not keep the exam. Because there is insufficient evidence to make a complete determination, your claim is denied.”⁸⁶⁹

On December 14, 2006, he appealed and requested a hearing before an administrative law judge.⁸⁷⁰

Claimant Added to DB List. Mr. Conn and Judge Daugherty put the claimant on the January 2007 DB List and noted “MENTAL AOD [amend onset date] 04/11/06.”⁸⁷¹

On January 12, 2007, Dr. Huffnagle signed a report titled, “Social Security Medical Disability Assessment,” which provided his conclusions about the claimant.⁸⁷² However, Dr. Huffnagle did not examine the claimant in person, but instead performed a “File Review,” which looks only at the paper records available.⁸⁷³ His brief report, which was little more than half of a page in length, was faxed to SSA on January 16, the day before Judge Daugherty issued his decision.⁸⁷⁴

Dr. Huffnagle’s report noted the claimant had cirrhosis of the liver, but otherwise made no specific diagnoses, finding only complaints of “stomach problems, respiratory problems.”⁸⁷⁵ Regarding his alcohol-related problems, he found, “The patient has a history of alcohol which likely accounts for some of his problems. However, his problems have now reached a level of severity that even if he were to stop drinking his problems would remain in the absence of alcohol.”⁸⁷⁶

⁸⁶⁷ *Id.* at 1-2.

⁸⁶⁸ See Exhibit H-11, November 21, 2006 RE: Special Medical Examination at 1.

⁸⁶⁹ See Exhibit H-12, December 6, 2006 Notice of Reconsideration at 1.

⁸⁷⁰ See Exhibit H-13, December 14, 2006 Request for Hearing by Administrative Law Judge at 1.

⁸⁷¹ See Exhibit H-14, D.B. January CLF030654 at 2.

⁸⁷² See Exhibit H-3, January 12, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1-2.

⁸⁷³ *Id.* at 1 and See June 12, 2012 Affidavit of Jamie Lynn Slone ¶12.

⁸⁷⁴ See Exhibit H-3, January 12, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 2.

⁸⁷⁵ *Id.* at 1.

⁸⁷⁶ *Id.*

He concluded his report by explaining the claimant would not be able to work, and even made precise judgments about the length of time he could work each day, despite never actually examining the claimant:

The patient due to severe uncontrolled abdominal pain would have a need for significant breaks that would cause him to be off tasks for long periods of time. It is my opinion within reasonable medical probability that this patient would only be able to stay on task for six hours in an eight hour workday and the six hours would not be continuous. His ability to stay on task at one time would be no more than one hour at a time.⁸⁷⁷

Claimant Awarded Benefits. Dr. Huffnagle's report was faxed to the agency on January 16, 2007.⁸⁷⁸ Two days later – little more than a month after the claimant appealed his denial – Judge Daugherty issued a fully favorable decision, without holding a hearing.⁸⁷⁹ Moreover, the decision was based exclusively on the brief file review conducted by Dr. Huffnagle.⁸⁸⁰

At no point in the written decision, however, did Judge Daugherty acknowledge the claimant's alcohol abuse, which even Dr. Huffnagle and other treating physicians documented to be the likely reason for his condition.⁸⁸¹ Rather, he found that the claimant had “the following ‘severe’ impairments: cirrhosis, SOB [shortness of breath], and pain.”⁸⁸² Judge Daugherty did not specify anything more specific regarding the last impairment – “pain” – but simply found it limited him to less than sedentary work:

The evidence supports a finding that the claimant retains the following residual functional capacity: needs significant breaks, causing him to be off task for long periods of time and could stay on task no more than 6 hours in a work day. Having considered all of 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.⁸⁸³

Based on that finding, Judge Daugherty relied on the Medical Vocational Guidelines to award benefits to the claimant.

5. Factual Inaccuracies in Judge Daugherty's Decisions and Misuse of Medical Opinions

The Committee reviewed a number of cases where, in addition to the sole reliance on medical opinions procured by Eric Conn, Judge Daugherty misused information from the opinions themselves. Thus, his decisions contained numerous factual inaccuracies, which were important in the award of benefits.

⁸⁷⁷ *Id.* at 1-2.

⁸⁷⁸ *Id.* at 2.

⁸⁷⁹ See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 4.

⁸⁸⁰ *Id.* at 2.

⁸⁸¹ *Id.* at 1-4.

⁸⁸² *Id.* at 1.

⁸⁸³ *Id.* at 2.

Case I: Judge Daugherty awarded benefits to a man for a disc prolapse and chronic pain despite being cleared to work by several doctors.⁸⁸⁴

Records in the file indicate that the claimant hired Eric Conn on March 29, 2006 and applied for benefits the next day.⁸⁸⁵ His application alleged he became disabled that same month.⁸⁸⁶ This claimant applied for benefits due to “problems with both ankles swelling, calcium deposits on ligaments, arthritis in knees, bone spurs and arthritis in disc in back and all joints, left elbow has been broken and unable to straighten arm, pain in hands, limited use of hands, pain in back that goes to legs and knees, borderline cholesterol, and hearing loss in both ears.”⁸⁸⁷

Following his application, the agency sent the claimant for a consultative physical exam in May 2006.⁸⁸⁸ In the medical history section of the exam report, the claimant traced his ankle pain to a diagnosis of calcium deposits on the tendons in both ankles from 2003, and said that he had pain in his ankles about 4-5 days per week.⁸⁸⁹ His elbow fracture was from 2000, and occurred while playing basketball.⁸⁹⁰ The claimant said that “he can no longer play sports because of his elbow. He complains of pain in his left elbow about 2 times per month and he is unable to use his left arm at those times.”⁸⁹¹

Despite reporting that he stopped working due to his disability, his records also showed that his disability began on the same day he was laid off.⁸⁹² In the employment section of the exam notes it stated that, “Patient last worked on March 17, 2006...He worked there for 6 months before being laid off.”⁸⁹³

Based on the physical exam, the physician concluded that the claimant was fully able to work and had almost no significant limitations:

[I]t would appear that this claimant does have the ability to do such work related activities as sitting, standing, moving about, lifting, carrying, handling objects, hearing and seeing and speaking and traveling. His routine physical examination today was within normal limits with the exception of some findings of some mild arthritis in the knees....while I do believe he does have findings compatible with some mild arthritis, I do not find that this arthritis is of such an extent that it would prevent him from performing his job functions...Based on his examination

⁸⁸⁴ See Exhibit I-1, January 16, 2007 Decision, Administrative Law Judge David B. Daugherty at

⁸⁸⁵ See Exhibit I-2, March 29, 2006 Appointment of Representative at 1 and see Exhibit I-3, Application Summary for Disability Benefits at 1.

⁸⁸⁶ *Id.* at 1.

⁸⁸⁷ See Exhibit I-4, Disability Report-Adult-Form SSA-3368 at 2.

⁸⁸⁸ See Exhibit I-5, May 2006 Consultative Examination at 1.

⁸⁸⁹ *Id.* at 1.

⁸⁹⁰ *Id.* at 2.

⁸⁹¹ *Id.*

⁸⁹² *Id.* and see Exhibit I-4, Disability Report-Adult Form SSA- 3368 at 2.

⁸⁹³ See Exhibit I-5, May 2006 Consultative Examination at 2.

today, I found no factors which would limit his ability to do job related activities.⁸⁹⁴

Based on this evidence, the agency denied the claim initially on June 7, 2006.⁸⁹⁵ The claimant requested reconsideration of his application, and in the meantime, sought additional medical treatment for his back pain.⁸⁹⁶

In June 2006, the claimant saw an orthopedic specialist who reviewed X-rays the claimant brought with him and concluded that “Disc space is well preserved except for L5,S-1 which has a near complete effacement [narrowing of space].”⁸⁹⁷ The physician recommended getting an MRI and beginning exercises, as well as a course of physical therapy.⁸⁹⁸ He also, however, noted that with those activities, the claimant was healthy enough to return to work in the future: “Based on MRI findings, an epidural would likely be helpful. I think between that and exercises, it is likely he would be able to return to gainful employment.”⁸⁹⁹

The next day, the claimant saw another physician in the same practice.⁹⁰⁰ Under the “history” section of the exam notes, the claimant described his condition by saying:

...over the past six months, the pain has gotten much worse. He states that most of the pain seems to be located in the lower part of the back with very mild radiation into both buttocks. He denies any significant radiculopathy or symptoms going down into the leg. Most of the pain is the dull achy-type pain in the lower back that is made worse by physical activity. He states that he has been dealing with this for approximately 20 years and he gets some mild relief with ibuprofen. Recently the pain has gotten to the point where it affects his daily functioning. He states that he is to the point where ibuprofen is not handling the pain as well. Sitting to standing, lying to sitting, and transition positions increased the pain. He gets some relief when he rests...He denies any numbness, tingling or paresthesia into the leg. He denies weakness in the legs.⁹⁰¹

The physician concluded that the claimant “on MRI does have a lot of degenerative joint disease in the lower spine. There was apparently no evidence of any nerve root impingement, a formal read is pending.”⁹⁰² The physician “discussed options, risks, and alternatives with him. He opted to proceed today with an epidural injection. I told him it probably would not give him long lasting relief because of the degenerative joint disease in the back, but we opted to proceed.” The physician also “talked to him about exercise program, water aerobics, some weight loss, and probably to avoid smoking.”⁹⁰³

⁸⁹⁴ *Id.* at 4.

⁸⁹⁵ See Exhibit I-6, June 7, 2006 Notice of Disapproved Claim at 1.

⁸⁹⁶ See Exhibit I-7, Request for Reconsideration at 1 and Exhibit I-8, June 2006 Medical Records at 1.

⁸⁹⁷ See Exhibit I-8, June 2006 Medical Records at 2.

⁸⁹⁸ *Id.* at 2.

⁸⁹⁹ *Id.*

⁹⁰⁰ See Exhibit I-9, June 2006 Medical Records at 1.

⁹⁰¹ *Id.* at 1.

⁹⁰² *Id.* at 2.

⁹⁰³ *Id.*

The exam notes do not indicate the claimant was advised against working or given any other physical limitations.⁹⁰⁴

When the formal report of the MRI arrived later that day it showed the problem to be less severe than his doctor originally believed, and characterized the claimant's back issues as "minimal arthritic change, no evidence of significant lumbar disc pathology."⁹⁰⁵ The claimant returned to the clinic for another epidural injection a month later in July 2006.⁹⁰⁶ Exam notes from that visit stated, "[He] tells me that he has significantly improved. He states he still has some pain. He would describe, maybe 50-60% improvement..."⁹⁰⁷ While sitting in the car for the six-hour trip to the clinic exacerbated his pain, he said overall there were signs of improvement.⁹⁰⁸ The physician noted that the MRI from the previous visit had been reviewed and showed "just minimal arthritic changes, but no significant evidence of lumbar disc pathology."⁹⁰⁹

The agency reviewed this additional evidence, and on November 28, 2006, once more concluded the claimant was not disabled, and in fact wrote a detailed analysis showing the claimant to be in overall good health:

The medical evidence shows that you have been evaluated and treated for your conditions. Although you report pain and discomfort, the evidence shows that you have satisfactory movement in your ankles, knees, back, elbows, hands and joints. There is no severe muscle weakness or loss of control due to nerve damage. Your grip strength is satisfactory. There are no significant restrictions in your ability to stand, walk, move about, handle objects and do your normal activities. Although your cholesterol may become higher than normal at times, there is no evidence of end organ damage. Although you report problems with your hearing, your records show that you are able to hear satisfactorily.⁹¹⁰

Claimant Added to DB List. He requested a hearing before an ALJ on December 6, 2006.⁹¹¹ Judge Daugherty and Mr. Conn placed the claimant on the January 2007 "DB List."⁹¹²

On January 5, 2007 he was sent by Mr. Conn to see Dr. Huffnagle.⁹¹³ However, according to Dr. Huffnagle's brief exam write-up, the claimant's conditions were not severe.⁹¹⁴ After performing his physical exam, Dr. Huffnagle concluded that the claimant had "chronic low back pain, status post disc prolapsed, which is healed."⁹¹⁵

⁹⁰⁴ *Id.* at 1-2.

⁹⁰⁵ See Exhibit I-10, June 2006 MRI at 1.

⁹⁰⁶ See Exhibit I-11, July 2006 Medical Records at 1.

⁹⁰⁷ *Id.* at 1.

⁹⁰⁸ *Id.*

⁹⁰⁹ *Id.*

⁹¹⁰ *Id.*

⁹¹¹ See Exhibit I-13, Request for Hearing by Administrative Law Judge at 1.

⁹¹² See Exhibit H-14, D.B. January CLF030653 at 2.

⁹¹³ See Exhibit I-14, January 5, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

⁹¹⁴ *Id.* at 2.

⁹¹⁵ *Id.*

The same day he signed the Conn Law Office RFC Version #16.⁹¹⁶ The RFC, though, contradicted the claimant's own allegations of hearing loss in both ears, indicating he did not have any problems at all.⁹¹⁷

Claimant Awarded Benefits. Judge Daugherty issued a fully favorable decision eleven days later on January 16, 2007.⁹¹⁸ He cited only the medical opinion of Dr. Huffnagle and found the claimant to have "the following 'severe' impairments: disc prolapse and chronic pain."⁹¹⁹ He noted that:

Having considered all of 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 sedentary work, at best.⁹²⁰

Judge Daugherty failed to note, however, that rather than characterizing the claimant's disc prolapse as being severe, Dr. Huffnagle characterized it as being healed.⁹²¹ In other words, the very condition Judge Daugherty used as the basis for awarding benefits was healed.

6. Reassignment of Cases from Judge Gitlow to Judge Daugherty

Case J: In this instance, the claimant's case was before Administrative Law Judge Gitlow.⁹²² However, before Judge Gitlow could issue a decision, the claimant requested that his case be dismissed, and reapplied for benefits.⁹²³ Under the new application, his case was ultimately decided favorably by Judge Daugherty, who based his decision solely on a mental exam conducted by Dr. Brad Adkins.⁹²⁴

Claimant Denied Benefits in a Prior Application: Medical records in the file document a long history of treatment for the claimant's leg injury, which stemmed from a traffic accident in 1993.⁹²⁵ Following the accident, he underwent several surgeries in 1993 and 1995, including the placement of a rod in his fractured femur.⁹²⁶ His file contained medical records from the claimant's main treating physician focusing mainly on this condition up through 2006.

At a visit in 1999, the physician ordered a functional capacity evaluation to see if he could work.⁹²⁷ The evaluation was performed a few days later, but the therapist who performed the evaluation found the results to be invalid due to what the therapist classified as a "manipulation

⁹¹⁶ *Id.* at 4 and 7.

⁹¹⁷ *Id.* at 6.

⁹¹⁸ See Exhibit I-1, January 16, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 4.

⁹¹⁹ *Id.* at 2.

⁹²⁰ *Id.*

⁹²¹ *Id.*

⁹²² See Exhibit J-1, November 20, 2006 Notice of Dismissal at 3.

⁹²³ *Id.* at 3 and see Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 1 and 7.

⁹²⁴ See Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 1.

⁹²⁵ See Exhibit J-4, November 1999 Medical Records at 1.

⁹²⁶ *Id.* at 1.

⁹²⁷ *Id.* at 1 and 2.

effort” by the claimant.⁹²⁸ Based on the results that were demonstrated, the therapist stated “This assessment, although invalid, would qualify [the claimant] to be able to do light work as a physical demand level.”⁹²⁹

Several years later in August 2002, the claimant was ordered off work by this same treating physician, but records also show he was able to return to work by December of that year.⁹³⁰ The claimant continued to see his physician and receive treatment for his pain for the next few years.

In May 2004, the physician stated that the claimant was “...unemployed at present. The company with which he was employed has closed their offices.”⁹³¹ The claimant’s application for disability benefits indicated, however, that he became unable to work in April 2004 because of his medical conditions.⁹³² In 2005, the physician noted in a write-up, “[The claimant] is in today for follow-up. He still describes persistent right lower extremity pain and some radiculopathy. He has yet to find any type of work, and therefore, has signed up for disability.”⁹³³

Notes from a May 2006 exam with the claimant’s treating physician stated:

He is still having some knee pain and this pops at times. He hasn’t done anything to reinjure this. He is concerned about hardware becoming loose and creating a problem. He is much more inactive and is becoming much more depressed. He is staying in the house a lot and has a non-restorative sleep pattern. He is napping throughout the day. I have had a real heart-to-heart talk with him and basically told him to get his head on straight, that he is not disabled totally, and that there is no reason, with his computer background, that we cannot get him some type of retraining, out of the house, and productive.⁹³⁴

His physician recommended that the claimant contact the Department of Rehabilitative Services for re-evaluation and concluded: “He is not totally disabled and there is no reason that he cannot get back into some type of meaningful employment. I only hope that he will heed my constructive advice.”⁹³⁵

The same physician saw the claimant again, who presented with symptoms related to his leg pain in November 2006.⁹³⁶ In describing the claimant’s symptoms, his doctor said “He says that is to the point that he can’t stand the pain anymore and that something has to be done. He has seen orthopedic surgeons in the past, none of whom have recommended removing his hardware. He describes being in significant pain, but he is very stoic and appears to be in no acute distress whatsoever in the exam room, so I question symptom magnification and secondary gain.”⁹³⁷ The physician concluded this visit by making a referral to another orthopedic surgeon, and to the pain

⁹²⁸ See Exhibit

⁹²⁹ *Id.* at 1.

⁹³⁰ See Exhibit J-6, August 2002 Medical Records at 2 and see Exhibit J-7, December 2002 Medical Records at 1. .

⁹³¹ See Exhibit J-8, May 2004 Medical Records at 1.

⁹³² See Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 2.

⁹³³ See Exhibit J-9, May 2005 Medical Records at 1.

⁹³⁴ See Exhibit J-10 May 2006 Medical Records at 1.

⁹³⁵ *Id.* at 2.

⁹³⁶ See Exhibit J-11, November 2006 Medical Records at 1.

⁹³⁷ *Id.* at 1.

clinic for evaluation, and recommended the claimant return to the office in six months.⁹³⁸ There was no indication that the claimant could not work.⁹³⁹

The claimant applied for benefits previously in 2001, but was denied at the Appeals Council level.⁹⁴⁰ In a subsequent application, the claimant was denied at the reconsideration level in March 2005.⁹⁴¹ His case was assigned to Administrative Law Judge Gitlow, but before the Judge could render a decision, the claimant withdrew his request.⁹⁴² Judge Gitlow dismissed the case, meaning that the denial at reconsideration stood.⁹⁴³

Claimant Reapplied for Benefits: The claimant re-applied for benefits, and on November 22nd, 2006, the claimant submitted a new signed fee agreement and notice of representation by Eric Conn.⁹⁴⁴ This new application cited the following conditions as the basis for his claim: left leg injury, numbness in right side, shortness of breath, nerve problems, depression, anxiety, and trouble sleeping.⁹⁴⁵ The claimant listed his height as 5'6'' and his weight as 300 pounds, and said that he became unable to work because of his injuries in April 2004.⁹⁴⁶

One month later, the agency notified the claimant that his application was denied, based on the fact that his leg injury had healed, and the fact that he could perform most of his usual activities.⁹⁴⁷ The agency also noted that while the claimant may become depressed at times, he was still capable of thinking clearly and carrying out normal activities, and that the medical evidence did not give any indication of any other condition that would limit his ability to work.⁹⁴⁸

The claimant was again denied at reconsideration in April 2007 along similar lines.⁹⁴⁹ The agency indicated that the claimant was still capable of performing his prior work, noting in its evaluation of his functional capacity that the claimant's treating physician recommended that the claimant perform some kind of job to stay active instead of lying in bed.⁹⁵⁰ The claimant requested an Administrative Law Judge hearing on May 23, 2007.⁹⁵¹

Claimant Added to DB List: The claimant was added to the Conn Law Firm DB list for August 2007, which noted the need for a mental exam with an amended onset date of March 3, 2005.⁹⁵²

⁹³⁸ *Id.* at 1.

⁹³⁹ *Id.* at 1-2.

⁹⁴⁰ See Exhibit J-12, Disability Report – Field Office –Form SSA-3367 at 2.

⁹⁴¹ *Id.* at 2.

⁹⁴² See Exhibit J-1, November 20, 2006 Notice of Dismissal at 3.

⁹⁴³ *Id.* at 3.

⁹⁴⁴ See Exhibit J-2, Disability Report – Adult-Form SSA-3368, and see Exhibit J-13, November 22, 2006 Appointment of Representative and Fee Agreement at 1-2.

⁹⁴⁵ See Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 2.

⁹⁴⁶ *Id.* at 1 -2.

⁹⁴⁷ See Exhibit J-14, Notice of Disapproved Claims at 1.

⁹⁴⁸ *Id.* at 1.

⁹⁴⁹ See Exhibit J-15, April 4, 2007 Notice of Reconsideration at 1.

⁹⁵⁰ See Exhibit J-16, February 2007 Physical Residual Functional Capacity at 7.

⁹⁵¹ See Exhibit J-17, Request for Hearing by Administrative Law Judge at 1.

⁹⁵² See Exhibit J-18, D.B. August 2007, CLF030625 at 2.

On July 17, the claimant filed a motion to amend his onset date to March 3, 2005 – one day after the denial of benefits in prior application.⁹⁵³

The claimant also saw Dr. Adkins on July 17, after being referred there by Eric Conn, for a mental evaluation.⁹⁵⁴ In describing background information on the claimant, Dr. Adkins noted that the claimant had been receiving treatment at a local clinic and was diagnosed with depression there, although the claimant's case file included no records from that clinic.⁹⁵⁵ Dr. Adkins stated that the claimant reported pain and difficulty when performing toileting, hygiene maintenance, and grooming.⁹⁵⁶ This, however, was inconsistent with the claimant's own description of his limitations. In a separate functional report provided to the agency, the claimant listed only that he had difficulty putting on socks because of his leg pain when asked to provide information about performing personal care tasks.⁹⁵⁷

Dr. Adkins administered an IQ test, and rated the claimant as having a full scale IQ of 91, in the Average range.⁹⁵⁸ He also administered the Personality Assessment Inventory, and found that the claimant was experiencing symptoms associated with depression.⁹⁵⁹ The Summary and Conclusions section of the exam restated, word for word, the claimant's reported history, as well as the test results.⁹⁶⁰ Dr. Adkins diagnosed the claimant primarily with major depressive disorder, single episode, moderate, as well as social phobia, and pain disorder associated with both psychological factors and a general medical condition.⁹⁶¹ In the prognosis section, Dr. Adkins said that, "with treatment that should include psychotherapy and psychiatric intervention, it would not be unreasonable to expect to see a fair amount of remediation of his depression anxiety symptoms."⁹⁶²

Dr. Adkins also signed the Conn Law Firm's additional Version 1 form assessing the claimant's ability to do work-related activities that was identical to the forms for 25 other individuals, based on the Committee's analysis.⁹⁶³

Claimant Awarded Benefits: On August 3, 2007, two weeks after the claimant's visit with Dr. Adkins, Judge Daugherty issued a fully favorable decision without holding a hearing.⁹⁶⁴ His decision relied entirely on Dr. Adkins' exam, and disregarded the remainder of evidence in the file.⁹⁶⁵

However, Judge Daugherty also found the claimant to have more severe depression than even Dr. Adkins had. Where Dr. Adkins diagnosed with claimant with Major Depressive, *Single*

⁹⁵³ See Exhibit J-19, July 17, 2007 Motion to Amend Alleged Onset Date at 1.

⁹⁵⁴ See Exhibit J-20, July 17, 2007 Psychological Evaluation at 1.

⁹⁵⁵ *Id.* at 2.

⁹⁵⁶ *Id.*

⁹⁵⁷ See Exhibit J-21, Function Report Adult at 3.

⁹⁵⁸ See Exhibit J-20, July 17, 2007 Psychological Evaluation at 6.

⁹⁵⁹ *Id.* at 7.

⁹⁶⁰ *Id.* at 7-8.

⁹⁶¹ *Id.* at 9.

⁹⁶² *Id.*

⁹⁶³ *Id.* at 11 and 13.

⁹⁶⁴ See Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

⁹⁶⁵ *Id.* at 3-4.

Episode, Moderate; Judge Daugherty characterized the claimant's condition simply as "Major Depression" in the written opinion.⁹⁶⁶ Judge Daugherty wrote that Dr. Adkins was more consistent with the record as a whole, even though that record contained no evidence to support the claimant's indication that he was seeking treatment for, or had been diagnosed with depression.⁹⁶⁷

Judge Daugherty also provided no further explanation or evaluation to support why he felt the claimant was more severely restricted than was indicated by the agency in its two prior reviews of the claimant's conditions.⁹⁶⁸ He also did not address the evidence presented by the claimant's treating physician that the claimant was capable of working.⁹⁶⁹

⁹⁶⁶ See Exhibit J-20, July 17, 2007 Psychological Evaluation at 9 and see Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 3.

⁹⁶⁷ *Id.* at 4.

⁹⁶⁸ *Id.* at 4-5.

⁹⁶⁹ *Id.* at 1-5.

**APPENDIX II:
MONTHLY BREAKDOWN OF MR. CONN'S DISABILITY CLAIMANTS
LISTED ON THE DB LIST AND FEES EARNED**

Month and Year	No. of Claimants on DB List	Amount Paid by SSA in Fees
June 2006	14	\$23,302.28
July 2006	39	\$112,479.02
August 2006	49	\$162,853.98
September 2006	24	\$59,592.10
October 2006	37	\$100,086.16
November 2006	41	\$120,011.92
December 2006	23	\$59,622.00
January 2007	52	\$133,751.73
February 2007	36	\$92,511.33
March 2007	46	\$104,512.91
April 2007	48	\$126,864.57
May 2007	46	\$114,903.21
June 2007	50	\$129,184.99
July 2007	39	\$97,235.20
August 2007	46	\$99,885.60
September 2007	52	\$128,245.72
October 2007	38	\$87,911.81
November 2007	40	\$111,829.79
December 2007	42	\$87,874.04
January 2008	40	\$98,129.42
February 2008	33	\$82,518.50
March 2008	36	\$82,115.31
April 2008	31	\$69,343.95
May 2008	36	\$78,806.42
June 2008	44	\$104,758.04
July 2008	45	\$109,376.64
August 2008	46	\$89,811.67
September 2008	39	\$72,010.45
October 2008	32	\$70,579.88
November 2008	32	\$88,158.54
December 2008	23	\$42,304.81
January 2009	16	\$29,608.30
February 2009	44	\$100,422.79
March 2009	32	\$68,930.59
April 2009	30	\$63,099.10
May 2009	41	\$83,603.23
June 2009	47	\$143,795.58
July 2009	30	\$76,754.28
August 2009	40	\$105,633.02
September 2009	39	\$101,146.17

October 2009	46	\$115,169.00
January 2010	48	\$122,212.31
February 2010	51	\$146,736.54
March 2010	33	\$92,038.02
April 2010	41	\$104,340.14
May 2010	40	\$96,199.40
July 2010	46	\$117,981.77
Total	1,823	\$4,508,242.23

**APPENDIX III:
PETTY CASH WITHDRAWALS MADE FROM THE CONN LAW FIRM
BANK ACCOUNT**

Date	Amount	Memo	Signature
11.07.05	\$10,000	"Petty Cash"	Pat Conn
01.13.06	\$9,000	"Petty Cash"	Pat Conn
02.16.06	\$9,000	"Petty Cash"	Pat Conn
03.07.06	\$9,000	"Petty Cash"	Pat Conn
03.23.06	\$9,000	"Petty Cash"	Pat Conn
04.27.06	\$9,000	"Petty Cash"	Pat Conn
06.02.06	\$9,000	"Petty Cash"	Pat Conn
07.10.06	\$9,000	"Petty Cash"	Pat Conn
08.08.06	\$9,000	"Petty Cash"	Pat Conn
10.05.06	\$9,000	"Petty Cash"	Pat Conn
10.23.06	\$9,000	"Petty Cash"	Pat Conn
12.13.06	\$9,000	"Petty Cash"	Pat Conn
01.19.07	\$9,000	"Petty Cash"	Pat Conn
02.06.07	\$9,000	"Petty Cash"	Pat Conn
03.07.07	\$9,000	"Petty Cash"	Pat Conn
04.10.07	\$9,000	"Petty Cash"	Pat Conn
04.20.07	\$9,000	"Petty Cash"	Pat Conn
05.21.07	\$9,000	"Petty Cash"	Pat Conn
06.01.07	\$9,000	"Petty Cash"	Pat Conn
07.30.07	\$9,000	"Petty Cash"	Pat Conn
08.27.07	\$9,000	"Petty Cash"	Pat Conn
10.16.07	\$9,000	"Petty Cash"	Pat Conn
11.20.07	\$9,000	"Petty Cash"	Pat Conn
12.17.07	\$9,500	"Petty Cash"	Pat Conn
01.08.08	\$9,500	"Petty Cash"	Pat Conn
02.06.08	\$9,500	"Petty Cash"	Pat Conn
03.07.08	\$9,500	"Petty Cash"	Pat Conn
05.13.08	\$9,500	"Petty Cash"	Pat Conn
07.15.08	\$9,500	"Petty Cash"	Pat Conn
07.29.08	\$9,500	"Petty Cash"	Pat Conn
08.11.08	\$9,500	"Petty Cash"	Pat Conn
12.23.08	\$9,500	"Petty Cash"	Pat Conn
02.23.09	\$9,500	"Cash W/D"	Pat Conn
03.23.09	\$9,500	"Petty Cash"	Pat Conn
04.08.09	\$9,500	"Petty Cash"	Pat Conn
04.27.09	\$9,500	"Petty Cash"	Pat Conn
05.04.09	\$9,500	"Petty Cash"	Pat Conn
05.28.09	\$9,500	"Petty Cash"	Pat Conn
06.10.09	\$9,500	"Petty Cash"	Pat Conn
07.07.09	\$9,500	"Petty Cash"	Pat Conn

07.27.09	\$9,500	"Petty Cash"	Pat Conn
08.14.09	\$9,500	"Petty Cash"	Pat Conn
09.23.09	\$9,500	"Petty Cash"	Pat Conn
10.21.09	\$9,500	"Petty Cash"	Pat Conn
11.18.09	\$9,500	"Petty Cash"	Pat Conn
12.17.09	\$9,500	"Petty Cash"	Pat Conn
12.28.09	\$9,500	"Petty Cash"	Pat Conn
01.29.10	\$9,500	"W/D"	Pat Conn
02.19.10	\$9,500	"Petty Cash"	Pat Conn
03.01.10	\$9,500	"Petty Cash"	Pat Conn
04.14.10	\$9,500	"Petty Cash"	Pat Conn
05.20.10	\$9,500	"Petty Cash"	Pat Conn
06.14.10	\$9,500	"Petty Cash"	Pat Conn
07.14.10	\$9,500	"Petty Cash"	Pat Conn
07.30.10	\$9,500	"Petty Cash"	Pat Conn
09.01.10	\$9,500	"Petty Cash"	Pat Conn
10.05.10	\$9,500	"Petty Cash"	Pat Conn
10.21.10	\$9,500	"Petty Cash"	Pat Conn
11.22.10	\$9,500	"Petty Cash"	Pat Conn
12.16.10	\$9,500	"Petty Cash"	Pat Conn
01.02.11	\$9,500	"Petty Cash"	Pat Conn
02.01.11	\$9,500	"Petty Cash"	Pat Conn
03.09.11	\$9,500	"Petty Cash"	Pat Conn
04.06.11	\$9,500	"Petty Cash"	Pat Conn
05.02.11	\$9,500	"Petty Cash"	Pat Conn
05.27.11	\$9,500	"Petty Cash"	Pat Conn
Total Petty Cash		\$616,500	