

**RECEIPT OF SOCIAL SECURITY BENEFITS BY PERSONS
INCARCERATED IN PENAL INSTITUTIONS**

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS

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RECEIPT OF SOCIAL SECURITY BENEFITS BY PERSONS INCARCERATED IN PENAL INSTITU- TIONS

FRIDAY, JUNE 20, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. J. J. Pickle (chairman of the subcommittee) presiding.

[Press release announcing the hearing follows:]

[Press release Monday, June 9, 1980]

HON. J. J. PICKLE (D., TEX.), CHAIRMAN OF SOCIAL SECURITY SUBCOMMITTEE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES HEARINGS ON RECEIPT OF SOCIAL SECURITY BENEFITS BY PERSONS INCARCERATED IN PENAL INSTITUTIONS

Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Social Security Committee on Ways and Means, announced today that a hearing on the receipt of social security benefits by persons incarcerated in penal institutions will be held on Friday, June 20, 1980, beginning at 10 a.m., in room 1100 Longworth House Office Building.

The Subcommittee has noted that concern has been expressed that individuals can receive social security benefits while in prison. Legislation has been introduced to prohibit this in certain instances. Any action to deny benefits to a specific group of individuals raises substantial Constitutional and policy questions which should be examined before corrective measures are taken.

Members of Congress, individuals, and organizations are invited to testify or submit written statements for the record. Requests to testify must be received no later than 12 o'clock noon, Tuesday, June 17, 1980, in order to provide ample time to schedule testimony at the hearing. The requests to be heard should be submitted to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, Room 1102, Longworth House Office Building, Washington, D.C., (202) 225-3625. Notification to those scheduled to appear will be made as soon as possible after filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentation will be strictly limited, with the understanding that a more detailed statement can be submitted for the Subcommittee's review and for inclusion in the printed record of the hearing. This will afford more time for interrogation of the witnesses by the members of the Subcommittee. If it becomes necessary, the staff will group the witnesses into panels to expedite the hearing and will establish strict time limitations for each panelist.

The following is an outline of the procedure to be followed by organizations and individuals who may either want to appear and testify during this hearing or file a written statement for the printed record of the proceedings. All requests to be heard should contain the following information.

1. The name of the witness, his title, address, firm affiliation and/or organization he will represent.

2. If appearing in an individual capacity, a list of any clients at whose request in an individual capacity, a list of any clients at whose request or in whose employ the witness appears.

3. Which proposal or proposals will be discussed.

4. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record. Witnesses will be required to submit 30 copies of their prepared statement to the full Committee office, Room 1102, Longworth House Office Building, 24 hours in advance of the appearance. For those who wish to file a written statement for the record, 5 copies are required for this purpose and will be accepted throughout the entire course of the hearing. An additional supply of at least 50 copies of either type of statement (for a personal appearance or for the printed record) may be furnished for distribution to the press and public.

Mr. PICKLE. The Chair will ask the subcommittee to come to order.

I first want to thank the members of the subcommittee for coming this morning. We have good attendance this morning, and we have an interesting subject to discuss.

This morning the subcommittee will address the many complexities involved in attempting to correct a problem which has received substantial attention in recent weeks. That is the problem of prisoners receiving social security benefits.

At a time when there is public concern over the soundness of the social security program, press reports that perpetrators of heinous crimes can receive social security benefits while in prison have outraged many reasonable people, both in and out of Congress.

This committee intends to put a stop to any abuses of the social security program and, within the confines of the U.S. Constitution, to see that the receipt of social security benefits by prisoners is limited in such a way as to pursue the best interest of the social security program and of society as a whole.

The committee has already engaged in a significant amount of research into the subject. Congressman Andrew Jacobs first introduced legislation on this subject in April of 1979. Along with Congressman William Whitehurst, we have been working with the Government Accounting Office to determine the extent of the problem. The GAO thus far has run a complete check of the 22,000 Federal prisoners. Their complete check of all Federal prisoners indicates that only 224 or about 1.5 percent are receiving social security benefits.

Now these are Federal prisoners, I might emphasize. This is a smaller figure than the 10-percent estimate which has been circulated previously. Nevertheless, the fact that the problem may not be as extensive as publicized does not erase basic questions of equity and program integrity which need to be addressed. I think it is best that this matter have a thorough hearing, and the subcommittee will give serious consideration to remedial action.

We have a list of witnesses this morning which we will proceed with, but I want to ask Mr. Conable if he has anything to add.

Mr. CONABLE. I thank you for holding these hearings. I think it is entirely appropriate. There is widespread concern about disclosures relating to the social security benefits of prisoners. I do think the constitutional issue is a serious one and needs to be addressed.

I have a bill, introduced recently, that tries to deal with the constitutional issue, which is admittedly complex. But I think it is important that in one way or another we not just make a gesture

on this but really try to correct the problem. I am not suggesting that other bills are gestures. I am suggesting that it is a complex issue that needs careful study by a committee rather than simply a response to popular reaction.

And so I think the hearings are appropriate. I hope we will look into the details of how we can handle this in a way that will not do violence to the equal protection of the laws provision.

It is a matter of particular interest to me because of disclosures relating to David Berkowitz, the so-called Son of Sam killer, who is in Attica Prison in my district. That has had a good deal of attention up home, and has become a focal point of unhappiness.

We have some investigation of that particular issue, Mr. Chairman, and we will need more. I think the committee would do well to study it with some care and try to improve matters.

I think Mr. Archer has something to add.

Mr. PICKLE. Mr. Archer?

I should have added at the beginning that I was mindful that you and Congressman Archer had or were going to introduce a bill. I assume that you have.

Mr. CONABLE. Yes.

Mr. PICKLE. I might also say that our staff has also compiled a bill that we may introduce as a substitute or companion to the bill Congressman Jacobs introduced, but I am mindful that you have introduced it. We may have different versions to attempt the same overall objective.

Mr. Archer?

Mr. ARCHER. Thank you.

I want to compliment the chairman on holding these hearings. All of us on the subcommittee are mindful of the fact that our Nation's social insurance programs form a somewhat delicate balance between two concepts, social adequacy and individual equity.

In keeping with the latter concept, benefits paid under the social security system are related to contributions made. One receives from the system in proportion to what one has paid into it through payroll taxes. I do not think that we want to undermine that concept, which gives the system its insurance character.

But we also do not want to see our society bestow its largess on those who would do it damage. We do not like the idea of forcing the vast majority of taxpayers who support the social security system to contribute doubly to those who have committed serious crimes against society and the state.

Against this background, Mr. Conable and I have cosponsored legislation which I believe answers most of the problems associated with the benefits being paid to prisoners, without flying directly in the face of both logic and the law, and without undoing the basic principles of our social security system.

Section 1 of the bill would in effect deny social security benefits to a convicted felon who claimed disability because of something that happened to him or her during the commission of the crime or in connection with prison life. It would do so by amending the definition of disability.

Section 2 of the bill would in effect deny so-called student's benefits under social security to persons jailed after felony convic-

tions. It would do so by adding to the definition of full-time student a clause which excludes those imprisoned for felonies.

Section 3 of the bill would amend the provision of law which denies benefits to anyone who refuses, without good cause, to receive rehabilitation services. The amendment would have the effect of curbing benefits to imprisoned convicted felons.

I am not sure that this cleans up all of the problems, Mr. Chairman, but I believe that it moves in the right direction. I do not have a closed mind with respect to any proposed solutions that might come as a result of these hearings, and I look forward to receipt of the testimony today.

Mr. PICKLE. I thank you, Mr. Archer.

Does any other member wish to make any statement at this time?

Mr. Jacobs?

Mr. Gradison?

Mr. JACOBS. Mr. Chairman, the only observation I would make is that the bill I introduced I consider as an umbrella vehicle. I do not think anyone could draft a bill before hearings are held, that is, learned enough to do the job. So, my only recommendation is in the tradition of criminal law enforcement, let's get the facts, man.

Mr. PICKLE. Thank you, Mr. Jacobs.

Our first witness this morning will be Senator Malcolm Wallop, U.S. Senator from the State of Wyoming.

Senator Wallop, if you will take the seat at the witness table, we will be pleased to have you, and also welcome you here on this side of the House.

**STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR
FROM THE STATE OF WYOMING**

Senator WALLOP. Thank you very much, Mr. Chairman.

May I express my thanks, too, to you and your committee for holding this hearing. I think it is timely and it is certainly well advised. Coincidentally, the Finance Committee has taken this matter up in the context of the budget reconciliation measure. With the House and Senate in sync on the prisoners' benefits issue, I feel confident in saying that a solution will be promptly arrived at.

I would like to commence my brief remarks this morning by thanking you for that opportunity to share some of my thoughts on the receipt of social security title II disability benefits by prisoners.

By way of background, my attentions were focused on this situation by a constituent who wrote requesting my support for H.R. 5610, the bill authored by Congressman Whitehurst and cosponsored by more than 115 of your colleagues in the House. That letter, which is typical of the flood of mail I have since received, expressed a sense of disbelief, even outrage, at the notion that a convicted criminal could receive disability benefits while in prison.

The intensity of the public commentary prompted me to review the current law and consequently to introduce corrective legislation, S. 2722, on May 15 of this year. Sixteen of my Senate colleagues are now cosponsors of that legislation.

While the approach taken by my bill differs somewhat from that of H.R. 5610 and other pending proposals, all of these bills share

the common object of changing existing law to preclude prisoners from receiving disability benefits.

The disability insurance system added to the social security program in 1956 was conceived to pay monthly cash benefits to individuals who at one time had a relationship to the work force but who by reason of physical or mental disability could no longer engage in substantial gainful activity anywhere in the national economy.

No prohibition was written into the law to make inmates of penal institutions ineligible for benefits. As a result, prisoners and other incarcerated persons—for example, persons found not guilty by reason of insanity and those who are found incompetent to stand trial—can receive disability insurance while they are incarcerated or institutionalized if they meet all other eligibility criteria.

We do not know exactly how many prisoners are taking advantage of current law. However, in 1970, the Social Security Administration estimated that nearly 4,000 inmates in Federal, State, and local prisons at that time were collecting disability benefits.

Congressman Whitehurst indicates the figure may be closer to 30,000 in 1980, at a cost of some \$60 million. His figures, I understand, are based on interviews conducted with inmates and guards at several prisons from California to New Jersey.

The Senate Finance Committee staff reported yesterday on the GAO report that you mentioned, Mr. Chairman, and estimated that approximately 6,000 prisoners are now receiving social security benefits at an annual cost of between \$10 million and \$20 million.

These figures are only rough estimates because social security officials do not currently keep records on how many of the 5 million individuals receiving disability benefits are prison inmates. Whether the figure is 4,000 or 30,000, this is an unanticipated use of the system that was never intended and must indeed be stopped.

S. 2722 corrects this unintended use of the disability program by barring persons convicted of crimes incarcerated in penal institutions from receiving those benefits. It also precludes the receipt of benefits by persons institutionalized either because they are incompetent to stand trial or have been found not guilty by reason of insanity. The bill would also deny disability benefits to families of the wrongdoer, leaving those with need to public assistance programs, funded by general revenues.

This legislation adopts the philosophy that a convicted criminal who is taken out of the work force by reason of his or her criminal act should not be entitled to benefits, whether or not suffering from a mental or physical disability—real or feigned—which would otherwise qualify them for benefits.

The reasons for the legislation are numerous. We were alerted just yesterday by William Driver, Commissioner of Social Security, that interfund borrowing is going to be necessary in order for the social security trust funds to continue paying benefits to retirees and survivors. Faced with the decision of raising social security taxes, reducing benefits, or eliminating benefits to prisoners, to shore up the financial condition of the trust funds, the choice seems clear.

Also, unlike people on the outside who must use their social security checks to provide food, clothing and shelter, prisoners and other inmates have all of these necessities provided for them by the State or Federal Government.

Moreover, it is offensive to employers and employees who pay taxes into the disability trust fund to learn that convicts in prison whose needs are being attended to by the Government—thus, by the taxpayer—may use their disability benefits to purchase luxury items such as color television sets, stereos, and sporting goods.

Still another element of unfairness is the fact that in many cases social security and society will pay twice when a convict goes to prison. Not only will the convict get social security disability payments, but the victim who has been injured may also have to receive benefits. At a minimum, benefits paid to the victim should be offset from benefits to which the wrongdoer is now entitled.

S. 2722 was introduced to begin the Senate dialog on the prisoners' benefits issue. There are numerous questions which should be addressed as we consider the pending proposals so that an acceptable, constitutionally sound piece of legislation can be crafted.

Specifically, we must carefully evaluate the constitutional questions, as Mr. Conable recently mentioned, surrounding the denial of benefits to this one class of individuals. Would this constitute a violation of either the equal protection clause or the due process clause of the Constitution, or does Congress have, as I believe it does, a compelling interest in denying prisoners title II disability benefits?

For example, should all prisoners be denied benefits or should exceptions be made? For example, should prisoners who were eligible for and receiving disability payments prior to committing an offense retain their eligibility after being convicted?

Should family benefits continue to be paid regardless of the conviction?

Should individuals who are found mentally incompetent to stand trial and who are then institutionalized lose their eligibility for benefits?

When should the convict regain eligibility for benefits? When released on parole or at the completion of the parole period?

Should prisoners be denied all Federal benefits, or only disability benefits?

Should this entire question of denial of benefits be left to the discretion of the sentencing judge?

I would hope that some of these questions will be addressed by the witnesses today and that the Social Security Administration, Bureau of Prisons, and GAO will be particularly mindful of these concerns as they formulate their recommendations on the various approaches to the prisoners' benefits issue.

Mr. Chairman, the Senate will vote within a few short weeks on this issue. In response to the widespread support for my bill, the Finance Committee included within its recommendations to the Budget Committee for inclusion in the budget reconciliation measure a provision which would restrict the payment of disability and children's benefits to persons convicted of crimes. Under the provision, benefits would not be payable to convicted felons except as ordered by a court in conjunction with the prisoner's participation

in a rehabilitation program expected to result in the return to productive employment. It also precludes incarcerated persons from receiving social security student benefits. In addition, any disabling condition arising during the commission of a crime would not be considered in determining eligibility for benefits. A disabling condition which arises while the prisoner is incarcerated could not qualify that person for disability benefits while in prison. The committee estimated a savings of \$16 million for the trust fund in fiscal year 1981 under this revision in the social security law.

Thanks to your demonstrated diligence and the obvious interest of your subcommittee colleagues, I am very optimistic that the House will also move quickly on remedial legislation in this area. With the initiative that has already been shown, there is little question but that the 96th Congress will successfully close the door on social security benefits for prisoners.

Mr. PICKLE. We thank you, Senator. You have given us some good, valuable testimony and raised some specific questions that I am sure this committee and the witnesses today are going to make reference to because they go to the heart of the problem we face.

I am going to ask the cooperation of the committee, if they are agreeable at this time, in order to proceed as rapidly as possible to ask—to defer questioning of Senator Wallop at this time. We want you to stay if you can, Senator. But we have a large number to testify today. I want to let our colleagues in the House get their statements in.

Senator WALLOP. I fully appreciate that.

Mr. PICKLE. Congressman Whitehurst, if you would come to the witness table and the other Members of the Congress, Congressman Biaggi and the rest of you gentlemen, if you will come on up.

Senator, we want you to stay, and stay at the witness table. We recognize that you may have to leave to go to the other body. If you do, we understand. But you are welcome.

Senator WALLOP. I will stay for as long as my schedule permits. I thank you.

Mr. PICKLE. First, we are going to hear from Congressman William Whitehurst. Also at the table we have Congressman Biaggi from New York, Congressman Sawyer from Michigan, Congressman James Courter from New Jersey, Congressman Toby Roth from Wisconsin, and Congressman Petri of Wisconsin.

Now we are going to ask Congressman Whitehurst, if you would present your statement, and then I am going to suggest—I am going to put all your statements in the record, so we will have it as a matter of record in its entirety. Then we will let each one of you make such statements as you would like. We will not cut any of you off, but we are trying to cover as much territory as we can. If that is agreeable, Congressman Whitehurst, we will recognize you.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. WHITEHURST. Thank you.

Not only do we have our colleagues here but we have gone to some lengths to get a number of pertinent witnesses to come from out of town, people in the penal system as well as victims, to testify. I think it will be enlightening to the members of the

subcommittee to hear from them. With that in mind, just let me take excerpts from my statement and I will abbreviate this as best I can.

I was not aware that my colleague from Indiana had introduced legislation until this morning, in the statement, because my bill that I introduced after reading accounts of prisoners abusing the social security system in New Jersey, and also after determining that the Garden State was not the only one with such a problem but many others as well, how bad is the problem in terms of dollars, prisoners involved—I am confident in saying there are millions and millions of dollars and I think there are thousands and thousands of prisoners who are abusing the system—I introduced this legislation because I believe it was not the intention of President Roosevelt to subsidize criminals when he signed the Social Security Act into law in 1935. I also introduced it because I believe it is one effective way to make crime stop paying in our country.

However, I say this with the utmost respect to the distinguished Members of Congress who are on this committee, I recognize my legislation is one of several possible legislative remedies to the problem. I pledge to you my willingness to consider an alternative course of action that you may choose, so long as it promises to end this preposterous system of subsidizing criminals with this Nation's precious social security dollars.

Mr. Chairman, I am in complete agreement with your recent public statement regarding this issue of prisoners receiving Social Security benefits that: "It is a matter which easily outrages any reasonable person." And, like you, Mr. Chairman, I, too, agree that it is ridiculous for someone like David R. Berkowitz, New York City's "Son of Sam" mass murderer, to be allowed to collect several hundred dollars each month in social security benefits because of some asinine qualification procedure. For what possible reason can there be in paying an animal like this from our country's already strained social security fund? What must the families of this creature's victims think? Have our laws become so inflexible that our social security administrators must bend over backwards to make sure that another parasite is added to suck the life out of the social security host? I hope to God they are not. And I cannot help but wonder how many other mass murderers are on the rolls of social security who are shielded from public scrutiny by privacy laws.

But I did not introduce H.R. 5610 because of "Son of Sam." If his case were simply an aberration of the system, I can assure you that I would not have pressed for this hearing today. But, I submit, it is not. And that is the problem. Far too many criminals are qualifying for these benefits.

Mr. Chairman, just as we believe it is ridiculous for "Son of Sam" to be getting these benefits, I also believe it is equally ridiculous to permit a California prisoner who killed four persons—two of them police officers—to collect \$195 a month from social security, just as I believe it is ridiculous to pay an Indiana prisoner who killed his 5-year-old stepdaughter \$163.30 a month, and a Minnesota arsonist \$285 a month in social security education benefits, even though the classes he attends are provided free of charge by the State.

Education has long been one of my favorite endeavors. I spent 18 years in academe and was dean of students at a major university before coming here. I think it is very commendable for an inmate to want to better him or herself while in prison, but I certainly do not believe we must grease their palms with money from our social security fund to advance their education. Does it not make eminently more sense to at least allow the States to use that money to help defray the cost of maintaining their prison systems? I wonder how many prisoners would continue to sign up for courses in barber training and auto body repair if they knew they were not going to get a few hundred bucks a month from social security? Not very many, I submit. If nothing else, it would at least get those prisoners out of the classrooms who are not serious about improving themselves during their incarceration.

As it is now, many prisoners are savvy enough to know that they can sign up for courses and either drop out or attend the minimum number of classes, knowing full well that it practically requires a papal edict to have their education benefits stopped. I know of a prison official in Minnesota who, when he finds that a prisoner is not attending classes, feels that he must get down on his hands and knees and beg social security to turn off the spigot of money. But, I might add, more often than not the torrent of money continues to flow. These same prisoners are also smart enough to know that they can tap into other rivers of money as well, including Veterans' Administration education benefits and the basic education opportunity grants administered by the Department of Education. In fact, just to make sure that every prisoner knows exactly what he or she is entitled to, one prisoner newspaper in Michigan provides prisoners with a step-by-step rundown of the benefits available to them.

Although my bill does not address social security education benefits, I frankly believe that these benefits are being abused more than disability insurance benefits. The simple truth is that these prisoners are milking a social security system that they fully realize contains a loophole for them to exploit. Unfortunately, it has taken us until now to recognize this situation exists and to recommend corrective action. Does anyone really believe that society owes these people a monthly allowance? I do not, and there are many others who share my opinion.

Have we forgotten that this country's taxpayers annually spend more than \$4 billion to run the 4,700 jails and prisons in the United States? Have we forgotten that the Department of Justice reminded us only a few weeks ago that in the past 5 years the prison population has increased by one-third or 76,000 people to its present population of over 314,000? And have we forgotten that the cost of housing an inmate runs from a low of \$7,000 a year in Arkansas to more than \$26,000 a year in the jail system of New York City? I submit, is this price not enough? Must society now make sure that each inmate's cell comes equipped with a 19-inch color television set or, in the case of one Minnesota inmate, a Queen Anne chair?

In many respects, social security resembles a basic income transfer program, taking income from those who have it and providing it to those who do not. But, as in any other program involving

billions of dollars and millions of people, much of this money winds up in the hands of people who do not need it. And, I submit, that is exactly what is being permitted to happen in our Nation's prisons.

It has long been argued that the social security system operates on the principle of "earned right," that is, participants in the system earn the right to benefits through contributions in the form of payroll taxes. It is generally held that social security is a national insurance system intended to partially replace earnings lost on account of the retirement, disability, or death of the worker. In other words, it is a system conducted by the State as a floor of protection to insured workers. Inasmuch as it is a State system, my position is that those who choose not to abide by the laws of the State should not be permitted to share its benefits, at least not when such a person is already a ward of the State.

Furthermore, the social security system can be viewed as resting on two supporting pillars—individual equity, based on the relationship between contributions and earning; and social adequacy, based on a need factor; that is, the awarding of benefits to dependents and survivors of insured workers. Under the social-adequacy concept, it can be argued, and rightly so, I believe, that prisoners do not need benefits because their basic needs, including food, clothing, medicine, and shelter, are already being borne at considerable expense by the State.

Honorable members of the subcommittee, in concluding my statement, when I introduced H.R. 5610, I frankly did not anticipate the tremendous response I would receive. At last count, citizens from 38 States, representing the megalopolitan areas of the east and west coasts and the tiny towns in between, have voiced their support of my legislation. The backgrounds of these people are many and varied, from the coal-mining fields of West Virginia, to Park Avenue in New York, and, yes, even a disillusioned social security employee from Baltimore.

Obviously, it is not practical to read the hundreds of letters I have received on this issue, many of them penned by people in dire straits who, for one reason or another, are unable to qualify for social security benefits they so desperately need. But I can tell you that as I read through the letters that daily stream into my office there is a common thread that ties them together. It is a thread of despair. It is a thread that says "What's wrong with America?" when we extend benefits to criminals but not to others who paid faithfully into social security for years and years only to discover that when they need that money they cannot get it.

"It's dog eat dog and the middle class is the dog," writes a woman from Brazil, Ind. "The greatest disgrace in my opinion is how we, the working class, get a kick in the teeth from every direction."

And from a woman in my district of Norfolk, Va., who wrote after reading that "Son of Sam" is collecting social security: "We read about these things every so often and fuss, and forget it. Tonight I can't forget it. I've worked all day, I'm tired, I hurt and seeing that in the paper was sort of the 'straw.'"

Today, honorable members of this subcommittee, I, too, am tired. I am tired of facing my constituents who say to me, "Congressman Whitehurst, it seems that no matter how hard we work, how hard

we try to cut corners, we keep falling farther and farther behind. Why can't Congress do something to help us? Why is it that it's always the people who try the hardest who get the short end of the stick, Congressman?"

In the 12 years I have been in Congress, I still find that one of the most unpleasant tasks that comes with this job is informing a constituent who has suffered a coronary, stroke, or other debilitating illness, that he or she cannot qualify for social security benefits because of some technicality.

And when these same people come into my district offices in wheelchairs and tell me that they are destitute, and that they have worked all their lives, and that they have lived by the law and never been a burden to the state, I find it very difficult to comfort them when they know and I know that there is a man who gunned down six people sitting in a cell in Attica Prison who stands to collect thousands upon thousands of dollars for as long as he lives, in social security.

My legislation is not a panacea for the millions of Americans who worry that when they become old or disabled that there will not be enough money left in social security to help them live comfortably in their declining years. No, it is not a panacea; but it is a start, and a meaningful gesture by this Congress that it is concerned about the well-being of the social security system and determined to purge it of the parasitic members of society who are drawn to it like moths to a flame.

Mr. Chairman, in addition to my colleagues, as I mentioned earlier, I have requested and you all have very kindly permitted these people to testify who have come from out of town. I have one witness, however, who prefers not to appear before the cameras who indeed prefers for reasons of her own personal safety not to be identified. I will submit with your permission her statement for the record.

Mr. PICKLE. We will accept her statement in its entirety. Are you asking that we keep the name—

Mr. WHITEHURST. I am asking her name be kept anonymous, Mr. Chairman.

Mr. PICKLE. All right. That will be accepted under that provision. If you want fuller testimony submitted later or some other matter, we will cooperate.

Mr. WHITEHURST. Thank you.

Mr. PICKLE. Thank you for your statement. You have been a leader in asking for remedial action in this field. We are glad you brought this to our attention. As I said earlier, Congressman Jacobs introduced a bill.

Mr. WHITEHURST. I was not aware of that. I am delighted.
[The prepared statement follows:]

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF VIRGINIA

I want to state at the outset that I am sincerely appreciative of the Subcommittee's decision to hold this hearing today on the issue of prisoners receiving Social Security benefits. It is an issue which has touched a sensitive nerve among many Americans who share the common belief that there is something grossly unfair with a Social Security system that rewards the criminal and penalizes the hard-working, law-abiding individual.

It is my fervent hope today that this hearing will not only be informative in shedding light on what I believe is a systematic rip-off of our Social Security dollars by a large group of prisoners in our country, but also serve as a springboard in correcting what so many of us believe is a twisted interpretation of the Social Security Act.

Seated behind me are several persons who have come here today on very short notice to testify on this issue. Some of them have traveled great distances at their personal expense to be here today. And I can assure you that many, many other people from throughout the country would be joining us here if they could afford to, or if they had been given more than 10 days notice to prepare for this hearing.

But unlike the Social Security recipients in our nation's prisons, who can squirrel away thousands of dollars because they don't have mortgages to pay, food to buy for their families, or cope with the other rising expenses of life, the people who would like to have been here today do have those obligations.

As you are all aware, I have introduced legislation to prohibit prisoners from receiving Social Security disability insurance benefits. To date, 118 of my colleagues in the House, who are well represented from both political parties, have cosponsored H.R. 5610. In addition, Senator Malcolm Wallop of Wyoming, who introduced similar legislation in the Senate only a few weeks ago, already has the cosponsorship of 16 of his colleagues.

I introduced this legislation after reading accounts of prisoners abusing the Social Security system in New Jersey and after determining that the Garden State was not the only one with such a problem but many others as well. How bad is the problem? In terms of dollars and the numbers of prisoners involved, I am confident in saying that we are talking about millions and millions of dollars and thousands upon thousands of prisoners.

As you know, at my request the General Accounting Office is presently conducting a comprehensive survey of the number of prisoners receiving Social Security benefits, as well as benefits they receive from the Veterans Administration. It is unfortunate that the GAO was unable to complete its work in time for today's hearing, but I am confident that when it is completed the magnitude of the problem will open many eyes.

I introduced this legislation because I believe it was not the intent of President Franklin Delano Roosevelt to subsidize criminals when he signed the Social Security Act into law in 1935. I also introduced this legislation because I believe it is one effective way to stop making crime pay in our country. However, and I say this with the utmost respect to the distinguished Members of Congress who serve on this very capable Subcommittee, I recognize that my legislation is one of several possible legislative remedies to this problem, and I pledge to you my willingness to consider an alternative course of action you may choose, so long as it promises to end this preposterous system of subsidizing criminals with this nation's precious Social Security dollars.

Mr. Chairman, I am in complete agreement with your recent public statement regarding this issue of prisoners receiving Social Security benefits that: "It is a matter which easily outrages any reasonable person." And, like you, Mr. Chairman, I, too, agree that it is "ridiculous" for someone like David R. Berkowitz, New York City's "Son of Sam" mass murderer, to be allowed to collect several hundred dollars each month in Social Security benefits because of some asinine qualification procedure. For what possible reason can there be in paying an animal like this from our country's already strained Social Security fund? What must the families of this creature's victims think? Have our laws become so inflexible that our Social Security administrators must bend over backwards to make sure that another parasite is added to suck the life out of the Social Security host? I hope to God they are not. And I can't help but wonder how many other mass murderers are on the rolls of Social Security, who are shielded from public scrutiny by privacy laws?

But I did not introduce H.R. 5610 because of "Son of Sam." If his case were simply an aberration of the system, I can assure you that I would not have pressed for this hearing today. But, I submit, it is not. And that is the problem. Far too many criminals are qualifying for these benefits.

Mr. Chairman, just as we believe it is "ridiculous" for "Son of Sam" to be getting these benefits, I also believe it is equally ridiculous to permit a California prisoner, who killed four persons—two of them police officers—to collect \$195 every month from Social Security, just as I believe it is ridiculous to pay an Indiana prisoner who killed his 5-year-old stepdaughter \$163.30 a month, and a Minnesota arsonist \$285 a month in Social Security education benefits, even though the classes he attends are provided free of charge by the state.

Education has long been one of my favorite endeavors. I spent 18 years in Academe and was Dean of Students at a major university before coming here. I

think it is very commendable for an inmate to want to better him or herself while in prison, but I certainly don't believe we must grease their palms with money from our Social Security fund to advance their education. Doesn't it make eminently more sense to at least allow the states to use that money to help defray the cost of maintaining their prison systems? I wonder how many prisoners would continue to sign up for courses in barber training and auto body repair if they knew they weren't going to get a few hundred bucks a month from Social Security? Not very many, I submit. If nothing else, it would at least get those prisoners out of the classrooms who aren't serious about improving themselves during their incarceration.

As it is now, many prisoners are savvy enough to know that they can sign up for courses and either drop out or attend the minimum number of classes, knowing full well that it practically requires a Papal Edict to have their education benefits stopped. I know of a prison official in Minnesota who, when he finds that a prisoner is not attending classes, feels that he must get down on his hands and knees and beg Social Security to turn off the spigot of money. But, I might add, more often than not the torrent of money continues to flow. These same prisoners are also smart enough to know that they can tap into other rivers of money as well, including Veterans Administration education benefits and the Basic Education Opportunity Grants administered by the Department of Education. In fact, just to make sure that every prisoner knows exactly what he or she is "entitled to," one prisoner newspaper in Michigan provides prisoners with a step-by-step rundown of the benefits available to them.

Although my bill does not address Social Security education benefits, I frankly believe that these benefits are being abused more than disability insurance benefits. The simple truth is that these prisoners are milking a Social Security system that they fully realize contains a loophole for them to exploit. Unfortunately, it has taken us until now to recognize this situation exists and to recommend corrective action. Does anyone really believe that society owes these people a monthly allowance? I don't and there are many others who share my opinion.

Have we forgotten that this country's taxpayers annually spend more than \$4 billion to run the 4,700 jails and prisons in the United States? Have we forgotten that the Department of Justice reminded us only a few weeks ago that in the past five years the prison population has increased by one-third or 76,000 people to its present population of over 314,000? And have we forgotten that the cost of housing an inmate runs from a low of \$7,000 a year in Arkansas to more than \$26,000 a year in the jail system of New York City? I submit, isn't this price enough? Must society now make sure that each inmate's cell comes equipped with a 19-inch color television set or, in the case of one Minnesota inmate, a Queen Anne chair?

I'm sure this Subcommittee knows full well that the introduction of H.R. 5610 last October came at the end of a decade which saw expenditures for benefits under the disability insurance program increase from \$3.3 billion in 1970 to \$16.1 billion this year. Even with the continuous increases we have had over the years in both the tax rate and the earnings base, we are seeing now that Social Security is going to have severe cash flow problems beginning as early as next year. When the Social Security program began, Americans paid 1 percent on an earnings base of \$3,000. This year, they are paying 6.13 percent on gross earnings of \$25,900. And, to complicate matters more, in future years there will be fewer workers paying into the system and more people drawing benefits.

In many respects, Social Security resembles a basic income transfer program, taking income from those who have it and providing it to those who don't. But, as in any program involving billions of dollars and millions of people, much of this money winds up in the hands of people who don't need it. And, I submit, that is exactly what is being permitted to happen in our nation's prisons.

It has long been argued that the Social Security system operates on the principle of "earned right," that is, participants in the system earn the right to benefits through contributions in the form of payroll taxes. It is generally held that Social Security is a national insurance system intended to partially replace earnings lost on account of the retirement, disability, or death of the worker. In other words, it is a system conducted by the state as a floor of protection to insured workers. Inasmuch as it is a state system, my position is that those who choose not to abide by the laws of the state should not be permitted to share its benefits, at least not when such a person is already a ward of the state.

Furthermore, the Social Security system can be viewed as resting on two supporting pillars—individual equity, based on the relationship between contributions and earning; and social adequacy, based on a need factor; i.e., the awarding of benefits to dependents and survivors of insured workers. Under the social adequacy concept, it can be argued, and rightly so I believe, that prisoners don't need benefits because

their basic needs, including food, clothing, medicine, and shelter, are already being borne at considerable expense by the state.

Honorable Members of the Subcommittee, in concluding my statement, when I introduced H.R. 5610, I frankly did not anticipate the tremendous response I would receive. At last count, citizens from 38 states, representing the megalopolitan areas of the east and west coasts and the tiny towns in between, have voiced their support of my legislation. The backgrounds of these people are many and varied, from the coal mining fields of West Virginia, to Park Avenue in New York, and, yes, even a disillusioned Social Security employee from Baltimore.

Obviously, it is not practical to read the hundreds of letters I have received on this issue, many of them penned by people in dire straits who, for one reason or another, are unable to qualify for Social Security benefits they so desperately need. But I can tell you that as I read through the letters that daily stream into my office there is a common thread that ties them together. It is a thread of despair. It is a thread that says "What's wrong with America?" when we extend benefits to criminals but not to others who paid faithfully into Social Security for years and years only to discover that when they need that money they can't get it.

"It's dog eat dog and the middle class is the dog," writes a woman from Brazil, Indiana. "The greatest disgrace in my opinion is how we, the working class, get a kick in the teeth from every direction."

And from a woman in my district of Norfolk, Virginia, who wrote after reading that "Son of Sam" is collecting Social Security: "We read about these things every so often and fuss, and forget it. Tonight I can't forget it. I've worked all day, I'm tired, I hurt and seeing that in the paper was sort of the 'straw.'"

Today, honorable Members of this Subcommittee, I, too, am tired. I am tired of facing my constituents who say to me, "Congressman Whitehurst, it seems that no matter how hard we work, how hard we try to cut corners, we keep falling farther and farther behind. Why can't Congress do something to help us? Why is it that it's always the people who try the hardest who get the short end of the stick, Congressman?"

In the 12 years I have been in Congress, I still find that one of the most unpleasant tasks that comes with this job is informing a constituent who has suffered a coronary, stroke, or other debilitating illness, that he or she can't qualify for Social Security benefits because of some technicality.

And when these same people come into my district offices in wheelchairs and tell me that they are destitute, and that they have worked all their lives, and that they have lived by the law and never been a burden to the state, I find it very difficult to comfort them when they know and I know that there is a man who gunned down six people sitting in a cell in Attica Prison who stands to collect thousands upon thousands of dollars for as long as he lives in Social Security.

My legislation is not a panacea for the millions of Americans who worry that when they become old or disabled that there won't be enough money left in Social Security to help them live comfortably in their declining years. No, it's not a panacea; but it is a start, and a meaningful gesture by this Congress that it is concerned about the well-being of the Social Security system and determined to purge it of the parasitic members of society who are drawn to it like moths to a flame.

Mr. PICKLE. We will all cooperate and find the best vehicle to do the right thing. Now we have other colleagues here. I am going to recognize Congressman Biaggi at this time for a statement. Your statement will be included in the record in its entirety.

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

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

Mr. Chairman, members of the committee, thank you for the opportunity to address you today and also commend you for having these hearings. Your quick response to this issue is laudable.

I will not embark on lengthy testimony this morning, because Mr. Whitehurst has clearly spelled out the case. I think it is fitting and proper he be commended for his leadership and diligence in the advocacy of this legislation. What heartens me even more is

the fact that we have members of the committee who have already prepared legislation addressing itself to the issue.

Insofar as New York City is concerned, the city where David Berkowitz conducted his reign of terror, now he is not the only reason we are here, but I think what he has accomplished points out very clearly the outrageous situation that exists, a situation that has made people of our country furious in the light of the difficulties that social security is having. David Berkowitz was in our city, and practically brought the city to its knees by virtue of his maniacal conduct. He was sentenced to 315 years in prison. All things being equal, absent a change of fact and circumstance, the social security fund will be paying him for these—for the rest of his life. I am certain that it was never the intention of the authors of this legislation to provide this kind of benefit.

Before I came to the Congress, I was a police officer for 23 years. Then I went into law and developed and found myself in this position. My observation has been that victims of the crimes are forgotten; they pay a price, never to be compensated. We have failed in the Congress to provide victims compensation. The ironic part of the total picture is that the offender, the felon, continues to be housed. For some it is the ultimate in welfare benefits. I have had much contact with these individuals, and they do not regard prison as a hardship. Of course, others do. But when we compound it by providing them moneys with which they can live in even a better fashion than they did when they were free, well, that bears attention and certainly offends all of our sensibilities.

But just yesterday in the Washington Star we find that the social security system is again being jeopardized. There are some doubts as to whether we will be able to in the future provide the kind of moneys and security that the eligible recipients require.

Now Congress has responded in the past with relation to that I thought in very courageous fashion. We may be required to do that once again. But to think that there is a drain, no matter how small, the principle here is more important than the number. Although the chairman stated that there was a relatively small number in the Federal penitentiaries, I would suggest very vigorously that we look at the State penitentiaries and the local institutions where we will find, I believe, the abundance, an abundance of individuals who are receiving these benefits. Clearly the situation calls for correction.

I am satisfied that the issue is being addressed, and I thank the chairman for this opportunity to speak.

[The prepared statement follows:]

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and members of the subcommittee, I am pleased to present testimony at this hearing. I first wish to commend this subcommittee and your distinguished chairman, Mr. Pickle, for agreeing to investigate the issue of prisoners receiving social security disability benefits. In addition, I would like to pay tribute to my distinguished colleague from Virginia, Mr. Whitehurst, for his diligence and leadership in this area.

This is a combination of a hearing and an expose of what clearly is an unconscionable situation—namely the fact that one of the most heinous criminals ever to blemish the face of the Earth—David Berkowitz—or "Son of Sam"—has been the apparent recipient of social security benefits while in prison.

I represent the City of New York where David Berkowitz conducted his reign of terror in our streets. The City of New York, tragic as it is—accustomed to crime as it is—was practically brought to its knees in fear by the maniacal activities of David Berkowitz. When he was sentenced to his 315 years in prison, many in New York felt that it was not enough for the grievous harm he did to the psychological health of the city.

I came to this Congress following a 23-year career as a police officer in the City of New York. My career in law enforcement taught me in graphic terms that the victim of crime always seems to fare the worst in the criminal justice system. What more dramatic proof do we need in the case of David Berkowitz? Here is a man imprisoned at a cost of several thousand dollars a year drawing another \$3,500 or more in disability benefits. Meanwhile, for those persons whom he maimed or those six families who lost a loved one to murder—what has come to them?

It is revelations such as the "Son of Sam" travesty which cause people in this Nation to lose faith. The issue of social security is an especially sensitive one in this Nation. Just last night it was reported in the Washington Star that according to the social security system trustees—benefits paid to 35 million retired Americans will be exhausted by early 1982. They urged a transfer of funds between the different trusts to avert this catastrophe. Yet at the same time—David Berkowitz is receiving—uninterrupted—his disability benefits.

Where is the justice in this situation?

I hope that the witnesses from the Social Security Administration are prepared to take some definitive action in the Berkowitz case as well as for thousands of other prisoners—whether in Federal, State, or local facilities—who are receiving benefits. My colleague, Mr. Whitehurst, has sponsored legislation, H.R. 5610, to address this issue. He will discuss it at greater length in his statement. I endorse this bill and feel it is the very least we should do to stop this travesty in its tracks.

I appreciate the opportunity to testify here today and hope this hearing will be a catalyst for correction of an obviously unacceptable situation. I assure the subcommittee and my colleagues that the outrage we feel about the Berkowitz matter is multiplied many times over among American taxpayers. We must do more than this hearing—we must put an end to this situation or we will be held accountable—and rightly so.

Mr. PICKLE. Thank you, Congressman Biaggi. I am going to digress for just a moment on two points with respect to your statements.

The hearing this morning is with respect to receipt of the social security benefits for prisoners. But you made reference to the fact that the Social Security Administrator and the trustees yesterday had made an announcement about our trust funds and the problem we have ahead. I am not going to open up this hearing for discussion of that issue, but I do want to take advantage of this to reply to your statement, because you are correct, we do have concern about our trust fund. The trustees' report serves a very useful purpose. It is constituted by law so that the Congress is officially notified by actuaries and trustees of the condition of the trust fund. They do this at periodic reporting intervals. The report yesterday was in line with their constituted requirement.

It is a notice for us to take action. The subcommittee is mindful of that. The subcommittee will hold hearings on this question next week to consider the transfer, either by reallocation or borrowing or a combination, to transfer funds into the OASI fund so that we will have ample funds through all of 1981, and during the coming year this committee will give serious consideration to a change in the overall picture. But there is no reason for the public to panic and think that our trust funds are in great difficulty. They are not. We are in better shape than the Federal Government. But we are going to address the problem. We have had this problem before, and we have handled it temporarily by reallocation, and whatever approach we take is going to be done because it must be done in order to assure the American people. So I want everybody in Amer-

ica to know that word ought to go out that the trust fund is not insolvent, is not going busted, and the Congress will see to that.

Mr. JACOBS. Will the chairman yield on that point. The chairman says that the trust fund is in better shape than the Federal Government. Some people might consider that damning by faint praise. I think we should say the trust fund's condition is in better shape than the condition of the Federal Government, just for the record.

Mr. PICKLE. We have problems with social security ahead. We took a courageous step in 1977. This is a temporary problem. We have to handle it.

The second question is you made reference to the "Son of Sam"; Americans are offended by the fact that he had been receiving and has been receiving some disability benefits. I have made inquiry of the Social Security Administrator about the status of the Son of Sam situation. I think at this point I am going to call on Congressman Conable to make reference because he has a letter that I have received from the Social Security Administrator. He is going to not read the letter but make reference to that. I think it will clear the atmosphere at this point.

Mr. CONABLE. I don't know that this letter clears the atmosphere. It is from the Commissioner of Social Security about David Berkowitz. It indicates that on the basis of an extensive report of psychiatric examinations, the date of his disability onset was established as August 31, 1977, that he had adequate coverage under social security, and that he was eligible for disability benefits; therefore, the Social Security agency started paying them.

Further according to this letter, on March 25, 1980, in a followup to determine whether his disability continued, there was contact with the chief of the mental health facility at Attica Correctional Facility in New York and a report indicated there was no evidence of any psychotic disorder at that point, that he was coherent, and so forth.

Therefore, following this March report on his condition, the agency ruled he was no longer disabled.

His representative payee was contacted and was told that Berkowitz would be allowed until June 27, 1980, to submit a final response to the proposed termination and that it can be appealed. There is no indication yet that it will be appealed.

But the point is, if Berkowitz were to appeal, and show that his disability continued, then he would continue to get disability payments. So this letter doesn't really solve the issue. It simply says this particular man may not get benefits anymore if the representative payee does not contest successfully the tentative finding by Social Security that he is no longer disabled.

Mr. GRADISON. Under the laws of your State, is there any basis for action by the State to collect these benefits once paid to him to help to defray the costs of his maintenance and so forth?

Mr. CONABLE. I am not aware of such.

Mr. BIAGGI. Mr. Gradison, if I may respond to that, that principle is being applied in the State of New Jersey. There is a professional fighter who was permitted to go out and fight periodically, has accumulated some \$60,000 in purses. The State has addressed itself to those purses and is charging that individual for the price

of his maintenance. So those moneys have diminished to the extent of \$2,000. He has a \$2,000 balance.

Mr. GRADISON. Thank you.

Mr. PICKLE. I appreciate your analysis, Congressman Conable. I did not want to leave the impression by saying the atmosphere had been cleared that it has been settled, but rather to give you a current status.

Mr. CONABLE. Yes.

Mr. PICKLE. They are not letting the situation in the Berkowitz case just ride. It is being examined and an action will be taken. That does not relieve us of our responsibility of trying to find an answer to the basic problem.

Mr. BIAGGI. Mr. Chairman, my final remarks.

Mr. Berkowitz was educated in my area. He left a greater impact there because several of the victims came from my district. When this thing broke in the papers, they came to my office en masse. Some of the victims were murdered. One young man survived, with the loss of his eyesight. They were simply outraged.

I can't be profuse enough in my commendation to you for having these hearings so quickly. Thank you very much.

Mr. PICKLE. Thank you, Congressman.

Now I am going to call on Congressman Sawyer. I am going to receive his statement.

Do you want to make it or would you rather have a recess and come back?

Mr. SAWYER. Since we are almost ready for the second bell, maybe we should recess and come back.

Mr. PICKLE. We will recess for 10 minutes. I am going to ask the committee to come back immediately so we can continue with as much rapidity as possible.

[A brief recess was taken.]

Mr. PICKLE. The Chair would ask everyone to take their seats again, please.

The committee will come to order. We will proceed with our witnesses. When we recessed, Congressman Sawyer had been recognized. We want to re-recognize him at this time.

The gentleman from Michigan, we are glad to have you here.

**STATEMENT OF HON. HAROLD S. SAWYER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. SAWYER. Thank you, Mr. Chairman.

I want to extend my thanks to the committee for giving me the privilege of being here. I also join in the commendation of seeing this subcommittee move on this matter. I got involved in this—if I may just submit my prepared statement for the record.

Mr. PICKLE. It will be included.

Mr. SAWYER. I won't burden you with reading it. I got into this because I am on the Veterans' Affairs Committee, on its Subcommittee on Education. It came to my attention that prisoners in Michigan, in particular, and it developed all over the country, were receiving veterans educational benefits while they are in prison because they were taking courses.

It developed that the courses are totally paid for by the State of Michigan, the books, instruction, by a State appropriations every year.

I then made an effort to find out just how many inmates were receiving assistance. From the various prisons I was only able to develop there were about 150 in this category who were receiving full GI benefits taking courses.

I then checked with the Veterans' Administration, and being on the committee and so forth they were quite cooperative. It turned out that the actual number was between two and three times as many as the prisoners we knew about. Apparently they engaged in rerouting their checks for fear there might be some attempt to recapture the cost to the State. They rerouted them to other parties or mailboxes, and were investing in land and all kinds of things as we got into it.

The Veterans' Administration even put out a pamphlet entitled "Veterans Benefits Inside and Outside" and had case workers going to the prisons inviting people to sign up for courses so they could get these benefits.

Well, we checked with other States and found out that virtually every State in the Union, in particular all of the larger, more populous States at least, do pay for all these educational courses and don't get any recapture of the funds.

About a week ago, I introduced an amendment in the full Committee of Veterans' Affairs and this was stopped. It is now heading for the floor. There is a prohibition for the payment of any funds to inmates where the State or other governmental unit or grant is paying the tuition and books and expenses or it is provided free, generally. So that at least that will be corrected.

Based on the survey we made, approximately \$10 million nationally was going down the drain on that sort of thing. Now I know that is not your problem. That instance is taken care of because the bill will be on the floor shortly.

But in the course of it I ran into the payment of educational benefits under social security survivors benefits. We could not get nearly the cooperation out of the Social Security Administration as we did out of Veterans, and perhaps understandably because I was on the Veterans' Affairs Committee and not the other.

But as near as we could tell from the figures we have been able to develop from the Michigan prisons themselves, and recognizing probably the same concealment factor of rerouting to other mail drops, in effect, I estimate that in Michigan there is over a million dollars a year of social security educational or survivors benefits going to prisoners.

So I am inclined to go along that the figures developed by Mr. Whitehurst are probably right in the ball park, somewhere in the \$50 million, \$60 million area nationally, if you include disability.

I won't take any more time, but I have a letter here. We don't have anybody of the infamy of the "Son of Sam" that New York has, but we have our share of murders and less highly publicized ones.

But I have here a letter from a Dr. Tannheimer, chief of medical services for the Michigan Department of Corrections. He speaks of a 22-year-old, sentenced in 1978, who is serving a 6- to 12-year

sentence for assault less than murder and possession of a firearm in a felony. He says he is well, quite intelligent, well informed, and extremely manipulative.

But he hired a lawyer after he got incarcerated and they pursued the matter on disability that he was emotionally disturbed.

He attaches, the doctor attaches the letter from Social Security Benefit Information enclosing to him the check for \$3,106.40 from the time he has been incarcerated as back pay, back benefits, reinstating full benefits.

Of course, the doctor points out, "You are well aware how fully the Department of Corrections provides for the food, clothing, warmth, cleanliness, and medical needs of these prisoners."

It seems outrageous to me. Even beyond the amounts involved, aside from the high-profile case, "Son of Sam," in Michigan alone we have about 500 prisoners on social security educational benefits, and while we have plugged a similar gap or fault in the case of the Veterans' Administration, it hasn't yet been touched in Social Security.

I thank you very much.

[The prepared statement follows:]

STATEMENT OF HON. HAROLD S. SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before you on social security benefits for prisoners.

As you are aware, I have supplied this sub-committee with copies of reports I have received from wardens in Michigan as to the extent inmates are receiving social security and veterans' benefits in my state.

Before I discuss the need to eliminate social security benefits to inmates, I would like to point out that the Veterans' Affairs Committee has taken the lead in this matter. Last Thursday, the full committee adopted an amendment I offered which, once and for all, eliminated the payment of VA educational benefits to prisoners. This amendment will save the Veterans Administration and the taxpayers up to \$10 million yearly. My amendment simply outlaws payment of educational benefits if a prisoner has his tuition paid for by any other source, or if he receives free tuition.

I would strongly urge the committee to adopt a similar amendment on social security educational benefits.

It is clearly wrong to allow prisoners to receive social security benefits for tuition when someone else is paying it. This happens not only in Michigan, but in New York, California, North Carolina, New Jersey, Illinois, Indiana, and Pennsylvania, just to cite a few examples.

As you can see from the reports I have provided the committee, almost \$500,000 a year is being paid to Michigan inmates in social security educational benefits. I hasten to add that this is only the tip of the iceberg. As you can see, I was able to document 142 inmates who received V.A. educational benefits, but, by the V.A.'s own records, some 300 inmates actually receive benefits. Thus, more than 50 percent of those receiving benefits are having them funnelled outside the prison to avoid detection and the state's attempt to recoup some of its money.

I have no reason to doubt that this is happening with social security benefits, too.

What is even more intolerable than this obvious abuse, is the unwillingness of the Social Security Administration to cooperate with the Congress in determining the extent of the matter. In communications I have received from them, and which the committee has cited in its report, the Social Security Administration estimates 4,000 inmates received benefits in 1970. And, the committee further says current data would lead them to believe this number is about the same now.

Yet, in Michigan alone, we can account for 300 inmates who have received social security educational benefits. If this is only half the picture, at least 500, and maybe 600, inmates are receiving social security benefits in Michigan.

Since I can only rely on the figures for Michigan, I cannot, with absolute certainty, tell the committee how many inmates receive social security benefits nationally. But, I can tell the committee that it is much more than what Social Security says, and probably closer to the figure of 30,000 which my colleague, Mr. Whitehurst, has cited.

STATE OF MICHIGAN,
DEPARTMENT OF CORRECTIONS,
Lansing, Mich., June 12, 1980.

Representative HAL SAWYER,
U.S. Congress, Washington, D.C.

DEAR SIR: This inmate at the Michigan Reformatory has retained an attorney. Clearly both inmate and his attorney stand to gain from the payment of unwarranted Social Security benefits.

My writing to the Social Security office is without response after two months. As you well know, certain legal rights of privacy make a conscientious effort on our part to assist you in correcting these violations potentially hazardous.

The enclosed documents pertain to a twenty-two year-old man sentenced in 1978 to a 6-12 year sentence for (1) assault less than murder and (2) possession of a firearm in a felony. He is well, quite intelligent, very well-informed, and extremely manipulative.

You are well aware how fully the Department of Corrections provides for the food, clothing, warmth, cleanliness, and medical needs of these prisoners.

He is neither disabled nor wanting of material things.

Please advise how such cases of flagrant violations of the intent of the Social Security laws can be properly exposed and corrected.

Attorneys who cooperate with these unsavory schemes carry an ominous shield and ample threat to discourage most people who can and would like to help you.

Sincerely,

JOHN F. TANNHEIMER, M.D.,
Chief of Medical Services.

BUREAU OF RETIREMENT AND SURVIVORS INSURANCE,
GREAT LAKES PROGRAM SERVICE CENTER,
Chicago, Ill., December 21, 1979.

We have recently reviewed the evidence in your disability claim and find that you are still disabled. You will, therefore, continue to receive your benefit payments. If your condition improves, or there is a change in your work status, however, you must notify us immediately.

If you have questions about your claim, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit the office, however, please take this letter with you.

Shortly you will receive a check in the amount of \$3,106.40 which covers benefits due you for August 1978 through November 1979. We have deducted medical insurance premiums due through December 1979 from this check. We will continue to deduct \$8.70 from your monthly rate of \$214.60 for medical insurance.

This action supersedes our previous determination and is in accordance with the decision of the Administrative Law Judge.

SOCIAL SECURITY ADMINISTRATION,
BUREAU OF HEARINGS AND APPEALS,
Lansing, Mich., November 8, 1979.

Mr. _____,
Holland, Mich.

DEAR MR. _____: This is to acknowledge receipt of your letter of November 3, 1979. You have in your possession a copy of my decision. This decision clearly indicated that I found you disabled and that you were entitled to benefits based on that disability.

I have no information nor is anything available to me as to the status of your benefit checks. All such inquiries should be directed to the District Office. It was my understanding that the Holland Social Security Office was to handle your file.

Yours very truly,

ROBERT G. HULL,
Administrative Law Judge.

RIVERSIDE CORRECTIONAL FACILITY,
March 19, 1980.

PSYCHIATRIC EVALUATION

Identification.—Mr. _____ is a _____-year-old, white, single male who was referred to me for evaluation by Mr. _____.

Reason for evaluation.—Mr. _____ had requested transfer to Ypsilanti Forensic Center in accordance with the "guilty but mentally ill" statute which he pleaded when he was incarcerated.

Psychiatric history.—Mr. was sent to this hospital 12-1-78 from for evaluation and possible treatment. He, at that time, did NOT show any evidence of psychosis, organic or functional type. However, he was quite demanding, manipulative and wanted his own way. He was diagnosed as a Passive Aggressive Personality at that time.

Mr. does have a history of psychiatric treatment before his incarceration three years ago. He was treated at, Grand Rapids, at the State Hospital and also at Hospital in Ann Arbor. He was diagnosed as "schizophrenia, paranoid type" or "acute schizophrenic breakdown" at that time. He was not treated for any psychosis during his past admission to this hospital and has not been on any psychotropic medication since Dec. 1978.

Mental status examination.—A young, white male who is oriented to time, place and person. His memory is intact, both for recent and past events. His affect is appropriate. He mentioned that he wanted to go to the Forensic Center to seek treatment for his mental illness. He was extremely demanding, argumentative and said, "I had my private psychiatric examination and I was found to be schizophrenic and I also pleaded guilty but mentally ill, so I should be sent to the Forensic Center where I might receive some treatment." When he was asked why he thought that he was schizophrenic, he said, "I hear my name yelled and I look back and don't see anybody and I cannot sleep at night. I also see things." His speech was coherent, relevant. There was no evidence of any circumstantiality or bizarreness. He did say that he has mood changes and feels depressed at times, but expressed no suicidal ideations. His judgment seems to be questionable at present.

Diagnostic impression.—In my opinion, there are not enough symptoms or signs to justify the diagnosis of schizophrenia or any other kind of psychosis. His personality appears to be passive-aggressive in nature. However, he has been treated as a schizophrenic in the past and he might have had an acute schizophrenic breakdown at that time but there appears to be no residual at present.

Recommendation.—I recommend that if the Forensic Center in Ypsilanti accepts him, he could be evaluated there for any presence of underneath psychopathology. Clinically he does not appear to be schizophrenic at this point, but does have a history of schizophrenic breakdowns in the past and received treatment before incarceration.

....., M.D.,
Staff Psychiatrist,
Psychiatric Hospital.

Mr. PICKLE. Thank you, Mr. Sawyer.

We are mindful of the action of the Veterans' Affairs Committee. We have a copy of the amendment that you put on the bill, H.R. 7394, I believe it is. So we appreciate your interest, though it pertains to veterans. Your problem and ours are related.

I also want to say to you, when you say you did not get full cooperation from the Social Security Administrator, I would want to know what information you asked him for. You give us a copy of that, and we will see if we can't get full cooperation. I would hope there is a misunderstanding, that the problem could be handled. We will certainly assist you.

Mr. SAWYER. This doctor, the Chief of the Michigan Correction Medical Section, also points out to me that he has been writing to the social security office over a period of 3 months on this case and has not yet gotten the courtesy of a response. So apparently we don't find ourselves alone in that situation.

Mr. PICKLE. If you will give me a copy of the letter we will see if we can get a response.

Mr. SAWYER. I will put it in the record.

Mr. ARCHER. I want to compliment the gentleman from Michigan for his testimony.

I think his point is well taken, and the bill which Mr. Conable and I cosponsored, H.R. 7555, does deal with this question of survivorship and students who are in prison.

I think it is something we should attempt to do.

Mr. SAWYER. Thank you.

Mr. PICKLE. Now we are going to recognize Congressman James Courter of New Jersey.

STATEMENT OF HON. JAMES A. COURTER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. COURTER. Thank you very much.

I appreciate the opportunity, and I also would like to go on record by commending the committee for having hearings so quickly on this very crucial matter.

There are just a couple of things that I would like to add. I will submit my written testimony to the record.

First, I would like to say we all in the Congress come from diverse backgrounds.

I happen to have been a prosecutor for probably 8 or 9 years, and I know the frustration among policemen because they were my friends and I worked with them a lot.

I very recently had the opportunity to talk to a couple of policemen that are friends of mine because of the fact that we worked together a number of years ago, and this was just one additional thing that they said was extremely frustrating and affected the morale of the police department, so I urge the committee to proceed as quickly as possible.

One last point, and then I understand we have another vote; there is a feeling of many people in the United States that the Congress is incapable of reacting quickly, we can't seem to get anything done, a feeling of a lot of citizens of the United States that everything seems to be so unfair.

This is I think the reason that this particular issue received such public attention that, one, is Congress going to react quickly and, two, it's a perfect example of the mess we seem to be in with regard to laws that don't seem to have any equity at all.

I urge the panel to proceed with the hearing and with the good legislation, as I understand not only Mr. Whitehurst sponsored but the bill Mr. Conable and Mr. Archer sponsored as well.

I thank the chairman for the opportunity to testify.

[The prepared statement follows:]

STATEMENT OF HON. JIM COURTER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW JERSEY

I appreciate this opportunity to testify on the subject of Social Security payments to prisoners.

I strongly urge the Committee to support Mr. Whitehurst's bill, H.R. 5610, or similar legislation to deny Social Security benefits to convicts.

I am sure that the Committee is familiar with many of the specific accounts of prisoners who have obtained benefits, often large amounts, and in many cases by concocting a "disability" in order to qualify for benefits. Often, prison lawyers and caseworkers are used in the process of establishing eligibility. I will not dwell on these specific "horror stories"—I'm sure the Committee is familiar with them, and with their costs.

This matter was brought to my attention by a series of articles which appeared in a Trenton, New Jersey newspaper. These articles caused considerable outcry among many of my constituents, and I share their sense of frustration.

In a time when we are increasing Social Security taxes in order to maintain the financial integrity of the Social Security trust funds, I believe it makes little sense to allow this unwarranted drain on the funds to continue. It is unfair to the taxpayer, and unfair to those who fear that the trust funds will not be able to meet their obligations in the future.

In addition, these payments are unfair to the general public, which prefers to believe that once a convict is behind bars, he will be punished for his crime. People are rightfully outraged when they discover that prisoners can build substantial personal savings at the expense of the Social Security system.

Mr. Chairman, it is my hope that this legislation can receive prompt and favorable consideration by the full Ways and Means Committee. Frankly, I would be embarrassed to report to my constituents that Congress has failed to make this important, simple reform.

Mr. PICKLE. We want to assure you that we have held these hearings because we want to be responsive to the problems that have been raised. I think you will find the subcommittee responsive, and I hope the full committee on Ways and Means will act on this. We must protect the various constitutional problems that are involved in this question, and we know what our objectives are.

Congressman Roth, I am willing to recess.

Do you want to make a statement at this point?

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. ROTH. I wish to echo the remarks of my colleagues here in complimenting you and the other members of the committee for holding these hearings. It is very important and timely legislation.

Also, I thank Congressman Whitehurst and Congressman Jacobs for their legislation, and the people that are working on this legislation.

I think in a nutshell we can say that the flagrant cases and abuses that we see and the large loopholes indicate Congress must address itself to these problems forthwith, and there is something terribly wrong with a system that allows these types of abuses.

We are going to gain the people's trust and confidence when we tackle loopholes like this, and I am confident that people like you with your ability, that you are going to do just that.

Mr. PICKLE. You obviously made a good statement, Congressman.

We thank you very much.

Your statement will be made a part of the record, too.

We appreciate your presence here today. I know of your interest because you joined with Congressman Whitehurst in asking for some solution to this problem.

[The prepared statement follows:]

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

I am very grateful for the opportunity to join with you and my other colleagues at this hearing today. It is a pleasure to present my views in strong support of legislation to provide that social security disability benefits not be paid to individuals who are confined in penal institutions or correction facilities.

The question of convicted criminals receiving social security disability payments has received increased attention as more and more examples are revealed of how the American taxpayers are getting ripped-off. There are basically four areas I would like to address in my remarks today before this subcommittee.

1. *The present situation puts the American people in double jeopardy.*—In many cases, society will pay twice when a convict goes to jail. First, there is the cost of the crime to society, and second, the taxpayer pays for the room and board and rehabilitation of the convict. It represents a colossal ripoff to the taxpayers if on top of this a prisoner is able to collect up to \$538 a month from the Social Security Administration.

Providing social security benefits to convicted criminals circumvents the original purpose and intent of the Social Security Act. The system was never designed to provide a retirement pension but to assist retirees, the handicapped, and surviving

family members to recoup income lost to death, disability and retirement. Prisoners have no need for a monthly allowance as all their basic needs are already provided.

2. *It is ridiculous to further weaken the social security program and at the same time expect the taxpayer to pay more to enrich criminals.*—Payments to the disabled and their dependents have quadrupled from about \$3 billion in 1970 to nearly \$12 billion in 1978 and the amount is increasing annually. During that same period, the total number of beneficiaries has increased from almost 3 to 5 million.

We have been hearing for years that our social security system is on the verge of bankruptcy. Some have even recommended taxing social security, an idea that I adamantly oppose. How then can it afford to make payments to convicted criminals? Overtaxed citizens sacrifice enough without having to subsidize this kind of giveaway. This current situation flies in the face of decency and common sense. It is an insult to every American taxpayer.

Moreover, it is incredible that the vast number of social security beneficiaries are forced to accept a lower standard of living while prisoners live high on the hog in their rent-free cells.

3. *Apart from the issue of whether inmates are abusing the social security system, reports are that the money creates other problems at the prison.*—The money makes many inmates targets for strong-arming by other inmates. For example, in one instance a prisoner got a check and was strong-armed out of \$300 and another inmate's girlfriend on the outside cashed the check before it could be stopped. Then somebody snitched and protection had to be provided for the snitch.

Other reports are that a lot of money just creates a lot more discipline problems. A social security check in prison means the inmate can live like a king. As one guard put it, "This a place where \$100 a month will buy you drugs, cigarettes and luxuries. And social security checks, it should be noted, can be as high as \$538 a month.

4. *Finally, while the situation cries out for action it appears that an administrative paralysis has set in and many would rather hide behind the law than change it to correct the problem.*—We must remember that Congress made the law, and Congress can change the law. Any system that has a loophole big enough for David Berkowitz, the infamous "Son of Sam," to be receiving benefits, means there is something terribly wrong with that system. This particular incident of giving benefits to Son of Sam is going to create a tremendous loss of confidence among those vast millions of Americans who pay into the social security system with the belief that this money is going to be used to help them when they are old and infirm.

We must prove once and for all, Mr. Chairman, that crime does not pay by enacting legislation to correct this blatant abuse of our nation's social security program. Thank you.

Mr. PICKLE. Congressman Petri, would you like to proceed?

STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. PETRI. I think I can make it short.

I want to thank you for the opportunity to testify before the committee.

The problem you are addressing in these hearings is clearly widespread. To allow prisoners to draw these SSDI benefits, given the substantial social security taxes Americans pay, is a misallocation of hard-earned funds.

In the district I represent, the Sixth Congressional District of Wisconsin, there is an institution where 26 in a population of 161 are receiving SSDI benefits.

This is 16 percent of that institution's criminal population. I should add that an outreach worker from the social security office has been going out to the institution and telling prisoners when they enter the institution of their eligibility for SSDI funds.

Mr. PICKLE. Who has been going there? Will you identify your institution?

Mr. PETRI. It is the Winnebago Mental Health Institute in Oshkosh.

Mr. PICKLE. What is going on there?

Mr. PETRI. According to Glen Lloyd, of WLUK-TV in Green Bay, an outreach worker has been going out to the institution and telling prisoners when they enter the institution of their eligibility for SSDI funds. Maybe under the law that is that individual's obligation; but it is our obligation to correct the law if this sort of thing is occurring.

The figures for the number of prisoners receiving SSDI benefits nationwide seem to be a bit elusive. The Social Security Administration has figures that date from 1974. According to them, only 3,934 prisoners received SSDI benefits.

A provisional figure for the total prison population in our country in December 1979 set the count at 314,083. If the 16 percent receiving SSDI benefits in the Wisconsin institution were projected nationwide, the total number of prisoners in our country receiving SSDI benefits would be in the range of 50,240.

If we use a conservative estimate that each of these prisoners is receiving a monthly benefit of \$200, the range of monthly benefits under SSDI in 1979 was \$122 to \$502, then the total outlay would be in the range of \$120,576,000, \$120 million, and then some going to prisoners.

Now, these figures may be excessive but they could range up to that high based on our own local experience.

As I understand it, members of the committee are considering the possibility of changing the definition of what qualifies a person for SSDI benefits. The change would delete existing conditions related to the commission of a crime from the list of qualifying conditions for a disability claim.

I would endorse such a change, as it would be simple and to the point.

According to officials in the local Social Security Administration office in my district, if this change were made, all of the 26 prisoners presently receiving SSDI benefits would no longer be eligible.

In this context, I have a suggestion, Mr. Chairman, which may not be within your subcommittee's jurisdiction, but is worth raising in considering this problem.

That is, prisoners who have legitimately earned social security benefits, either because they have reached retirement age or because they are deemed "disabled" on grounds other than their criminal proclivities, should be required to use these funds to defray some of the costs of their incarceration.

The law-abiding elderly people in nursing homes pay part of the costs of their care with their social security receipts.

Why shouldn't convicted criminals who have incurred some debt to society at large be required to do the same?

Another approach would be to count prison room, board, and rehabilitation expenses as in-kind income sufficient to disqualify prisoners from eligibility for SSDI, and I think the committee should consider that as well.

In fact, I recommend that all prisoners who have some outside source of income be required to contribute to their room and board and rehabilitation.

In closing, I urge the committee to act quickly in drafting this legislation.

[The prepared statement follows:]

STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee on Social Security, on the problem of prisoners receiving Social Security Disability Insurance benefits. I would like to commend the committee for arranging this hearing as expeditiously as you did, on an issue that has aroused considerable public concern.

Unfortunately, the problem of prisoners receiving Social Security Disability Insurance benefits, referred to as SSDI, is not limited to just a few localities. These situations appear to be widespread, and they accordingly lead many of the American public to believe, on fairly reasonable grounds, that "crime pays." Indeed it does in the cases where individuals have succeeded in claiming a disability because of "criminal insanity," or in some cases because of the hardships of prison life.

Clearly these situations should not be sanctioned. Members of this Subcommittee are keenly aware of the importance of the SSDI program to those who are truly and legitimately in need. You also appreciate more than others do, just how steep the demands on this program are. To allow prisoners to draw these benefits, given the substantial Social Security taxes that all working Americans must pay, is a misallocation of hard-earned funds.

In the district, I represent, the 6th congressional district of Wisconsin, there is an institution where twenty-six in a population of one-hundred sixty-one are receiving SSDI benefits. This is 16 percent of that institution.

The figures for the number of prisoners receiving SSDI benefits nationwide seem to be a bit elusive. The Social Security Administration has figures that date from 1974. According to them, only 3,934 prisoners were receiving SSDI benefits. A provisional figure for the total prison population in our country in December 1979, set the count at 314,083. If the 16 percent receiving SSDI benefits in the Wisconsin institution were projected nationwide, the total number of prisoners in our country receiving SSDI benefits would be in the range of 50,240. If we use a conservative estimate that each of these prisoners is receiving a monthly benefit of \$200 (the range of monthly benefits under SSDI in 1979 was \$122 to \$502), then the total outlay would be in the range of \$120,576,000—\$120 million and then some.

As I understand it, members of the committee are considering the possibility of changing the definition of what qualifies a person for SSDI benefits. The change would delete existing conditions related to the commission of a crime from the list of qualifying conditions for a disability claim. I would endorse such a change, as it would be simple and to the point. According to officials in the local Social Security Administration office in my district, if this change were made, all of the twenty-six (26) prisoners presently receiving SSDI benefits would no longer be eligible.

In this context, I have a suggestion Mr. Chairman, which may not be within your subcommittee's jurisdiction but is worth raising in considering this problem. That is, prisoners who have legitimately earned Social Security benefits, either because they have reached retirement age, or because they are deemed "disabled" on grounds other than their criminal proclivities, should be required to use these funds to defray some of the costs of their incarceration. The law-abiding elderly people in nursing homes pay part of the costs of their care with their Social Security receipts. Why shouldn't convicted criminals who have incurred some debt to society at large, be required to do the same?

In fact, I recommend that all prisoners who have some outside source of income, be required to contribute to their room, board and rehabilitation.

In closing, I urge the committee to act as quickly as possible in drafting legislation to rectify the situation of prisoners being eligible for SSDI benefits on the grounds of their criminality. It is extremely important that changes be made to restore to some degree the American public's faith in our government.

Mr. PICKLE. Before you gentlemen leave, Congressman Sawyer and Mr. Courter and, particularly, Bill, when we resume, the committee would like to have all of you available to ask questions and get responses.

We particularly would like you and Mr. Sawyer to come, and any of you other gentlemen, and Senator Wallop, if he has not gone to the hinterland.

We will recess for 10 minutes.
[A brief recess was taken.]

Mr. PICKLE. I am going to ask that the subcommittee come to order.

Unfortunately, it would appear that we have some trigger finger members who are calling for rollcalls. This may be another vote. I may have to check.

Let's proceed and try to make the best we can of these circumstances.

Mr. Whitehurst, let me ask you first, I stated in my original statement to the committee that there have been some claims and allegations of abuses of this program. We didn't know the extent of it. Now you have stated that in some of your releases earlier and in your testimony, some 30,000 prisoners were receiving social or disability benefit. That would be about 10 percent of the present population.

The figures I had given to me, that we have been given from GAO tentatively would be 1 percent or a little over 1 percent. Now, there is a great disparity in the two claims or allegations.

We don't have the final report of the GAO and theirs is limited to Federal. We are advised that perhaps State percentages would be relatively the same. We don't know the amount.

What is the source of your figures that it would be some 30,000 prisoners?

Mr. WHITEHURST. It is a rough projection. I make no bones about it. We did it on the basis of the State prisoners, prison systems we canvassed.

We didn't look at the Federal penal system. I think you will find on the basis of just the testimony that has been given this morning, indeed, on the basis of our own contact which had been purely with State systems, that the number of prisoners who were abusing this are much greater in State prison systems than they are in Federal.

Of course, the greater number of prisoners in this country are held in State institutions as opposed to Federal institutions.

Mine is not a scientific or categorical figure, but I don't think we are that far from the mark.

Mr. SAWYER. Mr. Chairman, we arrived at our estimates independently; namely, from the Veterans' Administration benefits.

We have 12 penal institutions in Michigan, one being Federal. Based on the percent that we could determine from inquiring of the prisoners that we knew about on GI benefits which were slightly less than half of the figures from the Veterans' Administration, and if we assume that same thing is true because of prisoners' routing their payments to other places, then projecting it nationwide, we came very, very close to these figures that Mr. Whitehurst has used.

The Social Security Administration says 4,000 prisoners receive benefits nationally. Well, it is not 4,000. I can assure you of that, and it is more like 20, 25, or 30,000, based on any percentage similarity to Michigan.

Mr. WHITEHURST. I would add also that I have two gentlemen here this morning who are penal officials, and I think that when they testify on the basis of their own first-hand knowledge, this figure will come out.

Mr. PICKLE. It may be that the figures that the GAO has given us are underestimated, not intentionally. We are advised that they

actually checked the social security number so that the routing of the check would make no difference, but these figures should be made a factual matter as we proceed, and we will get to that as quickly as we can, so that we all will know.

We do know that, our report that we have put out on the subject social security benefits for prisoners showed 1970 census data indicated about 4,000 inmates of Federal, State, and local correctional facilities received social security benefits.

We are in the process of another census. We don't want to wait until the census is finished, but we are trying to find what is the source, and how do we go about it?

Mr. PETRI. I wanted to add, the figures are not based on a very scientific sample, but a very accurate count in one institution would indicate the problem would be even larger than that indicated by Mr. Whitehurst.

Mr. PICKLE. Well, let's hope your estimate is incorrect, Congressman.

We do not know, and I believe that the GAO, when they give us their final report, will give us a much better figure than we have had.

Now, Mr. Whitehurst, in your statement and Senator Wallop's statement, and I am sorry the Senator is not here, but I understand that the proposal you and Senator Wallop had recommended, that your bill would deny individuals already in prison benefits, social security benefits.

Now, our report shows that we have had two previous actions by the Supreme Court of the United States with a ruling on the constitutional questions involved, particularly with respect to ex post facto laws, and we are wondering if the bill, as you have written it, would your bill be declared constitutional or unconstitutional on the grounds similar to those grounds; I won't mention them, but they are on page 7 of the committee report.

Have you had an opinion obtained for your bill on legal grounds, whether it would be constitutional?

Mr. WHITEHURST. Mr. Chairman, I have not. I have had some conversations this morning outside of the committee room with Mr. Archer in conjunction with this problem.

Indeed, in any event I would have to, and would willingly defer to the legal expertise that your subcommittee would bring to this issue.

He made a point of the fact that the grounds could be made on the basis of, I believe, \$10,000 as the ceiling that, the earned ceiling that one can have to qualify, is that correct?

Mr. ARCHER. That changes, the amount is not \$10,000.

Mr. PICKLE. Well, it is approximately \$300 a month.

Mr. ARCHER. It is \$300 a month.

Mr. WHITEHURST. Well, if this is true then the cost of caring for a prisoner, taking care of his needs in most prisons, would cover that sum.

Therefore, someone could be denied, under the law, in the sense that not the income but the money being spent to maintain them is in excess of that figure and therefore they would not qualify.

Am I reading you correctly?

Mr. ARCHER. If the gentleman would yield, one approach that I think we should look at and have examined carefully is imputing to the prisoner a dollar amount as earnings under the law which would be in excess of the substantial activity threshold which would then deny them the ability to come in and claim to be disabled.

Mr. WHITEHURST. Precisely. This is a possible avenue to take.

Mr. PICKLE. We have approximately 5 minutes to take a vote.

Mr. WHITEHURST. I will be pleased to come back, Mr. Chairman.

Mr. PICKLE. Congressman Sawyer also.

We will stand in recess for 10 minutes.

[Recess taken.]

Mr. PICKLE. The subcommittee will come to order.

Mr. WHITEHURST. Mr. Chairman, my administrative assistant is here, and he has the legal mind in my office; I don't. We have discussed this. Would it be out of order to have him come to the table and perhaps address one or two thoughts?

Mr. PICKLE. That will be permitted.

Mr. WHITEHURST. Mr. Charles Fitzpatrick.

Mr. PICKLE. Welcome, Mr. Fitzpatrick. Have a seat.

Mr. Whitehurst, do you think incarceration for a period of 30 days, irrespective of the conviction of crime, is the proper standard for the denial of social security benefits?

Senator Wallop's bill, well, the bill introduced by Mr. Conable and Mr. Archer and the Senator, requires a conviction of a crime rather than just incarceration.

Would the conviction of a crime be a better standard?

Mr. WHITEHURST. Conviction of a felony, I think, would be the best standard, Mr. Chairman.

Mr. PICKLE. All right.

Mr. SAWYER. May I speak, Mr. Chairman?

I don't think the conviction of the crime is the point. If he were put on probation and were totally disabled, he has the same problems as he had before he was convicted.

It is the fact that all of his expenses are being paid by some unit of government, even to the extent of people who worry about whether or not he is there every night. These expenses run about \$15,000 a prison bed in the United States. All his needs are taken care of. The purpose of Social Security disability is so he could take care of his needs, he doesn't have any needs that are at least essential needs, but you could have a conviction.

A person who is on probation and he has the same problems he would have if he is convicted.

Mr. PICKLE. Would you deprive him of benefits for their dependents?

Mr. SAWYER. Yes. I think if they are under SSI to the extent the dependents participate, there are other programs that would assist them, various other programs, like aid to dependent children. I think this is a misuse of the social security program since it really isn't aimed at taking care of the dependents, but providing for the needs of the disabled individual.

Mr. ARCHER. Will the gentleman yield at that point?

Mr. PICKLE. Yes.

Mr. ARCHER. The gentleman from Michigan refers to SSI, which is not part of the social security programs, and I wonder if that is what you meant?

Mr. SAWYER. Social security disability is what I was talking about.

Mr. ARCHER. SSI is a total welfare program and would be in a different category.

Mr. PICKLE. Mr. Jacobs?

Mr. JACOBS. Mr. Chairman, when I introduced this legislation a little over a year ago, it was on the basis of a general philosophy which has been reflected in the testimony of the members here today.

I would like to explore in terms of that philosophy public policy in general.

For example, the lady, Mrs. Roy Rainy, to give a name, a constituent who wrote to me about this problem, didn't see it on the news media or read it in the paper. She knew of an individual case, and that is what got me interested in the subject. The focal point and indeed the responsibility of this committee is social security, but may we explore for just a moment in terms of public policy comparable areas?

For example, Federal civil service retirement, supposing a Member of Congress is incarcerated in prison. It is sad, but it has happened.

Shouldn't we consider legislation which I will tell you in candor I am preparing now, to apply the same philosophy in a case like that?

Also, in the case of railroad retirement, we have hit the nail on the head with this legislation there. Similarly, and this case is somewhat more remote, but some of you ought to consider, is the case of a private pension which is being paid as a consequence of failure of the fund by ERISA. Is that affected enough with the public Treasury and the public interest to apply the same philosophy there?

Of course, Federal workers are not in the social security program. I have a bill to eliminate the exemption from social security of all those in the Federal Government who are GS rich, that is, about GS-15 and up, including the President, judges, Members of Congress, so on, and so forth. But would you gentlemen care to comment on extending this philosophy to gander on the views or whatever those other things might be?

Mr. WHITEHURST. This is a subject that needs a lot more reflection than we can bring to it just here at the witness table.

I would say to the gentleman philosophically he is probably correct for the purposes of consistency. We do deprive everybody of certain rights if they are convicted of a felony. We deprive them of the right to vote, to hold office. Those are pretty basic rights.

In comparison, are they earned rights? Well, no, we don't call them earned rights. We call them constitutional rights we are all born with, and we qualify on the basis of naturalization.

Nevertheless, they are rights.

I would be personally in sympathy with the gentleman's philosophy. Whether we could make it stand up constitutionally is another matter.

My bill is narrower. Based on the premise that is initially stated in my statement that the program, in its intent, the framers of it designed it to help people who could not provide for themselves by virtue literally of their inability to work, for mental or physical reasons.

As has been stated over and over at this table this morning, as the gentleman well knows, people who are put in prison don't have that problem. Their needs in fact are cared for. It may very well be that in the sense of having worked the requisite number of quarters, they qualify to receive those benefits.

The basic principle of fairness, which should be the basis of any law, would seem to me to preclude their receiving these benefits.

There is a jungle between recognizing what the problem is and finding the solution. Everybody recognizes that and no one knows that certainly more than the chairman and members of your subcommittee.

We essentially brought the problem to you which you surely knew already existed, perhaps not to the extent that it has been surfaced, and we are saying certainly there ought to be, and the expertise represented on this subcommittee, a means of finding a solution to it.

Mr. JACOBS. The Hiss case comes to mind. That is the landmark case in this area, a case that is considered comparable to social security, the Federal service retirement program.

"Whether something is constitutional or is not" as Teddy Roosevelt said, "depends on whether the fifth justice comes down to heads or tails."

The Governor of my State once took an oath to uphold whatever Justice Warren had in his head, be that as it may.

A good Republican, General Eisenhower, said the ultimate in security is the penitentiary. That seems pertinent and that gets to what Mr. Sawyer was saying.

I was very attracted, sir, by your statement concerning the question of conviction or not conviction.

If this were approached from the point of view of a set-off, that is to say, the compensation was being made in some other way, say by the choice of the offender, it seems to me that approach could attack the problem.

What I am concerned about here is someone who either is or is not, I suppose as a matter of law, as in a case in New York, found to be a mental case.

Here is a person who is a mental defective or is mentally ill and commits heinous crimes, is imprisoned; a person like that ought not to receive compensation from the Federal Government.

It is rather clear to everybody. Well, what will the public say, for example, if a convicted Federal official goes to the penitentiary and collects the equivalent of the Federal social security, the Federal civil service retirement benefits? Does that look like just privilege once more rearing its head?

My dad used to say section 3 of the unwritten law is if you steal enough you are excused from crime, and I had a history professor who said he didn't know of a millionaire who was ever hanged in the United States.

I just throw that out.

We don't have jurisdiction on this subcommittee, but we have talked about veterans. I think that ought to be discussed on the record.

Mr. FISHER. May I engage briefly in this discussion, because I think it is coming close to the most difficult part of the problem.

Mr. PICKLE. I hope, I will recognize you, if Mr. Jacobs yields to you.

Mr. FISHER. This can be my only time.

Mr. PICKLE. I hope the members would limit the questions to the bill before us, and the matter over which we have jurisdiction.

We have a lot of witnesses to be heard today and I hope we can stay on the subject.

Mr. JACOBS. Let me say for the record, this is very important to the bill before us because if we are only going to do this and not in other areas, then it raises serious questions as to whether we should do it on this, even though I am, I suppose, a cosponsor.

Mr. FISHER. Government is a matter of drawing lines and here it is again. I would like to try to draw a line and get the reaction of anybody, and that is that persons convicted and serving in prison would be denied payment of any kind coming from the Federal Government until such time as they have served the sentence, and then on whatever the terms of the law specify they resume their right to receive Federal payment.

Now, there are certain programs where the degree of participation of Federal Government or the Federal Treasury is not so easy to determine, but the idea would be to determine its entitlements, interest, dividends, private pensions with no Government interest in them, that would not be touched.

I would be interested in reactions from my colleagues from Virginia, or Michigan, or anywhere.

Mr. WHITEHURST. As usual, the perception and sharpness and analytical ability of my friend has manifested itself. It is simple, to the point and this is a basic fairness about it that people understand.

If it would constitutionally stand up, I think it is the answer to the problem.

Mr. FISHER. A practical support to this position is that there is something wrong or unjust, or unfair about paying twice. In the case of disability, the prison does offer the security that he speaks of; it may not be the best kind of security, but why pay twice?

They do get board and room and that is what disability insurance is for, so to speak.

Mr. JACOBS. That whole philosophy of the setoff doesn't necessarily, and Mr. Sawyer has made this point quite rightly, doesn't necessarily rest on the criminality of a person.

I have a 10-percent disability from combat service in the Marine Corps. When I came to the Congress in 1965, I dropped a note to the VA and said "suspend the payment so long as I am serving in Congress." I am being paid a handsome amount. I was kicked out of Congress in 1972 courtesy of a certain landslide in Indiana, and I resumed those benefits during the time I was out.

Well, I came back to the Congress in 1975, and wrote the same letter again, so I think Mr. Sawyer has really laid a pearl on the record here. That is something we ought to consider very carefully,

the doctrine of the setoff rather than just the doctrine of "OK, now we put him in prison, let's get him again, beat up his kids, take away his property."

That waves back to the Dark Ages slightly, corruption of blood, and so forth, private property removed. A fine should be set and so on and so forth.

Mr. SAWYER. Thank you. I don't like my situation being extended to analogize Congress with prison, although it may be a stepping stone.

Mr. PICKLE. Mr. Archer.

Mr. ARCHER. Thank you, Mr. Chairman. I will try to be brief. I do want to delineate your positions as much as possible. I don't think we are going to settle today on a precise solution that we know will clear the constitutional hurdles and other legal problems, but I am curious as to whether both of you believe we should consider trying to find some method to take away the retirement benefits for those prisoners who are over 65 years of age in contrast to those that are disabled and in prison and in contrast to the students which Mr. Sawyer mentioned.

Mr. WHITEHURST. That was not my intention.

Mr. ARCHER. You think if you are over 65 and you are in prison, then you ought to be able to continue to draw your benefits.

Mr. WHITEHURST. I think so.

Mr. ARCHER. How do you feel, Mr. Sawyer?

Mr. SAWYER. That is a tough question, as Mr. Jacobs pointed out.

Mr. ARCHER. We have to come to grips with that.

Mr. SAWYER. I understand but off the seat of my pants on a subject this complex, I wouldn't want to make any opinion that I hadn't really well thought out.

I kind of fall along the line that Mr. Fisher suggested, that where the funds are strictly private funds, and there is not a public participation in the payment might be a good demarcation.

If you have public pension payments, let's say, I think at least they should be reduced to an offsetting amount of what the government is providing the person by way of room and board, medical care and everything else. Maybe that would be a test.

I do agree that we ought not to involve private funds in this thing whether they be private pension plans, interest or dividends or whatever they might be. I do think there is a double-dipping, if you want to put it that way, where the public is providing the full maintenance and care of the individual, and yet is still also paying that which he would receive if he had to pay all those things himself.

Mr. ARCHER. The basic laws relating to private and Federal pension plans are not under the jurisdiction of this committee and I hope we can stay away from that so we can concentrate on the issue at hand, and that issue is, should we or should we not attempt to take away the social security retirement benefits for prisoners who are over 65 years of age?

Mr. SAWYER. Along the line I said, I think that either we should or there should be an offset for what some governmental unit is already picking up the check for.

Mr. ARCHER. You do think we should consider attacking that as well as the disability payments?

Mr. SAWYER. Yes, although I don't think that is as clear. Reasonable minds could certainly go off in different directions there, but I don't think they can on the disability payments.

Mr. ARCHER. On the question of local jails, or lesser offenses, that sort of thing, under the concept of offset then, I assume you believe we should temporarily deny benefits under those circumstances?

Mr. SAWYER. I think we ought to take some sentence, minimum sentence limit.

You would spend more administratively trying to handle 30-day jail sentences probably than you would save by doing it but at some place it ought to only apply if it is incarceration beyond a certain time.

Mr. ARCHER. Am I correct in assuming that you feel that when a convicted felon is put on probation that his benefits should resume?

Mr. SAWYER. Oh, no question about it. I don't think it should go with the conviction. Once the person is out he has all the problems and has to pick up his own check for everything.

He is no longer being provided it. I think then everything ought to be paid out. It is during the period the public is paying the shot for his board, keep, medical care, clothing, and everything else that it amounts to double-dipping to allow these payments during that period of time.

Mr. WHITEHURST. Could I come back to the old point? As a practical matter, the average age of prisoners in this country is 34 years old so if we are talking about people receiving benefits at age 62 or 65, the number is very small.

I realize there are people there that age and the problem must be addressed, but from a practical point of view what we are talking about is much younger prisoners who are taking advantage of this.

Mr. PICKLE. Mr. Gephardt?

Mr. GEPHARDT. No questions.

Mr. PICKLE. Mr. Whitehurst, Mr. Sawyer, we recognize in presenting your testimony, making recommendations for action and submitting to us a bill, that is a preliminary recommendation on your part. I know you don't have an answer to all these many legal problems that we have been discussing here.

I would like to, in behalf of the committee, submit to you and to others questions that would relate to the question of dependencies, of the offsets, of the State option, the authority of the HHS Secretary to divert funds perhaps, and other aspects of the overall question. We will do that in writing and ask you to respond. You may do it jointly or separately, because there are a lot of aspects we need to go into. So, with your understanding, if that is agreeable, we will proceed on that basis and come back perhaps to you later, submit questions in writing. I want to ask other questions but in the interest of time I think we must proceed with our schedule.

Mr. WHITEHURST. Thank you, Mr. Chairman.

Mr. PICKLE. Thank you, gentlemen. Your statements have been received.

Mr. Whitehurst, you brought us a question, you thrust it upon us. This is an old question, and it has been going on for years. We will get into the deep legal questions, but here again this commit-

tee, I think, is determined to do what we can to correct any abuses in the social security program.

Mr. WHITEHURST. I thank the chairman.

Mr. PICKLE. The leadership you have given to this question is helpful.

Mr. WHITEHURST. I particularly appreciate your being willing to hear the witnesses coming from out of town to see how they are directly affected.

Mr. PICKLE. I thank both of you gentlemen. I am going to ask Mr. Lawrence Thompson, who is the Associate Commissioner for Policy of the Social Security Administration, if he is here. Yes, Mr. Thompson.

Mr. Thompson, we are glad to have you here, and I assume you represent both the Social Security Administration and the HHS.

STATEMENT OF LAWRENCE H. THOMPSON, ASSOCIATE COMMISSIONER FOR POLICY, SOCIAL SECURITY ADMINISTRATION

Mr. THOMPSON. That is correct.

Mr. PICKLE. You are the authority on this subject.

Mr. THOMPSON. I am not sure I am the authority, Mr. Chairman, but I am sure I am here.

Mr. PICKLE. We are privileged to hear your testimony.

Mr. THOMPSON. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you to discuss issues concerning the receipt of social security benefits by prisoners.

Imprisonment by itself has never been a basis for nonpayment of social security benefits. In fact, the act makes only two specific references to nonpayment of benefits based on criminal activity. It provides for terminating certain benefits upon the deportation of an insured worker who violates certain provisions of the Immigration and Nationality Act; it also provides that a Federal judge has discretion to deny social security benefits in certain cases to people convicted of subversive activities.

In addition, social security regulations contain a long accepted insurance principle and prohibit the payment of social security survivor benefits to anyone who is convicted of a felony for intentionally causing the death of the worker on whose account the benefits are based.

Nevertheless, we are aware of the current concern being expressed about the fact that prisoners can and do receive social security benefits. Many people undoubtedly feel that people who commit crimes against society, and therefore forfeit certain rights, should also forfeit benefits under the social security programs.

Further, it may seem incongruous that incarcerated persons should receive social security benefits when society already provides for their needs through its Federal, State, and local tax systems. Such payments may also appear wasteful at a time when social security taxes are being increased in order to maintain the financial stability of the social security program. We are aware of these sentiments, and they are understandable.

With rare exception, a person's eligibility for social security is based upon work in employment covered by social security, and without regard to individual need or circumstances.

One prominent argument for restricting social security benefits to prisoners is that the prisoners do not need the benefits. However, such a restriction would represent a major departure in program philosophy. For this reason, we believe that any proposal that might be seen as moving in the direction of establishing a needs test in the social security program should be subject to the most careful consideration of both its immediate and longer range effects.

Mr. PICKLE. Do you think the bill recommended is requiring the needs test?

Mr. THOMPSON. There has been a great deal of discussion about the issue of prisoners getting social security benefits when their needs are being taken care of by the State. So implicitly we are introducing the notion that a given individual in a given circumstance, whose needs are being taken care of, doesn't need social security benefit. That is the introduction of an idea that I think by and large we have kept out of the social security program. I may say that if the principle is adopted with respect to prisoners it is not necessary that it be extended to others.

Mr. PICKLE. Pardon me for interrupting you. I shouldn't have done that. I know they inferred by their responses this morning they might have a needs test. I don't know that it is in the legislation specifically. That is what I was asking.

Mr. THOMPSON. The legislation does not establish a needs test, but the rationale is close to it.

Another aspect of program philosophy that bears on this issue is the problem of dependents benefits. Many prisoners have families and under current law the family members are frequently eligible for social security benefits as dependents of the prisoner. Moreover, the social security benefits payable to prisoners can go to their families, since many prisoners help to support their families from whatever funds they have.

Social security has traditionally sought, wherever possible, to insure support to dependents of covered workers when those workers have died, retired, or become disabled and when the dependents can't reasonably be expected to work themselves. We feel a key consideration in evaluating any proposal to restrict payment of social security benefits to prisoners should be its effect on the income maintenance of the family.

Although questions of constitutionality are ultimately settled in the courts, we are concerned about the significant constitutional questions which are raised by many proposals to deal with this issue. The Supreme Court, in *Flemming v. Nestor*, has affirmed that an individual's social security benefits cannot be denied or restricted arbitrarily and without due process of law. If a proposal to restrict benefit payments to prisoners is viewed as purely punitive in intent rather than as serving some valid governmental objective related to the objectives of the Social Security Act, we believe it may raise questions about due process and equal treatment under the law.

Restricting social security benefits to prisoners but not to inmates of other public institutions, or only to prisoners convicted of certain categories of crimes, could raise such questions. Moreover, if such a provision were applied to prisoners who had committed a

crime prior to enactment of this bill, it might be seen by some as constituting punishment for past acts in violation of the constitutional prohibition against ex post facto laws.

In our view, many of these questionable features are in the bill which has received the most widespread media attention, H.R. 5610, introduced by Representative Whitehurst. Many of the problems are present also in H.R. 3524 introduced by Representative Jacobs.

In summary, H.R. 5610 would prohibit the payment of disability insurance benefits to an individual for any month throughout which the individual is confined to a penal institution or correctional facility, apparently including pretrial detention. Benefits would continue to be paid to the incarcerated person's eligible dependents, but the worker's benefit would not be available for the support of the family. Thus, the total amount of benefits available for support of a family of an incarcerated worker would be substantially less than would be paid to another family.

We are concerned that this bill would discriminate against social security disability beneficiaries because, for identical offenses, it would impose on them a more severe punishment than that imposed on nonbeneficiaries. We are concerned that the bill would have an uneven impact among disability beneficiaries convicted of a crime. Those who are actually required to serve a prison term would lose their benefits, while those sentenced to probation or fined would not.

In addition, we are concerned because the bill would eliminate benefits for those who have not been found guilty of any crime, but are merely awaiting their trial, and since pretrial detention practices vary from State to State, suspension of benefits for people awaiting trial would produce uneven results.

We believe that both bills also raise the type of constitutional issues mentioned earlier.

Considerations such as these make it clear, I think, that crafting any proposal to restrict benefits to prisoners raises serious legal and philosophical questions that must be carefully evaluated. We believe the issue needs careful study and further debate. We particularly want to guard against any change in the law that might have unintended effects, which could happen if a "quick fix" measure were enacted in response to intense publicity over this issue.

There is another reason why we believe that action in this area should be deferred. As you know, the General Accounting Office is currently conducting a survey of this subject which will give us some idea of how many prisoners are receiving social security and other Government benefits. Initially, GAO will compare the social security benefit roll tapes with those of the Federal prison system. Later, GAO will try to do the same thing with a few selected States and localities. The results are expected in the next 4 to 6 months, although preliminary data may be available sooner, and there is some data supplied to you, Mr. Chairman, on the Federal prisoners.

The results of the GAO study may be particularly significant in defining the scope of the issue. This is important because it is apparent that much of the current concern stems from information conveyed by the media which is, at best, dubious. One item of controversy concerns the number of prisoners receiving social secu-

ity benefits. Media estimates of social security benefits to inmates in correctional institutions have ranged as high as 30,000 persons receiving as much as \$60 million annually in disability benefits alone. This represents about 10 percent of the current prison population.

Although we have not compiled data on the number of incarcerated persons who currently receive social security benefits, we have been able to locate some data from 1970 census records and a 1974 survey of State prison inmates. The 1970 census data indicated that about 4,000 inmates of Federal, State, and local correctional facilities received some type of social security benefits. This was slightly more than 1 percent of the total number of inmates and about one-tenth of the size of the numbers alleged in the press. Obviously, the GAO study will give much firmer evidence in this area.

The other incorrect impression that we believe is being spread by the media is that it is relatively easy for prisoners to receive social security disability benefits. Actually, in order to qualify for social security disability benefits, it is necessary for all persons—including prisoners—to meet the rather stringent requirements set forth in the law and regulations. In each case, proof to support each factor of entitlement is required. Statements by an applicant about his symptoms are not sufficient to establish the presence of a disabling physical or mental impairment.

The existence of a disabling condition can be established only through physical and/or mental examinations and supporting laboratory and other test data. Only where substantial evidence supporting a finding that all factors of entitlement are met—including documented evidence of a severe medical impairment—are benefit payments made; and confinement in a prison or any other institution does not by itself constitute evidence of an impairment or an inability to work.

I would like to close by stating that we are willing to explore as many options as possible that may resolve this problem in an equitable manner that does not do violence to social security program principles. However, we feel strongly that further study and, in particular, the results of the GAO study are essential to informed decisionmaking in this instance. The Administration stands ready to work further with the Congress in addressing this difficult issue.

That concludes my statement, Mr. Chairman. I would be happy to answer any questions you or any other members of the subcommittee may have.

Mr. PICKLE. Thank you, Mr. Thompson.

I take it that your testimony in general is one to proceed with caution, or at least with care, about the constitutional question that you have raised. I want to observe that it may be that the GAO tentative figures that they have given us are more correct than the 30,000 Mr. Whitehurst has indicated.

I would hope it is the lesser figure, just for the good of the program. But whatever the figure is, it is not as important as the question, What do we do with the problem we have at hand? How can we correct any abuses where they are receiving it? That is the question. I grant you we have constitutional problems. We recognize that.

Have you looked at other bills? Have you looked at the measure which Mr. Conable and Mr. Archer introduced as well as the one Mr. Whitehurst and Senator Wallop introduced?

Mr. THOMPSON. Yes, sir. In all truth, we have looked closely at the Whitehurst bill because we have had it longer. Mr. Archer introduced his bill Friday a week ago, I believe. Although I am acquainted with its provisions, I think in all fairness we haven't really given it as careful study as we could.

Mr. PICKLE. I have a series of questions I want to ask you. I want to ask one or two, but I want to get your viewpoint. First, on behalf of the subcommittee, I intend to submit to you and ask for your opinion on various parts of the bills that have been introduced. It may be that subcommittee will introduce another bill, and I want to get your viewpoints on those because we very much need your opinions on it.

The first question I want to ask: If we extended the provision in existing law to allow judges, Federal or State, I presume, to take away benefits as a part of the sentence for a felony, would this have a constitutional problem in your judgment? I don't think it would be ex post facto. If we gave them that authority, do you see any problem with that?

Mr. THOMPSON. Mr. Chairman, I will try to answer your question with my own view, but let me preface it by saying I am not a lawyer, let alone a constitutional expert. You should note that in evaluating my answer.

Mr. PICKLE. I am not an attorney either. You and I can really make progress here.

Mr. THOMPSON. The problem that I am aware of that might arise with that solution is that you are introducing into the Social Security Act, an act which was passed to promote the general welfare, in essence parts of the criminal code. You are making this benefit available or not available as a part of sentencing. The courts may view that as trying to have a punitive effect in an inappropriate way.

You also have to think about the fact that you are creating a situation where statutes will vary from State to State as to what a felony is and how people are treated, and judges will be applying those in such a way as to control entitlement to Federal benefits. You have to ask yourself whether that makes you uncomfortable.

Mr. PICKLE. I am going to ask you—

Mr. THOMPSON. Mr. Chairman, that approach would be prospective also, so that it would apply only to people being sentenced in the future, but not to people sentenced in the past.

Mr. PICKLE. I assume I observed it would not be a violation ex post facto, but that it would be prospective. I am going to ask you three or four questions right quick. I want your remarks. I know you are not an attorney. I want to get the general feeling from a policy standpoint of your division. We are trying to put together a bill.

No. 1, with respect to the question of the court decision, how would you feel if we provided that a judge may deny benefits to a social security beneficiary who is convicted, convicted of a felony? Now, the benefits would be restored when they are paroled or sentence was completed, but the dependents' benefits would not be

affected. Would you think that would be an acceptable approach in the field of court decision?

Mr. THOMPSON. I am not sure whether I would want to say that I feel it is acceptable just yet. I think it is worth exploring.

Mr. PICKLE. I am asking you questions that you are not expected to answer from a legal standpoint. But you are a representative on the question of policy. Though I don't expect positive answers, I am trying to get reactions, because we are faced with the problem of trying to put together a measure that would be best and not violate constitutional—

Mr. THOMPSON. Let me say that approach has the advantage of allowing discretion. One is bothered by the fact that we see stories about murderers and rapists getting benefits. I don't deny that. But there are other people who may end up in prison who, if we knew about them, we wouldn't feel so strongly that they should not get benefits.

Mr. PICKLE. That would be a question of discretion on the part of the judge.

Mr. THOMPSON. There would be another point introduced.

Mr. PICKLE. Here is a question of discretion. Suppose we gave certain State options in this overall question. Suppose we said that the Secretary of the HHS is authorized to certify social security benefits directly to the warden of a prison or to the administrator of a hospital for the criminally insane, so long as the benefits would not be affected? Suppose we said to the HHS Secretary that you could direct some of these benefits to the hospital or to the prison for the maintenance purposes, how would your department feel about that?

Mr. THOMPSON. Well, let me not give a final answer but let me just give an initial reaction as to how we would feel about that. I think that approach has certain advantages over straight-out denial of benefits. One attractive feature of it to us, I believe, is that you are preserving the notion that there is an entitlement to benefits. You are not saying that even though they pay their taxes like everyone else, they can't get their benefits. They would get their benefits, but you would reroute them to a representative payee, if you like. So that feature of it, I think, does address one of the concerns that we have about action in this area.

You might want to think about how you would handle situations where there were dependents. You might say that where there is a family that is being supported by these benefits, the Secretary would have the authority to divide it somehow. You also might think about giving the Secretary the authority to allow a State or a prison to become a representative payee, so that it could use the benefits for the support and maintenance of the prisoner. If the Secretary had that kind of authority, you might want to limit it to those States where there is a general system in effect to assess prisoners for room and board.

Mr. PICKLE. There is a common law principle that the individual or the prisoner may not profit from wrongdoing. I would assume that you would agree that if we had a provision that said that no benefits for an individual whose onset of disability occurred during the commission of a crime, that would be understandable; would that be acceptable?

Mr. THOMPSON. I think there is a certain attraction to that. It probably is a very minor situation, but then that doesn't mean one shouldn't have legislation that addresses it, even if it occurs only once or twice a year. It could be rather difficult for us to define who fell into the net that kind of a provision would cast.

But we have those kinds of problems in other areas, too. It is clear where somebody is holding up a store and gets shot in the process of committing a crime. It might be less clear in a case where somebody alleged that he was physically assaulted by a police officer or something after he was arrested. I don't know whether you have in mind things flowing from the commission of a crime as well. You would have to think that through. We would have to think it through jointly.

Mr. PICKLE. All right. Mr. Archer.

Mr. ARCHER. Thank you. You are pursuing an extremely important line of questioning which we are going to have to get into in detail before we complete our deliberations. I would like to pursue it a bit further.

Is it not true that the disability provisions under social security, in contrast to the retirement provisions which are specific, are subjective and subject to arbitrary guidelines written into the statute?

Mr. THOMPSON. Into the statute?

Mr. ARCHER. No. 1, subjective in determination of what is and what is not a disability; No. 2, arbitrary by the very terms of the guidelines that are written into the statute under which those subjective decisions are made.

Mr. THOMPSON. I think I can agree with the general thrust, though I wouldn't have chosen the word "arbitrary."

Mr. ARCHER. Well, they are arbitrary. The idea that if you earn over \$300 a month, that constitutes engaging in substantial gainful activity is an arbitrary decision by the Congress.

Mr. THOMPSON. That is right. We try to write standards which focus on objective measurable medical conditions. I think the point you are making that there has to be at every point an arbitrary line between who is not disabled and who is—

Mr. ARCHER. So inasmuch as we have already drawn lines with respect to disability, why should we not be able to draw additional lines under the statute without succumbing to the problems that you mentioned, and without violating the concept of entitlement, particularly?

I think your entitlement argument is very appropriate with respect to the retiree, 62 or 65. But in the area of disability, if you tell the people of this country that if you perpetrate a crime and you are convicted, then you no longer are entitled and it is prospective, then whatever criteria that we write into the law would merely be additional criteria to those that are already in there with respect to disability; would that not be true? So that the premium paid over a period of years will be understood by everyone in this country as not entitling one to a disability benefit under those circumstances.

Mr. THOMPSON. Yes. We have never changed the definition of disability in a way that restricted it, so that I am not sure what one would do with people already receiving disability benefits.

Mr. ARCHER. That is another question, of course. If we wanted to do it prospectively—

Mr. THOMPSON. Yes. I think there may be some way of addressing it that way, Mr. Archer. Exactly what you choose, how you choose to go about doing it, one way may be safer than another.

Mr. ARCHER. Do you think we ought to do something about this overall problem or do you think we ought to leave the law untouched?

Mr. THOMPSON. I think you ought to continue to explore this. I have identified and others have identified and your subcommittee members have identified kinds of rocks that you don't want to run aground on. There may be a way you can navigate that and address this issue, but I am not sure we know of a way yet. I think what you are doing right now is useful.

Mr. ARCHER. If a constitutional and appropriate way could be found, you would support changes and believe changes should occur, then, is that correct?

Mr. THOMPSON. I think if we find some way that doesn't upset the traditional program principles and is constitutional, that we would certainly consider it.

Mr. ARCHER. You would support changes?

Mr. THOMPSON. Well, I can't commit the Administration.

Mr. ARCHER. The Administration, then, has no position on whether we should do something about this.

Mr. THOMPSON. As I said, we are willing to work with you. We share your concern, and it is a very complicated topic. I don't know that there is a solution that we would, when we examine it.

It may not exist, but I don't know that it doesn't exist. We are certainly willing to look. On the other hand, we may find something that will successfully address this problem.

Mr. ARCHER. I have one other specific question that I would like to ask.

The allegation was made in the testimony of a panel earlier that employees of social security are going into prisons and attempting to sign people up for disability benefits and some type of outreach program.

Is this in fact occurring and do you feel that this is your mandate under the law?

Mr. THOMPSON. I don't believe that it is occurring, or at least not as a general proposition. It is not occurring in the sense that we are going out and trying to drum up business.

It is true that there is a general principle in social security that if somebody can't make it to the district office we will make attempts to come to them, and that applies in the case of prisoners, so that if prisoners are entitled and need to have contact with us, we do have field representatives who call on people in prison.

Mr. ARCHER. The question really is whether your employees are going out voluntarily. When you say you are not trying to drum up business, if they are voluntarily, without request, going into prisons to acquaint the prisoners with the opportunity to do this, then I would call that drumming up business.

If, on the other hand, they are responding to a request from a particular prisoner to come out and attempt to talk about his problems, that would be different.

Now, which is the case?

Mr. THOMPSON. I think it is much more the latter; they are responding to specific questions.

Mr. ARCHER. So there are no employees of social security today going into prisons voluntarily to make information available to prisoners, that all they have got to do is go down and sign up and that this benefit is available to them and that type of thing.

Mr. THOMPSON. It is not the intent to operate an outreach program.

Mr. ARCHER. Is it or is it not happening?

Mr. THOMPSON. What can happen is that at a smaller facility you only go when somebody says he wants to see you. At a larger facility, because of the way you schedule work, you may just schedule, say, the third Tuesday of every month, when you will stop by the prison for 2 hours and handle any business that comes in.

Your intention is only to handle the people who have a reason to contact Social Security, and in scheduling the work it is easier to set up a regular time that you will stop.

It may begin to appear like an outreach program, although that is not the intent.

Mr. ARCHER. I would hope this would be carefully investigated by the Administration and that it would pursue a course that would diligently be responsive only rather than having personnel go out and encourage prisoners to file for disability under the social security provisions.

Thank you very much, Mr. Chairman.

Mr. PICKLE. Mr. Gephardt?

Mr. GEPHARDT. No questions.

Mr. PICKLE. Thank you, Mr. Gephardt.

Mr. Thompson, I sense a hesitancy on the part of the Social Security Administration to advance this measure because of the wicket of the constitutional question you may be invading.

This is a serious question we need to try to resolve.

Thank you very much.

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

Mr. PICKLE. Now we have a panel of individuals that I will ask to come to the table.

Our first panel is the National Prison Project of the American Civil Liberties Union, Mr. Steven Ney, staff attorney.

Mr. Steven R. Schlesinger, associate professor, Department of Politics, the Catholic University of America.

Mr. James R. Trout from Fenwick, Mich.

Is Mr. Trout here? What is your agency or group?

Mr. TROUT. Michigan Department of Corrections.

Mr. PICKLE. You gentlemen may have a seat.

We have another panel after this, and I want to ask if these people are present.

Mr. Ernest Davis, Mrs. Edna Hall, and Mr. Gilbert Koopmeiners.

Are those individuals here?

They are; if we go through, and we may try to do that, would you be able to stay and if we take a break, are you limited, any of you, on your time schedule this afternoon?

[No response.]

Mr. PICKLE. We will proceed then and it is in the intent of the Chair to try to go through because of the time schedule that we have here on the House floor.

Now, I am going to recognize Mr. Ney, and then I will recognize Mr. Schlesinger and Mr. Trout.

Do each of you have a written statement?

Your statements will be included in the record in their entirety and we would be glad to recognize you, Mr. Ney, first, for your statement and such comments you may want to make.

STATEMENT OF STEVEN NEY, STAFF ATTORNEY, NATIONAL PRISON PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.

Mr. NEY. Thank you very much.

My name is Steven Ney. I am a staff attorney with the National Prison Project of the ACLU Foundation and, for those of you not familiar with our work, the prison project seeks to improve overall conditions in the Nation's prisons, to strengthen prisoners' rights and develop less costly, rational alternatives to incarceration as our response to crime.

In that connection our office has been involved in most of the major litigation challenging the conditions of incarceration in the United States, and we have been in part responsible for some of the court decisions declaring entire State prison systems unconstitutional.

I will go into that in a few moments.

We have outlined in our statement many of the policy reasons for opposing this legislation which is before you today.

Many of those reasons were highlighted by Mr. Thompson from the Social Security Administration. Some of them related to the fact that social security is an earned benefit.

What has been overlooked in most of the testimony this morning is the fact that a disabled prisoner must meet the same standards of disability as anyone else. He has paid into the system and he has worked and paid for those benefits by contributing to an insurance trust fund.

I think that fact cannot be overlooked. If this committee today removes prisoners from eligibility for those earned benefits I think you are opening the door to removing other persons who have paid into that trust fund for expected benefits.

What this legislation is doing is singling out prisoners, from all other groups in our society who have paid into that system, to forfeit their benefits.

I should indicate also that there are many other institutionalized persons and persons who are receiving public benefits who are simultaneously receiving social security disability benefits.

Thus, the argument that prisoners' needs are being met—and I question that and I will move to that in a moment—assuming that is true, that would apply to anyone else who is institutionalized in this country and is also receiving disability benefits.

It would apply to an Army officer who is in a Veterans' Administration hospital and is collecting disability benefits.

It would apply to anyone in a Public Health Service hospital, in a nursing home, in a hospice, in a mental institution, who is

receiving social security disability benefits. If the committee is truly concerned about duplication of benefits, double-dipping, so to speak, you should look at the much broader picture which is presented by alleged duplication of benefits.

I think the committee is erring by focusing on one small group; based on the tentative GAO data, it is really a very small number of prisoners who are getting benefits. You are focusing on only a part of the problem in response to a lot of media publicity.

What kind of duplication are you looking at?

The other point that we want to make and which was never addressed this morning by any of the witnesses was the assumption, the repeated assertion that prisoners' needs, their housing needs, their medical needs, are being met when they are in prison. While meeting prisoners' needs presumably is the purpose for the expenditure of large amounts of money, the assumption that those needs are being met is totally false. That is not what is happening in this country.

Mr. Chairman, in your State today there is a lawsuit pending brought by the U.S. Department of Justice against the Texas Department of Corrections challenging the constitutionality of Texas' prison conditions, including the adequacy of medical care provided to prisoners in the Texas Prison System.

There have been weeks of testimony in Federal court that prisoners are not receiving adequate medical care in prison, especially those who are totally disabled.

A court decision has not yet come down in this case but one is probably expected in the next few weeks or few months. In many other States, the courts have declared that entire statewide prison systems are incapable of meeting prisoners' basic needs.

Almost half of the States had one or more of their prisons declared unconstitutional because they inflict cruel and unusual punishment.

I would like to submit to the committee some pictures of a client of mine who was a victim of gross and deliberate indifference to his medical needs. He became totally disabled while he was incarcerated because his medical and psychiatric needs were not being met.

He was being "treated" by untrained inmates who were administering unprescribed and excessive amounts of potent antipsychotic medication. When he developed side effects to the medication he became totally paralyzed. He was not adequately examined during the course of his hospitalization in what was called a "prison hospital."

This was the case of Henry Tucker in the State of Virginia, the State where Congressman Whitehurst is from; it indicates that in the State of Virginia and many other States the level of medical care is absolutely horrendous.

The GAO issued a report in 1978 entitled "A Federal Strategy Is Needed To Help Improve Medical and Dental Care in Prisons and in Jails." The major conclusion was that "the health care delivery systems of most prisons and jails are inadequate because of deficiencies in assuring adequate levels of care, physical examinations, medical records, staffing, facilities and equipment."

Mr. PICKLE. Mr. Ney, I have the pictures you sent up. We appreciate your statements, because if those are matters that have been caused after a person gets to prison, they ought to be investigated.

The question of medical delivery or what is happening in prisons has nothing to do with this hearing today, unless you can tell me how they are related. In what way does it affect a prisoner getting benefits?

Mr. NEY. Well, the assumption that has been made here this morning by many of the proponents of the legislation is that prisoners are double dipping, because their needs have been met.

What we are showing you by this example of Mr. Tucker and by the court decisions is that that assumption has no basis in fact. The prisoners we are talking about are totally disabled prisoners; they are simply left to be warehoused.

Mr. PICKLE. No one this morning is questioning that a person's medical needs have not been met in the prison. At least I don't remember anybody making a claim that they have been or have not been, and I don't see what they have to do with the question immediately before us.

Go ahead. I want us to try to stay with the question that is before us.

Mr. NEY. I am trying to; I will try to explain it again.

The assumption of this legislation is that prisoners' needs have been met and therefore they should not get these benefits, because they don't need the benefits. That was the basis of Mr. Whitehurst's testimony.

What I am saying is that assumption does not have any validity, that the courts have found in State after State that prisoners' needs are not being met. In Alabama, for example, in 1972 the Federal court said that the medical care being provided to prisoners in that State was inadequate. In 1978 the court found that conditions had not improved.

Prisoners need those benefits to make their lives a little bit more bearable in prison, and they need those benefits to build a nest egg of some sort so they can care for their medical and other needs when they get out of prison.

Mr. PICKLE. If social security payments were available on a non-voluntary basis for paying to institutions for maintenance and other needs, how would this necessarily improve medical services for prisoners?

Mr. NEY. Are you talking about a setoff where the moneys would be paid to the institution?

Mr. PICKLE. Well, you keep going back to the needs, that they are not being met. I am trying to relate the needs; if you give and improve medical services, how does this have a relationship to the question before us?

Mr. NEY. One of the proposals we have made in our statement is that if a setoff is to be made, that it must be directly linked to a certification requiring the provision of medical and other services to prisoners. I don't think a State should be allowed to receive funds supposedly intended to meet those prisoners' needs when the needs are not being met.

Mr. PICKLE. I don't see how giving additional medical service is going to improve this other question, but your statement is their medical needs are not being met.

We will accept that as being your statement, because I don't know whether it is or isn't. I hope they are being met.

Let's accept that and you go ahead.

Mr. NEY. What we are saying is prisoners need those payments for several reasons. One is to attempt to meet their personal needs while they are in prison, the needs that are not being met by prison authorities.

There are some court cases where prisoners have been able to go to court and use their own private moneys, which would include social security to obtain medical care which has not been provided by the State.

Mr. PICKLE. I see. All right.

Mr. NEY. Prisoners also—

Mr. PICKLE. I understand what you are driving at now, but go ahead.

Mr. NEY. There is also the question of prisoners and their dependents. Prisoners in many cases, based on the letters we have been getting, are using the social security benefits to support their families, and what this legislation would in effect punish the children for the crimes of the parent.

I think it would be far better to earmark those payments, if there is some kind of setoff provision, so that the payments would be paid to the family of the prisoner and the dependents than to take them away all together.

I also think that prisoners should receive a stipend so that they can meet some of their personal needs which are not met when they are in prison. The totally disabled prisoner cannot do any work even if work is available in the prison, so there is no way he can have any spending money. We suggest therefore that a stipend, of at least \$75, should be available to the prisoner; and the rest of it should be placed into a trust fund either for the prisoner when he is released from prison or for his dependents.

I also wanted to point out that the focus this morning on "Son of Sam" and other mass murderers represent only a tiny fraction of those people who are in prison. Most prisoners serve an average of about 3 years in the United States, not for life, and they need to build up a small cushion that they can rely on when they get out of prison so they can care for themselves and their dependents.

I thank you very much.

[The prepared statement follows:]

STATEMENT OF THE NATIONAL PRISON PROJECT, AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, INC.

My name is Steven Ney and I am a staff attorney of the National Prison Project of the American Civil Liberties Union Foundation. For those of you not familiar with our work The National Prison Project seeks to protect and strengthen prisoners' rights, to improve overall conditions in the nation's prisons and to develop rational, less costly and more humane alternatives to traditional incarceration. We have been counsel in most of the major litigation dealing with the systemic problems of America's prisons.¹

¹ E.g., *Pugh v. Locke*, 406 F. Supp. 318 (M.D. Ala. 1976), *aff'd in substance*, *Newman v. Alabama*, 559 F. 2d 283 (5th Cir. 1977) *cert. den. sub. nom. Alabama v. Pugh*, 98 S. Ct. 3057 (1978)

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We oppose the legislation being considered today which in various forms would prohibit or severely restrict Social Security Disability payments to prisoners. Our opposition is based on important policy and constitutional reasons:

(1) Removing prisoners from eligibility for Disability benefits undercuts the earned benefit principle on which the Social Security insurance program is based.

(2) The question of alleged duplication of benefits involves far more than payments to prisoners; it is a complex issue which requires careful study, and prisoners should not be singled out for disparate treatment.

(3) The alleged abuses have been grossly exaggerated.

(4) Disability payments are needed to support the dependents of prisoners; children should not suffer for the crimes of the parent.

(5) Prisoners need disability payments to support themselves upon release from prison.

(6) The assumption that disabled prisoners' housing and medical needs are being adequately met by American prisons is utterly false.

(7) There are serious questions about the constitutionality of the proposed legislation.

I. SOCIAL SECURITY BENEFITS ARE AN EARNED BENEFIT: ANY CHANGE IN THIS BASIC PRINCIPLE REQUIRES CAREFUL EVALUATION

The legislation which you are considering today barring Social Security Disability payments to prisoners, while small in its present total dollar impact—several million dollars out of a multibillion dollar Social Security budget—actually represents a radical change in the philosophy and structure of the Social Security Disability program. We believe that by making prisoners ineligible Congress will be making a major shift in the Social Security program from that of an earned benefit to that of a needs-based program, a change which goes to the core of the Social Security insurance system. This is therefore a serious, complex, and sensitive subject which requires thoughtful and careful analysis of the facts, thorough consideration of the impact on prisoners and their families, and exploration of less drastic alternatives.

Unfortunately many of the facts are not available. The GAO is still in the midst of its investigation into the benefits being received by prisoners. The GAO should be asked to look into how prisoners utilize their benefits, the average length of time benefits are received, and to evaluate the impact on prisoners' families if benefits are cut off. In addition to needing a thorough study of this subject before adopting legislation, the broader question of duplication of benefits, if fairly and equitably investigated, requires consideration of other groups also receiving public benefits.

Since 1956 when the Social Security benefits Disability program was enacted, the basic principle under which payments have been made has been that of insurance, not need. A person is eligible for Disability payments if he has worked in "covered employment", and paid into the Social Security trust fund for the requisite number of quarters, and then becomes "totally and permanently disabled" and is unable to engage in "substantial gainful employment". This same earned benefits principle likewise is the basis for the other types of Social Security benefits; they are paid to workers regardless of income or need or personal circumstance since they constitute an earned benefit. As Senator George, Chairman of the Senate Finance Committee stated at the time of passage of the Social Security Act:

"Social Security is not a handout; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an *earned right*, the individual is eligible to receive his benefit in dignity and self-respect." (Emphasis added) 102 Cong. Rec. 15110.

The main arguments advanced in behalf of this legislation disregard the basic earned benefit principles of the program. But prisoners, like other workers, must make payments into the insurance system and must meet the same eligibility requirements. Yet this legislation would single out one group in our society—totally disabled prisoners—to forfeit their benefits. As the United States Supreme Court noted in a recent case, *Mathews v. Eldridge*, 424 U.S. 319, 340-341 (1976) the program is not needs based.

"Eligibility for disability benefits . . . is not based upon financial need. Indeed, it is wholly unrelated to the worker's income or support from many other sources, such

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(declaring the entire Alabama state prison system unconstitutional) *Palmigiano v. Garrahy*, 443 F. Supp. 956 (D.R.I. 1977) (declaring the entire Rhode Island state prison system unconstitutional); *Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977) (declaring New Hampshire state prison unconstitutional); *Battle v. Anderson*, 564 F.2d 388 (10th Cir. 1977) (declaring Oklahoma state prison system unconstitutional); *Ramos v. Lamm*, 485 F. Supp. 122 (D. Col. 1979) (declaring Colorado's major prison unconstitutional).

as earnings of other family members, workmen's compensation awards, tort claims awards, savings, private insurance, public or private pensions, veterans' benefits, food stamps, public assistance, or the many other important programs, both public and private, which contain provision for disability payments affecting a substantial portion of the work force. . . ." *Richardson v. Belcher*, 404 U.S. at 85-87, (Douglas, J., dissenting.) See Staff of the House Committee on Ways and Means, Report on the Disability Insurance Program, 93d Cong., 2d Sess., 9-10, 419-429 (emphasis added).

Thus, as the Court indicated, a large percentage of those receiving disability benefits are simultaneously receiving a wide variety of other benefits, both public and private. To cite just one example, a survey conducted by the Social Security Administration indicated that 16 percent of the Social Security Disability benefit recipients were also collecting veterans benefits.²

What is clear therefore is that the issues touched upon by this legislation are difficult and complex. Prisoners are not the only group of institutionalized persons who are eligible to receive Disability benefits. Benefits are also paid to disabled persons in Veterans Administration Hospitals, Public Health Service Hospitals, and various institutions such as hospitals, mental institutions, hospices, nursing homes, rest homes, and to persons in comparable private facilities. A disabled army officer, for example, may receive disability benefits while confined in a V.A. hospital, or a disabled police officer may collect Social Security while confined in a nursing home or mental hospital.

By citing these examples, we do not mean to imply that these payments constitute abuses of the system. What we are trying to indicate is that the question of alleged duplication of benefits is far broader and more complex than the one small aspect covered by the legislation before you today.

Although the GAO is currently studying the types of Social Security benefits being paid to prisoners, we submit that if this Committee is seriously interested in exploring the issue of duplication of benefits and wishes to deal with the subject fairly and equitably the inquiry must be expanded to include public benefits being paid to or received by all segments of disabled persons. We believe that to single out prisoners from all groups receiving public and private benefits, is simply unfair and inequitable, and can only be regarded as a punitive measure.

Congress has been rightfully cautious in the past when proposals have been made to change the earned benefit nature of the program. There are, in fact, very few exceptions to that salutary principle, and each is narrowly drawn. One of the few disqualifications contained in the original statute provides that persons convicted of subversive activities, such as sabotage, would forfeit their disability payments if the sentencing judge found that this form of additional punishment was warranted.³ The legislation before you today, however, is an exception which sweeps broadly, cutting off benefits to all prisoners without substantial rhyme or reason.

What this legislation does is to add an additional punishment to the sentence of every prisoner (even those who are awaiting trial)—the penalty of forfeiting an earned disability benefit. This added punishment is to be imposed across the board regardless of the seriousness of the offense, the nature of the offender, the number of prior offenses, the length of the sentence, whether the prisoner has dependents, or the nature of the disability.

II. THE ALLEGED ABUSES OF THE PROGRAM HAVE BEEN GROSSLY EXAGGERATED

The alleged abuses of the program which have been widely publicized we believe represent the rare exception and not the rule. If the abuses are confirmed, they should not form the basis for the legislation imposing additional punishment on an entire group of prisoners where only a few may have abused the system.

First, it is apparent from the preliminary GAO data cited in the Subcommittee Report of June 18, 1980 that less than one percent of all prisoners in the U.S. are receiving any form of Social Security benefits. The problem, therefore, if it exists at all, clearly is not of major proportions. Congress therefore, should certainly act carefully rather than rushing in with sweeping legislation.

It also appears that many of the alleged abuses involve problems in the administration of the program rather than issues of eligibility. For example, if prisoners are filing feigned or exaggerated claims of disability, that may warrant heightened scrutiny of applications rather than the exclusion of the entire class of prisoners from the program.

Second, the "horror stories" decrying the payment of benefits to mass murderers represent a tiny fraction of all prisoners, especially of prisoners who are receiving

²1966 Survey of Disabled Adults, Office of Research and Statistics, Social Security Administration (Table 5).

³See 202(u) of the Social Security Act.

benefits. Most prisoners are serving time for property crimes, not crimes of violence.⁴ And most prisoners are not serving life sentences building up a fortune but serve sentences averaging about three years.⁵

Third, the allegations that prisoners are spending their monthly payments on "luxury" items probably applies to only a tiny fraction of prisoners. In the federal prison system, for example, prisoners may not spend more than \$75.00 per month, thereby limiting disparities among prisoners. It must also be remembered that in most instances disabled prisoners do not participate in the few prison work programs which are available, so that disability benefits are the only form of income from which to purchase personal items, such as newspapers, magazines, and toilet articles.

III. DISABILITY PAYMENTS ARE NEEDED TO SUPPORT THE DEPENDENTS OF PRISONERS; CHILDREN SHOULD NOT SUFFER FOR THE CRIME OF THE PARENT

A second sound reason for continuing disability benefits to prisoners is that the needs of a prime beneficiary's dependents do not diminish if he or she goes to prison. Under the present disability program children's and dependents' benefits are much smaller (generally about one-half) than those paid to the primary beneficiary. Hence, the benefits received by the prime beneficiary may often be required to help support the children or other dependents. Under this bill, however, many children and other dependents would not receive this additional support on which they were previously relying since those funds would be cut off when the parent enters prison. This in effect will punish the children for the crimes of the parent. It will probably have the unintended effect of forcing many families onto the welfare rolls when disability benefits are discontinued, negating much of the savings intended by the legislation.

IV. PRISONERS NEED DISABILITY PAYMENTS TO SUPPORT THEMSELVES UPON RELEASE FROM PRISON

A third reason for continuing eligibility is to assist the disabled prisoner in building up a reserve to care for himself upon release from prison. While the media has focussed its attention upon a handful of prisoners serving very long sentences, the fact is that the average sentence served in the United States is about three years. Thus, it appears that disabled prisoners may be using their benefits either to support their dependents or to build up a reserve which will be used to pay for their medical care, rehabilitation, housing and other needs when they leave prison. It is essential that a prisoner, especially if totally disabled, be allowed to build such a cushion for release because it is clear that the states and federal prison systems do not do so. The average "gate money" paid to prisoners is abysmally low—approximately \$75.00 in most states,⁶ barely enough for one or two night's lodging upon release. Unless a disabled prisoner has funds upon release there simply is no way he can care for himself.

V. PRISONS ARE NOT MEETING THE HOUSING AND MEDICAL NEEDS OF DISABLED PRISONERS

While the argument that prisoners are receiving an undeserved windfall has a superficial appeal, it is based on the utterly false assumption that their medical and housing needs are already being adequately met by those running the institutions in which they are housed and that once incarcerated the needs of their dependents somehow become less.

The sad reality is that conditions in virtually every prison in this country fall far below the standards of a civilized society. Congress already recognized this fact earlier this year when it passed the "Civil Rights of Institutionalized Persons Act." The conditions in major institutions in nearly one-half of the states in this country have been found by the courts to be so bad as to inflict cruel and unusual punishment. Cases pending in many other states are likely to result in similar findings in the near future. (See Appendix for a list of cases.)

Even more significant for those prisoners who are totally disabled is the fact that the level of medical care provided by U.S. prisons is abysmal. According to a 1978 General Accounting Office Report ("A Federal Strategy is Needed to Improve Medical and Dental Care in Prisons"):

⁴*Myths and Realities About Crime*, U.S. Dept. of Justice, L.E.A.A., National Criminal Justice and Information and Statistics Service (1978).

⁵Id.

⁶"Back on the Street—From Prison to Poverty: The Financial Resources of Released Offenders", American Bar Association, Commission on Correctional Facilities and Services, 1976.

"The health care delivery systems of most prisons and jails are inadequate because of deficiencies in assuring adequate levels of care, physical examinations, medical records, staffing, facilities and equipment."

In state after state, and case after case, the courts have made specific findings that the level of medical care available to prisoners is grossly substandard. For example, in 1974 in Alabama, the court found that "egregious deficiencies" were "of such a nature as to render large-scale improvident treatment inevitable". *Newman v. Alabama*, 503 F. 2d 1320, 1332 (5th Cir. 1974). The court condemned "glaring, unhygienic conditions", a critical shortage of qualified personnel, the use of obsolete medical equipment and techniques, and "countless examples of inmates who were subjected to incalculable discomfort and pain as a result of the lack of medical care or inadequacy in the treatment administered." Five years later the Court found that despite its court order the same deplorable conditions still existed. *Newman v. Alabama*, 466 F. Supp. 628 (M. D. Ala. 1979).

In Rhode Island, the federal court found that the medical care system at the state prison was simply unable to provide satisfactory emergency service or satisfactory routine care for the inmates; "it falls below any minimum standards and creates an unacceptable risk of needless suffering and disaster." *Palmigiano v. Garrahy*, 443 F. Supp. 956, 973, 976 (1977). In *Todaro v. Ward*, 431 F. Supp. 1129, 1160 (S.D.N.Y. 1977) the Court found that medical care at a New York women's prison "does not regularly reach all those in need; that sick call procedures denied inmates access to needed medical attention; that prisoners often had waited for up to two months to see a doctor; and that "unnecessary suffering inevitably results."

Two recent cases illustrate the barbaric level of medical care common in U.S. prisons:

"* * * According to recent court testimony in *Ruiz v. Estelle*, Civ. Action No. 4-7-987 (S.D. Texas), a case brought by the Department of Justice, Ervis Frances, an inmate, was ordered by prison farm supervisors to hand feed silage into a threshing machine in violation of normal safety procedures. He lost both of his arms below the elbow. When an ambulance was summoned from the prison hospital it broke down and he was left unattended until another ambulance arrived from a town 20 miles away. According to further eyewitness testimony, the defenseless inmate was then raped by other patients in the prison "hospital". In the same suit, a Dallas attorney testified that he had observed an inmate, a former truck driver, perform surgery in a "operating room" at the Texas Department of Corrections Hospital."

"* * * In 1979 the National Prison Project obtained an unprecedented damage award of \$518,000 against Virginia prison and medical personnel on behalf of Henry Tucker, an inmate who became paralyzed as a result of medical and psychiatric mistreatment and non-treatment. Tucker's condition was caused by such practices as the use of untrained inmates who administered excessive and unprescribed amounts of potent antipsychotic medications; the failure to monitor serious side effects of medication; the failure to examine Mr. Tucker either before he was admitted or while he was in the prison hospital. As a result, Mr. Tucker not only became paralyzed in his arms and legs, but also developed plate-sized bedsores which became infested with maggots."

This catalog of horrors demonstrates that the assumption that disabled prisoners' needs are met and that they have not further need for disability payments has no basis in fact.

VI. THERE ARE SERIOUS QUESTIONS ABOUT THE CONSTITUTIONALITY OF THE PROPOSED LEGISLATION

We believe that there are serious questions about the constitutionality of the proposed legislation. Under a long line of cases beginning with *Fleming v. Nestor*, 363 U.S. 603 (1960) the Supreme Court has made it clear that Social Security legislation must be non-arbitrary and rational if it is to withstand constitutional scrutiny under the Equal Protection Clause and Due Process Clause of the Fifth Amendment. We believe, based on the analysis above, that the legislation is seriously flawed, essentially irrational, and arbitrary. It singles out without basis in fact or law one group, defined solely by their status as prisoners, to forfeit their otherwise earned benefits. The legislation is irrational and cannot be defended as designed to prevent duplication of benefits because (a) prisoners in fact do not receive adequate care in prison (see Point IV) and (b) many other groups receive publicly funded benefits but have not been required to forfeit their payments. It is also arbitrary because even as a punitive measure, it makes no attempt to distinguish between types of offenders, length of sentence, or prior offenses.

VII. THERE ARE LESS DRASTIC ALTERNATIVES TO THIS LEGISLATION WHICH MUST BE CONSIDERED

There are alternatives to H.R. 5610 which this Committee may wish to consider which would do less violence to the principle of earned benefit and would preserve some of the benefits for prisoners and their dependents and at the same time minimize the alleged abuses at which this legislation is aimed.

(1) The law could be amended to require a disabled prisoner to place all but \$75.00 of his monthly payment into a trust fund which would be available to him only upon release from prison. This alternative would have the advantage of preventing the abuses allegedly occurring from prisoner expenditure of relatively large sums yet allow the prisoner to have a cushion available to meet his housing, medical and other needs upon release. At the same time, it would allow the prisoner to retain a stipend to meet some of his personal needs while in prison.

(2) The law could be amended to—

(a) allow the applicable Department of Corrections to be designated as a representative payee⁷ if state law so provided;

(b) in that event a portion of the payment would be earmarked for transfer directly to a prisoner's dependents;

(c) if there were no dependents, the Department of Corrections would be allowed to retain a portion to defray the prisoner's maintenance costs, but only if the Department of Corrections demonstrated to the agency that the beneficiary's basic housing, medical and rehabilitation needs were being met; and

(d) Provide a monthly stipend to the prisoner for personal needs of at least \$75.00. This alternative would have the advantage of providing for direct payments to dependents, ensuring that the payments support the family unit. In addition, it would allow the Department of Corrections to defray some of its costs in meeting a prisoner's basic needs if there were no dependents, and it would encourage prisons to do so since they could recover some of their expenditures if those needs were being met. It would also allow the prisoner to provide for some of his personal needs out of a monthly stipend.

[From the New York Times, Sunday, Feb. 4, 1979]

MEDICINE—AN ADDED PUNISHMENT IS POOR HEALTH CARE

(By Linda Greenhouse)

WASHINGTON—All too often, a prison sentence carries with it an added form of punishment, not imposed by any judge and bearing no relation to the original crime. The extra penalty is the denial of adequate medical care.

The \$518,000 settlement the American Civil Liberties Union won from Virginia state prison officials and prison doctors last month on behalf of an inmate who became permanently paralyzed after months of neglect in prison hospitals served to highlight a nationwide problem. Whether the settlement—10 times larger than any previous damage award won by a prisoner anywhere in the United States—will prompt a solution remains to be seen.

Numerous courts have addressed the question over the past 10 years, ordering prison officials to correct some of the same practices that led to the Virginia inmate's tragedy. "The legal standards by now are clear," says Steven Ney, a lawyer for the A.C.L.U.'s National Prison Project who worked on the Virginia case. "It's also clear that conditions are still horrendous. The question is how to get from here to there."

The prison medical question often seems intractable because it stems not so much from deliberate mistreatment by prison authorities as from slipshod and unthinking administrative practices, low budgets and logistical difficulties that defy even well-meaning administrators.

Prisons often lack a clear division of authority between their security and medical staffs. In the Tennessee state prison system, for instance, where a state judge found widespread violations of constitutional rights, there was no one in charge of the correction department's medical system.

In many prisons guards screen inmate requests to see a doctor, allowing only a chosen few to go to scheduled sick call. Inmates are used to dispense medication to other inmates. Doctors do not see an inmate's medical records, making the few minutes spent with each prisoner even less productive than they might otherwise be.

⁷Section 7 205(j), Social Security Act.

Continuity of care is often impossible. Ordinarily, psychiatrists do not make rounds on the medical wings of prison hospitals, and medical doctors rarely visit the psychiatric wings—even though many inmates ill enough to be hospitalized have both medical and psychiatric ailments that cannot be neatly categorized.

A Federal judge in Rhode Island, who in another A.C.L.U. case found medical care at a state prison there to be "grossly inadequate," labeled as callous and particularly shocking the example of one inmate who was denied parole because "you need psychiatric counselling"—even though the prison was not in a position to provide such counseling.

Large state prisons are often located in remote rural areas, making it difficult to attract competent medical staff. As a result many prison doctors are unlicensed, foreign-trained physicians with few other options open to them. As for their patients, no one claims that prisoners are easy to care for. Because of their past lives, which often included drug abuse or alcoholism, they tend to be sicker than the general population. The strain of prison life exacerbates their symptoms, while boredom and idleness cause prisoners to focus inordinate attention on their physical condition. Besides, sickcall itself provides relief from boredom and a chance to socialize. As many as a third of a prison's inmates may ask to see a doctor during his scheduled hours; significantly, the number drops sharply in institutions where inmates know they will be allowed to see a doctor when they really need one.

The Federal prison system is regarded as generally free of the most serious deficiencies. Not so on the state level, even in relatively modern, attractive facilities such as New York State's Prison for Women at Bedford Hills in Westchester County. Two years ago a Federal judge ruled that sickcall procedures there denied inmates access to needed medical attention. Prisoners had to describe their symptoms in 15 to 20 seconds to a nurse standing behind a locked door with a small barred window. Delays of up to two months in getting to see a doctor were "not uncommon," according to the court.

There have been improvements at Bedford Hills, but a damage suit is still pending there over the transfer of seven inmates to Matteawan State Hospital, a facility for the criminally insane about 30 miles away, without notice or judicial determination that they required confinement in such a place. A Federal judge ruled the procedure a clear violation of state law and ordered the women returned to Bedford Hills. Each of the women is seeking \$200,000 in damages.

The basic standard applied by the courts today comes from a 1976 Supreme Court decision, *Estelle v. Gamble*, which held that the Government has an obligation to provide medical care to those it incarcerates. The court ruled that "deliberate indifference" to the medical needs of prisoners violated the Eighth Amendment's ban on cruel and unusual punishment. This is a relatively vague standard, which, with its implication that deliberate intent must be shown, is not regarded as particularly useful language by lawyers for prisoners.

But lower-court judges appear increasingly willing to hold prison officials responsible for awareness of minimum standards published by the American Medical Association and by the American Public Health Association, and to find "deliberate indifference" in failure to adhere to those standards. The public health group, for example, requires that the level of prison health care "be of comparable standard to that prevailing in the community at large," including the qualifications of the medical staff, its independence from the security staff and its ability to maintain a confidential medical relationship with inmates.

Another issue for the courts is the use of prison inmates to test vaccines and medications. The Federal prison system ended the practice several years ago, but it is still common in a number of states. A suit now being tried in Federal District Court in Maryland seeks a judgment that the state's practice of seeking inmate volunteers to test such products as antimalaria vaccine violated prisoners' rights because an inmate, dependent on the good will of prison officials, could not give free and informed consent. Maryland ended its drug testing in 1976. A favorable ruling in that case, while not formally binding as precedent in other districts, would presumably encourage other lawsuits around the country.

THE NATIONAL PRISON PROJECT—STATUS REPORT—THE COURTS AND PRISONS

States in which there are existing court decrees, or pending litigation, involving the entire state prison system or the major institutions in the state and which deal with overcrowding and/or the total conditions of confinement (does not include jails except for D.C.):

1. *Alabama*: The entire state prison system is under court order dealing with total conditions and overcrowding. *Pugh v. Locke*, 406 F.Supp. 318 (M.D.Ala. 1976), *aff'd*

in substance, *Newman v. Alabama*, 559 F.2d 283 (5th Cir. 1977), *cert. denied*, 98 S.Ct. 3057 (1978); Receiver appointed, 466 F.Supp. 628 (M.D.Ala. 1979).

2. *Arizona*: The state penitentiary is being challenged on total conditions and overcrowding. Preliminary orders obtained on overcrowding, limiting prison population and reclassification. August 1977–Feb. 1978. Full trial probably in Fall 1980. *Harris v. Cardwell*, C.A. No. 75-185 PHX-CAM (D.Ariz.).

3. *Arkansas*: The entire state prison system is under court order dealing with total conditions. *Finney v. Arkansas Board of Corrections*, 505 F.2d 194 (8th Cir. 1974). Special Master appointed, *Finney v. Mabry*, 458 F.Supp. 720 (E.D.Ark. 1978).

4. *Colorado*: The state maximum security penitentiary is under court order on total conditions and overcrowding. The prison was declared unconstitutional and ordered to be ultimately closed. *Ramos v. Lamm*, C.A. No. 77-K-1093 (D.Col. 12/20/79); 26 Cr.L. 2380. Partial stay issued pending expedited appeal (10th Cir. 3/80).

5. *Delaware*: The state penitentiary is under court order dealing primarily with overcrowding and some conditions. *Anderson v. Redmon*, 29 F.Supp. 1105 (D.Del. 1977).

6. *Florida*: The entire state prison system is under court order dealing with overcrowding. *Costello v. Wainwright*, 397 F.Supp. 20 (M.D.Fla. 1975), *aff'd* 525 F.2d 1239 and 553 F.2d 506 (5th Cir. 1977).

7. *Georgia*: The state penitentiary at Reidsville is under court order on total conditions and overcrowding. A special master was appointed in June 1979. *Guthrie v. Evans*, C.A. No. 3068 (S.D.Ga.).

8. *Illinois*: The state penitentiary at Menard is under court order on total conditions and overcrowding. *Lightfoot v. Walker*, C.A. No. 78-2095 (S.D. Ill. 2/19/80).

9. *Indiana*: The state prison at Pendleton is being challenged on total conditions and overcrowding. Trial held late in 1978. *French v. Owens*. A case was filed in Jan. 1979 against state penitentiary at Michigan City on overcrowding and total conditions. *Wellman v. Faulkner*, IP79-37-C (S.D.Ind.).

10. *Iowa*: The state penitentiary is being challenged on overcrowding and a variety of conditions. *Watson v. Ray*, C.A. No. 78-106-1, filed 12/28/79 (S.D.Ia.).

11. *Kentucky*: The state penitentiary and reformatory are under court order by virtue of a consent decree on overcrowding and some conditions. *Kendrick v. Carroll*, C76-0079 (W.D.Ky.) and *Thompson v. Bland* (April 1980).

12. *Louisiana*: The state penitentiary is under court order dealing with overcrowding and some conditions. *Williams v. Edwards*, 547 F.2d 1206 (5th Cir. 1977).

13. *Maine*: The state penitentiary is being challenged on overcrowding and a variety of conditions. *Lovell v. Brennan*, C.A. No. — (D.Me.).

14. *Maryland*: The 2 state penitentiaries are declared unconstitutional on overcrowding. *Johnson v. Levine*, 450 F.Supp. 648 (D.Md. 1978) *Nelson v. Collins*, 455 F.Supp. 727 (D.Md. 1978).

15. *Massachusetts*: The maximum security unit at the state prison in Walpole is being challenged on total conditions. *Blake v. Hall*, C.A. 78-3051-T (D.Mass.).

16. *Mississippi*: The entire state prison system is under court order dealing with overcrowding and total conditions. *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974).

17. *Missouri*: The state penitentiary is under court order on overcrowding and some conditions. *Burks v. Teasdale* 603 F.2d 59 (8th Cir. 1979).

18. *Nevada*: The two major prisons are being challenged on overcrowding and total conditions. *Maginnis v. O'Callaghan* C.A. No. 77-0221 (D.Nev.).

19. *New Hampshire*: The state penitentiary is under court order dealing with total conditions and overcrowding. *Laaman v. Helgemoe*, 437 F.Supp. 269 (D.N.H. 1977).

20. *New Mexico*: The state penitentiary is being challenged on overcrowding and a variety of conditions. *Duran v. Apodaca*, C.A. No. 77-721-C (D.N.Mex.).

21. *North Carolina*: A lawsuit was filed in 1978 at Central Prison in Raleigh on overcrowding and conditions and a similar lawsuit was recently filed involving the womens prison.

22. *Ohio*: The state prison at Lucasville is under court order on overcrowding. *Chapman v. Rhodes*, 434 F.Supp. 1007 (S.D.Oh. 1977). The state prison at Columbus is under court order resulting from a consent decree on total conditions and overcrowding and is required to be closed in 1983. *Stewart v. Rhodes*, C.A. No. C-2-78-220 (S.D.Ohio) (12/79). The state prison at Mansfield is being challenged on total conditions. *Boyd v. Denton*, C.A. 78-1054A (N.D. Oh.).

23. *Oklahoma*: The state penitentiary is under court order on total conditions and the entire state prison system is under court order on overcrowding. *Battle v. Anderson*, 564 F.2d 388 (10th Cir. 1977).

24. *Rhode Island*: The entire state prison is under court order on overcrowding and total conditions. *Palmigiano v. Garrahy*, 443 F.Supp. 956 (D.R.I. 1977). A Special Master was appointed in September, 1977.

25. *South Carolina*: The state penitentiary is being challenged on overcrowding and conditions. *Mattison v. S. Car. Bd. of Corr.* C.A. No. 76-318.

26. *Tennessee*: The entire state prison system declared unconstitutional on total conditions. Decision in August 1978 with preliminary order closing one unit by state court Judge. *Trigg v. Blanton*, C.A. No. A6047-Chancery Court, Nashville.

27. *Texas*: The entire state prison system is being challenged on some conditions. *Ruiz v. Estelle*, Trial ended summer, 1979.

28. *Utah*: The state penitentiary is being challenged on overcrowding and some conditions. *Nielson v. Matheson*.

29. *Vermont*: State prison closed.

30. *Washington*: The state reformatory is being challenged on overcrowding and conditions. *Collins v. Rhay*, C.A. No. C-7813-V (W.D.Wash.). A case was recently filed challenging conditions and overcrowding at the state penitentiary.

31. *Wyoming*: The state penitentiary is being operated under terms of a stipulation and consent decree. *Bustos v. Herschler*, C.A. No. C76-143-B (D.Wyo.).

32. *District of Columbia*: The District jails are under court order on overcrowding and conditions. *Inmates, D.C. Jail v. Jackson*, 416 F.Supp. 119 (D.D.C. 1976), *Campbell v. McGruder*, 416 F.Supp. 100 and 111 (D.D.C. 1976), aff'd and remanded, C.A. No.'s 75-1350, 75-2273 (D.C.Cir. Mar. 30, 1978).

33. *Puerto Rico*: The Commonwealth Penitentiary is under court order on overcrowding and conditions. *Martinez-Rodriguez v. Jimenez*, 409 F.Supp. 582 (D.P.R. 1976).

34. *Virgin Islands*: Territorial prison is under court order dealing with conditions and overcrowding. *Barnes v. Gov't of the Virgin Islands*, 415 F.Supp. 1218 D.V.I. 1976).

Mr. PICKLE. Well, I thank you; and the two points you have made are, I assume, embodied basically in the written statement you have submitted to us.

Mr. NEY. Yes; they are.

Mr. PICKLE. We are glad to have your entire statement.

The Chair is not arguing with you about these points but trying to understand the thrust of your argument.

I am going to ask now that Mr. Schlesinger, I believe, can now present his statement.

STATEMENT OF STEVEN R. SCHLESINGER, ASSOCIATE PROFESSOR, DEPARTMENT OF POLITICS, THE CATHOLIC UNIVERSITY OF AMERICA

Mr. SCHLESINGER. Thank you, Mr. Chairman and members of the subcommittee.

My name is Steven R. Schlesinger; my address is 719 North Belgrade Road, Silver Spring, Md. I am associate professor in the Department of Politics and director of the Center for Congressional and Governmental Affairs at the Catholic University of America here in Washington, D.C. I am speaking as a private individual and do not represent any other individuals or organizations.

Payment of disability insurance benefits to imprisoned persons has aroused considerable public interest. This is not surprising, since such payments raise fundamental problems of fairness and equity, both as to the taxpaying public and as to imprisoned persons, and by that I mean convicted persons in prisons as opposed to those awaiting trial in jails.

I very much appreciate the opportunity to testify before this subcommittee of the U.S. Congress on an important problem.

I intend to discuss some of the legal and constitutional aspects of our subject, rather than the many public policy questions it raises. I restrict myself in this manner because my scholarly endeavors have fallen in the general area of constitutional and public law.

The two most significant legal objections which have been raised to a denial of disability insurance benefits to prisoners are:

One, congressional action to prohibit payment of benefits would change the punishment and subject the prisoner to a greater punishment than the law annexed to his crime when it was committed. This might be considered an ex post facto law, in violation of article 1, section 9 of the Constitution.

Two, participants in the social security system earn the right to benefits through contributions in the form of payroll taxes, that is, FICA. If benefits are denied to those who are entitled by law to them, this would undermine the earned right concept which gives the system its insurance character.

This subcommittee could write legislation which satisfies both of these objections. As to the first, I suggest that benefits should be paid to prisoners whose crimes were committed before enactment of the legislation we are considering, and that benefits should not be paid to prisoners whose crimes were committed after enactment of that legislation. Such legislation would fully satisfy the ex post facto objection.

As to the second objection, I suggest that those benefits based on FICA contributions made after enactment of the legislation we are considering should be denied to prisoners, and those benefits based on FICA contributions made before enactment of this legislation should be paid to them. Such provisions would fully satisfy the earned benefits objections.

Let me make one additional point relating to the constitutional-ity of denial of disability benefits to prisoners.

It has been noted that payment of social security benefits is a due process right, according to the Supreme Court decision in *Fleming v. Nestor*, 363 U.S. 603 (1960). However, the High Court has never decided that this right applies to prisoners. Considering the various rights enjoyed by other citizens, such as the franchise, which have been denied to prisoners, it seems clearly a matter of congressional judgment as to whether prisoners should receive those benefits.

Permit me to say a few words about the manner in which benefits should be paid to prisoners. The U.S. Supreme Court has consistently held, in cases like *Procunier v. Martinez*, 416 U.S. 396 (1974), that prison administrators may formulate and enforce those regulations which are supportive of security and good order in prisons as well as of various penological objectives. Commonsense indicates that possession by prisoners of the sums paid out by social security would frequently be inconsistent with sound penology and effective prison administration. For example, it is common knowledge that there is a sometimes substantial illicit drug trade in many American prisons. I would be happy to supply the committee with a considerable number of citations from criminal justice literature on drug traffic in prisons, if the committee would desire. A ready source of funds, such as disability benefits, cannot but facilitate such trafficking in contraband.

Because of this possible inconsistency between payment of benefits and sound prison administration, this subcommittee should give serious consideration to giving prison administrators the authority to place disability benefits in an escrow account adminis-

tered by a receiver during the time the prisoner is incarcerated. I suggest that the receiver have the authority, based either on the prisoner's consent or a legal determination of his support obligations, to disburse some portion of the benefit payments to the prisoner's family. The receiver should also have the authority, based upon an appropriate legal judgment, to pay compensation to the victim or victims of the prisoner's crimes. Victims are the most forgotten and neglected component of our criminal justice system; they have not in the past often sought compensation for their injuries from those who injured them because those criminals lacked the funds to pay compensation. The escrow accounts about which I am speaking would provide a source of compensation to needy and, in some cases, desperate victims.

A number of States currently have in place statutes which provide for appointment of a representative or receiver for the purpose of reaching an inmate's estate. The Vanderbilt Law Review in 1970 published an excellent article dealing with, among other things, this receivership idea. You may want to look at that article as a source of ideas on that subject. Such State legislation could serve as a partial basis for formulating the type of receivership program of which I am speaking.

Once again, let me express my appreciation to the subcommittee for this opportunity to contribute to the discussion of this important matter.

Mr. PICKLE. Thank you.

The article you have reference to toward the close of your statement, I assume, is the article "The Collateral Consequences of Criminal Conviction," the Vanderbilt Law Review article?

Mr. SCHLESINGER. That is correct. That article deals generally with the decisions which courts have handed down dealing with the property rights of prisoners, and it also deals with the manner in which the State legislatures have handled the property interests of prisoners. It deals with pensions, with workmen's compensation, and with a number of other financial matters of interest to prisoners.

Mr. PICKLE. We appreciate your testimony and we appreciate your background. I particularly was interested in following the discussion you made with respect to giving prison administrators the authority to place disability benefits in escrow.

We appreciate your testimony.

Mr. SCHLESINGER. Thank you.

Mr. PICKLE. Now, Mr. Trout.

Do you have a written statement before the committee?

Mr. TROUT. Yes, sir.

Mr. PICKLE. Do you want to proceed now by summarization?

I have a problem of coming back after we vote. This is a quorum call followed by another vote, so that means we will be 10, 15 minutes before we can come back.

Mr. TROUT. I would be happy to wait, sir.

Mr. PICKLE. All right, if you prefer to wait.

We will have a recess. It will be about 15 minutes probably before we can get back, but we will recess for that time.

[A short recess was taken.]

Mr. PICKLE. The subcommittee, the reduced subcommittee will resume its hearings. I think both you gentlemen at the witness table now, I thank you for your understanding. We cannot help the situation. Mr. Trout you were recognized for your statement. I now ask you to proceed.

STATEMENT OF JAMES R. TROUT, FENWICK, MICH.

Mr. TROUT. Thank you, Mr. Chairman. I have worked with residents of correctional facilities in both Michigan and Illinois since 1969, being employed as a recreation director, teacher, assistant deputy warden for custody and security, GED test administrator/school counselor, and GED test preparation instructor. Some of my experience involves signing residents up for social security educational benefits. Most of my experience has been obtained in the State of Michigan, where I have worked since 1971, I wish to emphasize that my views on the application of current social security system regulations to prison residents do not necessarily represent the official policy or views of the Michigan Department of Corrections, although virtually all of my colleagues are aware of the wholesale abuse of social security benefits by our clients—and most share my feeling of indignation.

Mr. PICKLE. When you say your clients—

Mr. TROUT. We refer in Michigan to our clients as either clients or residents, not inmates or convicts. It is merely a matter of terminology. But we feel that this is more a human reference than simply referring to a man as a convict. He is a corrections client. We like to feel he is there for our help.

Mr. PICKLE. I thought maybe you were an attorney representing them.

Mr. TROUT. No, sir.

Mr. PICKLE. All right. It is the broad term for anyone in prison?

Mr. TROUT. Yes. Under the humane and enlightened leadership of Director Perry Johnson, the Michigan Department of Corrections has developed one of the best and broadest education programs to be found in any prison system in the country. Virtually every correctional facility, from the world's largest walled prison at Jackson, Mich., to the smallest forestry camp in the State's Upper Peninsula, offers some type of educational program. At the Michigan training unit in Ionia, as well as at the other major institutions in the system, special emphasis is placed on adult basic education, with a terminal objective being the successful completion of the GED test. Another major objective is the completion of one of a wide variety of vocational trades offered by the department—including auto body repair, auto mechanics, machine shop, welding, heating and air-conditioning, mechanical drafting, and others. This is a long step away from the old days of license plate manufacturing.

The Michigan programs are designed to serve every offender coming into the penal system—from the mentally handicapped—to the functionally illiterate—to the potential college graduate. I would add a number of prisoners have obtained college degrees through Michigan colleges and universities. Indeed quite a number of prisoners have obtained college degrees while incarcerated through extension programs operated by several Michigan junior

colleges and universities. It is the philosophy of the Michigan Department of Corrections that such programs speed the offender's reintegration into society, while providing him or her with a means of earning a living in a socially approved manner. In addition, the successful completion of these programs enhances the offender's self-image, giving positive reinforcement to the view that she or he can make it on the outside without resorting to former patterns of criminal activity.

All of the educational programs of the Michigan Department of Corrections are offered without cost to the corrections client. The offender can begin a prison term totally illiterate and walk out of the gate with a college degree, without cost to himself/herself or her/his family. The resident's education, as well as all other expenses—food, clothing, shelter, et cetera—is entirely paid for by the moneys appropriated by the State legislature, moneys collected from the taxpayers of the State of Michigan. In addition, a small daily stipend is paid on the basis of a daily work assignment. An educational assignment is considered a work assignment, in order to provide residents with funds for toilet articles, cigarettes, and the like.

Many corrections clients are recipients of social security benefits. An accurate count is virtually impossible to provide due to the restrictions of applicable Federal and State right of privacy acts. Amounts received vary, but some are in the \$400-per-month range. Most average in the vicinity of \$150 to \$250. Residents receive social security payments under three broad programs: survivors benefits, disability benefits, and educational benefits. With regard to the number, there has been a question today about the percentage of men incarcerated who may be receiving social security benefits. I think the emphasis has been on disability benefits. I can provide the committee with no figures on disability benefits. I can provide you with accurate figures from my own personal experience, in our institution alone we had over 80 men receiving educational benefits out of a population of 856. That approximates the 10 percent figure. That figure does not include anyone who is receiving survivor's benefits or disability benefits. So in my experience, 10 percent would, I believe, be an accurate figure in terms of our institution.

Mr. PICKLE. Ten percent are those receiving social security benefits?

Mr. TROUT. Yes, sir. There may be a question about Government percentage to be 1 percent and Mr. Whitehurst's figure is 10 percent. In my experience I note the Federal prison system has an older average age of inmates than do most State systems because of the nature of the different crimes. My institution, we have inmates ranging from approximately 16 to 27 years of age. So our average might be a little higher. Also if you are over 22 you do not qualify for educational benefits. That in itself would eliminate significant numbers of men who I mentioned.

Mr. PICKLE. You gave me the figures of 80 out of some 800-plus.

Mr. TROUT. Were on educational benefits.

Mr. PICKLE. Educational benefits.

Mr. TROUT. Yes.

Mr. PICKLE. Social security benefits?

Mr. TROUT. Yes, sir.

Mr. PICKLE. I would like for you to submit to the committee any of the figures you have that might shed some light on why there is a discrepancy between a 10-percent and 1-percent figure. Would you submit that to the committee additionally, any of the figures you have?

Mr. TROUT. Yes, sir, in written form.

Mr. PICKLE. Not just disability, but in the broader field.

Mr. TROUT. As I said the difference in the disparity would primarily in my opinion be due to the age group that my prison serves and the disparity between the average age of the men incarcerated in the State institutions as opposed to the Federal system.

Mr. PICKLE. Very well.

Mr. TROUT. Abuses of the benefits paid to incarcerated persons under current social security law are rife. Atrocities such as "Son of Sam" killer David Berkowitz receiving a \$300 monthly check for mental disability while confined to Attica Prison have received wide coverage in all news media. Not so well publicized are the thousands of less spectacular though similar cases across the country.

As noted, in Michigan prisons the resident is provided with all of the necessities of life at no charge. The Michigan prison resident has access to superb educational opportunities—at the expense of the taxpayer. What, one may ask, is the money sent to corrections clients under the current social security regulation being used for? The answer would be that social security benefits make life much more pleasant for incarcerated recipients. Already being fed, clothed, housed, and educated at public expense, the recipient most often uses his/her social security bonanza to purchase the allowed luxuries of prison life. These luxuries include Sony personal portable televisions, cassette tape players, cassette tapes, personal clothing from mail order catalogs, and food items from the resident store.

Many recipients eat in the institution's dining facility no more than a handful of times in a calendar year, preferring and being able to afford canned roast beef, chicken, turkey, spaghetti, and tuna, among other items, paid for by taxpayer dollars provided by the Social Security Administration.

Further, I relate my personal knowledge of one benefit recipient who purchased at least seven television sets over an approximate 2-year period and gave them to other residents of the institution. I also know of several social security benefit recipients who have purchased over \$1,000 worth of cassette tape recorded music over the course of a year or two.

The most common abuse of the law as now written is in the area of educational benefits. I think the disability benefits are perhaps much more widely publicized and flamboyant, if I may say. At the Michigan training unit in Ionia, a medium-security facility housing 856 male felons, residents enroll in school and apply for social security benefits. Once the checks begin to arrive some recipients find reasons not to go to school—medical or personal reasons—as much as they may claim they are being threatened and have to be locked in their rooms, but continue to draw benefits as they are still officially enrolled, and some drop out but continue receiving

checks because of administrative inefficiency by social security authorities or the simple time lag in the reporting procedure. Most residents, however, stay in school, simply putting in time so that their benefits will continue.

Any perceived desire for academic achievement and self-improvement by many incarcerated social security recipients was placed in serious doubt by the recent implementation of a Michigan law requiring the payment of up to \$100 by prisoners receiving social security educational benefits checks. This law was designed to help the State and department of corrections recover some of the huge costs of providing prison residents with the aforementioned educational opportunities. The rationale behind this Michigan law was, and is, that the Congress had intended the benefits paid under the social security educational benefit program to be used by the eligible young person to assist in paying the cost of his/her continued education. Prison inmates, however, are receiving a totally tax paid education already. The elected representatives of the citizens of the State of Michigan therefore voted to require residents of Michigan prisons to contribute a portion of the monies they receive under the educational benefit program to defray the costs of the educational programs these residents are enrolled in.

When the law was implemented at the Michigan training unit in the fall of 1979, over one-half of the social security benefit recipients immediately dropped out of school. Despite the fact that most of these men would still have netted a profit of at least \$100 per month after the required assessment, they preferred to give up the entire benefit rather than pay any part of the cost of their education. Actually, the sad fact is that few of these men were reaping any value at all from being enrolled in school, but were just putting in time to keep the checks coming. Of course, the more intelligent student-recipients simply surrendered the required \$100 deduction, stayed enrolled in school programs, and continue to receive the remainder of the paid benefits, which are more than one-half of the original amount paid per month. The latter amounts still allow these men to purchase the many extras available to incarcerated persons of means, and enables them to retain their privileged places at the top of the inmate social hierarchy. To these much more sophisticated and practical minded residents, it was, and is, business as usual as they continue to milk the program for what they are able.

To further illustrate the above, I note that shortly after the required deduction program was implemented articles appeared in the prison publication, "The Oracle," advising residents of another way to beat the system. Residents were given detailed instructions on how to meet the requirements and apply for a basic educational opportunity grant—BEOG—from the U.S. Department of Health, Education, and Welfare. The article reported that an amount of up to \$1,500 could be obtained and that as a grant, it need not be repaid. Although they are receiving an entirely taxpayer paid education, including room and board, residents of the Michigan training unit have applied for and received grants under this program. The article further implied that this was one way to circumvent what was viewed as an illegal seizure of social security educational

benefit funds from prison residents by the Michigan Department of Corrections, which was acting in accordance with State law.

In all fairness, it must be pointed out that some of those receiving benefits are sincerely interested in self improvement and a chance to lead a productive life upon being released from prison. These persons, however, are precisely the ones whom one would find in school regardless of whether or not social security benefits were paid directly to them during their term of incarceration.

In regard to the bill now before this distinguished body, introduced by the Honorable G. William Whitehurst of Virginia and cosponsored by other Members of the House, including my own congressional Representative, the Honorable Harold Sawyer of the fifth Congressional District of the Wolverine State, I wish to state that I regard the question of the direct payment of Government benefits to residents of correctional facilities as an item overdue for public scrutiny and reconsideration by this august body.

However, may I be privileged to suggest that some modification to the bill now under consideration might result in an increased benefit to the public good and society as a whole. An alternative approach, rather than the expedient of simply ending the payment of benefits to any incarcerated person.

Mr. PICKLE. You said an alternate approach?

Mr. TROUT. Yes, sir.

Mr. PICKLE. You are recommending an alternate approach rather than the expedient—

Mr. TROUT. Yes, sir.

Mr. PICKLE. Is what follows going to be your alternate approach?

Mr. TROUT. Yes, sir.

Mr. PICKLE. Pardon me. I could not follow your testimony. Go ahead.

Mr. TROUT. In view of the tremendous commitment to educational programs as a prime tool in the rehabilitation of felony offenders made by the Michigan Department of Corrections and other similarly progressive departments across the country, why not pay the moneys disbursed to prison inmates for social security educational benefits, or at least a major portion of these, directly to the States providing the education for the qualifying inmate recipients? Such an approach would benefit the eligible aid recipients while assisting the prison authorities who are providing the inmate with the educational opportunities.

It would also encourage financially strapped States to provide increased educational opportunities for eligible inmate recipients, with the goal of further assisting in their productive adjustment to society upon release.

Briefly, in my view, such an approach would: One, allow the social security educational benefit program—at least for incarcerated persons—to be restored to the purpose originally intended by Congress; two, provide a direct subsidy to educational programs being provided for eligible prison residents. This would defray the cost of the educational programs—just as a benefit recipient outside of prison would use the moneys to pay tuition and other costs incurred in obtaining an education; three, stop prison residents from misusing the benefits by spending them on televisions, tape players, cassettes, clothing, and other luxury items while already

receiving an education at the public expense. I might add in a comment addressed to some of the testimony given today it was suggested by some of the witnesses that such a program of altering the way that the benefits are disbursed now would put an undue burden upon the dependents of social security recipients who may be incarcerated.

In my experience as a corrections educator and administrator I find very little use being put by our inmates, our clients, that you are helping their dependents with these funds. It is far more common for them to spend it within the prison.

One witness testified in regard to the extensive drug traffic. It is my experience that the men who have cash money available to them because of the social security program were receiving benefits, and are most frequently at the top of the trade within the institutions because of the ready source of cash that is available to them. I would be happy to answer any questions that you may have.

Mr. PICKLE. Mr. Trout, your statements have a meaning to me. You are actually in the field, you are there, and you see how the program is working.

Earlier today I had commented to Mr. Thompson about some of the approaches our subcommittee was looking at. One of the proposals I had made to him was that we might introduce a bill that would provide that the Secretary of HHS could verify a social security payment directly to the penal institution if such institution had established a system for obtaining reimbursements from its inmates for the cost of education, maintenance, rehabilitation, or related expenses. This I take it is essentially the approach you are taking?

Mr. TROUT. Yes, sir.

Mr. PICKLE. I find it interesting that you as an active representative in this field, actually working in the field, saying this may be a better approach. I am also surprised to hear you say that most people who receive social security benefits keep it, do not send it back to their own families.

Mr. TROUT. There is one exception. In Michigan the most common ploy in terms of subterfuge which is used to avoid the Michigan law where they assess the money you must contribute to your own maintenance, the most common subterfuge is simply to have the check sent home or to another address, be it your girlfriend's or whoever it may happen to be. They in turn purchase a money order for the amount of the cash or very close to it, send it to the prison to be deposited in the inmate's account. As a money order we have no claim on it.

Mr. PICKLE. They are expert at beating the system?

Mr. TROUT. Yes.

Mr. PICKLE. Can a prison system allow the clients to put out a publication and print anything in it they wished, particularly a publication that would say how you could beat the system by applying for a BEOG grant?

Mr. TROUT. Yes, sir.

Mr. PICKLE. They can print anything like that they wish?

Mr. TROUT. Applying for programs offered by the U.S. Government is not considered as a threat to the security of the institution, therefore it is covered under the freedom of the press.

Mr. PICKLE. OK. Do they actually say in print this is how you can beat the system?

Mr. TROUT. No; the article inferred that. It was not stated that way.

Mr. PICKLE. You say we ought to stop the prisoners from buying cassettes. Can we do that by saying you just cannot buy these things in the prison? We can't tell them how they want to spend money if they want to send it to somebody, you are saying were they are actually purchasing in the prison you would not allow them to spend the money for television sets?

Mr. TROUT. Certainly not money obtained through channels such as this. I think it is a worthwhile program Congress had in mind when they passed this. I do not think they had in mind what is going on in institutions such as mine at this time.

Mr. PICKLE. That is going to be hard to regulate.

Mr. JACOBS. How many color televisions does your prison system sell in a year's time?

Mr. TROUT. Representative Jacobs, the Michigan Department of Corrections is somewhat deprived and backwards. In terms of it being progressive, our television Sonys are only black and white.

Mr. JACOBS. I wondered about that. You have an exchange where such things are sold?

Mr. TROUT. Yes, one item Mr. Ney mentioned was maintenance of a \$75 a month minimum. I might add that the way our system functions is they are allowed to draw up to \$60 per month in scrip to be spent at the resident store. However, there is no limit whatsoever on the funds which can be used in an outside purchase order. They can order cassette tapes directly from the manufacturer through this forum, that is also how they order the mail order clothing and many other items which are available. They can spend whatever they have got.

Mr. JACOBS. You mentioned Sony, John, but does the State of Michigan have any interest in buying American rather than Japanese?

Mr. TROUT. I think—I think that is a very cogent comment.

Mr. JACOBS. Actually it was only meant to be smart alecky.

Mr. TROUT. I know that. But in the current State of Michigan there are troubles, with imported automobiles, it seems like they might try to buy American made appliances.

Mr. JACOBS. We make RCA down at Indianapolis, just for education, if not education.

Mr. TROUT. Thank you.

Mr. PICKLE. Would you want to respond to statements Mr. Trout made or make additional statements at this time?

Mr. NEY. Yes, I would appreciate that.

Mr. PICKLE. You are recognized.

Mr. NEY. If prisoners are that is an issue that should be addressed by the State prison officials who have authority under State laws and their own regulations to restrict what kinds of items prisoners may purchase. The social security system was never intended to set limits on the way in which the earned bene-

fits can be spent. Recipients on the outside can do whatever they want with their benefits, squander their money or spend it on necessities. I think that is a question better left to the discretion of the prison authorities. In the Federal prison system, for example, they have set a maximum limit of \$75 a month that can be spent as I understand it for anything that is purchased in the commissary.

So that if there are abuses considered abuses, that is a question for the prison authorities to deal with, not the Social Security Administration nor this Congress.

Mr. PICKLE. Mr. Trout, do the prison officials restrict what they can purchase now?

Mr. TROUT. Certainly. We have clothing limits, limits upon what they can buy, some items of course would be banned. With regard to Mr. Ney's comments as to the educational benefits I addressed are earned benefits that the corrections clients who are receiving them—in fact, they are minor dependents, who are social security recipients due to the one or both parents being deceased. Therefore, in fact I cannot see how they have earned any benefit in that regard other than simply having the parent deceased while incarcerated.

Mr. PICKLE. I make one other observation: That is it was your analysis, your institution's analysis that once—when the Michigan legislature had passed a requirement that at least \$100 a month be put in to defer the expenses, one-half of the enrollees dropped out?

Mr. TROUT. Yes, sir.

Mr. PICKLE. You take it they did because they were not there seriously to begin with?

Mr. TROUT. Most definitely. Not only that but a number of them became quite violent and had to be transferred because they felt there was an unconstitutional infringement on their rights. Several of them kicked out windows and attempted to assault employees when told they would have to drop out of the school program if they did not comply with the law of Michigan.

Mr. NEY. If I could respond to one or two points that were made, Mr. Chairman.

Mr. Trout mentioned that most of the persons receiving educational benefits were not paying them to their dependents. While that may be true it may well be because beneficiaries by law have to be less than 22 years old, so many may not in fact have any dependents.

The point we were addressing earlier—and the GAO study will shed some light on this, I hope—is that the disability recipients are paying those funds to maintain their families, to keep them intact. It is very difficult, being in prison, to keep a family together. Many of them end up separated or divorced upon release from prison, so the committee should be looking at those two questions separately.

Mr. TROUT. In regard to the dependents, is that many of our men, when we attempted to implement this law, many of our clients were not the ones who were receiving the benefits, but the ones who have come in and have since been advised by the grapevine, get the address of your checks changed. No longer are they sent to the prison. This is rule No. 1, and in the last 6 months we

have noticed we have virtually no one who is receiving benefits recently.

According to our records, we have no incoming clients who are receiving benefits because they are signing up and having them sent to their home address.

One other thing, when the Social Security Administrator was before the committee you were talking about the outreach program. We too have people come into the Grand Rapids Social Security Office and actively recruit people for social security. That is a fact. It does happen in Grand Rapids, Mich.

Mr. PICKLE. I would ask the staff to check that out further, as a matter of information.

I thank both of you. You have come to the committee with somewhat disparaging views, but it is very helpful that you can join the group as a whole in trying to find the right answer to this problem.

Thank you very much.

Now, we are going to call Sgt. Ernest P. Davis, Jr., Mrs. Edna Hall, and Mr. Gilbert Koopmeiners.

Sgt. Ernest Davis is chairman of the benefits review board, local 105 and I presume that is in Trenton, N.J.

I understand that you are from the district represented by our colleague, Congressman Thompson, and we are glad to welcome you.

He has asked us to recognize you, and we are happy to do it. I will come back to you in just a second.

Mrs. Hall, from Newport, Tenn. You represent an organization?

Mrs. HALL. No, sir.

Mr. PICKLE. Mr. Gilbert Koopmeiners, you are from St. Paul, Minn.

Are you an individual or representing a group?

Mr. KOOPMEINERS. Individually; I represent the fellow taxpayers from that district.

Mr. PICKLE. All right.

Mr. Davis, did you want to make a statement or proceed with your statement?

STATEMENT OF SGT. ERNEST P. DAVIS, JR., CHAIRMAN OF THE BENEFITS REVIEW BOARD, LOCAL 105, NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION, INC.

Mr. DAVIS. Yes, sir; I would like to make a statement and I will proceed.

My name is Ernest P. Davis, Jr. I am a correction sergeant and currently stationed at the adult diagnostic and treatment center. It's a unit for sex offenders in Avenel, N.J.

As you pointed out, Mr. Thompson did make available a statement to me which I will give you later in regards to this matter.

I am representing the New Jersey Policemen's Benevolent Association in this matter, and I am chairman of the Policemen's Benevolent Association, Benefits Review Board of Local 105.

As such, I am vitally interested in the social security program on a National, State, and local basis.

Several years ago, when I was assigned to the classification division, I became aware that convicts were the direct recipients of social security disability benefits.

I emphasize the word "direct" because the checks came to them in jail, not to their families. It was theirs to keep and use as they wished, in amounts ranging from \$166 to \$418 a month. Checks for back payments frequently ran as high as \$4,000 and \$5,000.

The classification department was designated to help convicts process their claims, assemble records to support these claims, and to expedite free medical examinations for them. It was especially galling for me to aid these individuals after having reviewed their records.

One case involved a sex offender who specialized in molesting little children. Nicknamed "Satan," he was serving his third sentence for brutally attacking a 6-year-old girl.

He used this crime as a basis for his social security claim. I might add that he now gets \$354 a month in disability payments. Satan has even written a book detailing how he got social security, a copy of which was given to me by a now retired correctional lieutenant.

However, Satan is not alone in collecting these benefits behind bars. At Avenel alone over 10 percent of the inmates are getting a social security check. In view of the disparity raised earlier between the GAO figures and the figures submitted by Congressman Whitehurst, it is my information by direct knowledge that the Congressman's figures are complete and correct.

Unlike social security recipients outside prison walls who must use their check to pay for food, clothing, shelter, medicine, and education, these inmates have all their needs met by the State.

The American taxpayer pays twice for these inmates who have learned how to use the system. We give them free room and board, and then we give them a check for up to \$418 besides. And, in many cases, we are paying them for the very crimes they committed.

With all their needs met, what do inmates use their social security check for? They buy luxuries such as stereos, electronic games, color televisions, tape recorders and athletic equipment. I am personally aware of a disabled inmate pressing 400 pounds with an expensive weightlifting set he had bought for himself.

Even more insidious is the money that flows from social security into the prison underground. Other guards have told me that drug trafficking, numbers running and illicit sex have flourished because of social security funds. It is important to remember that in jail, where you are not supposed to have large amounts of money, \$200 a month makes you a king.

I have observed and talked to convicts who have described to me how they get social security. It is very simple to apply for social security if you are in jail. An inmate who is doing time will act crazy and get a doctor, preferably a psychiatrist or psychologist, to commit him to a State hospital for observation.

Once in the State hospital, the inmate regains his senses enough to ask a social worker to put him in touch with the local social security field representative.

A citizen has to travel to the nearest social security office no matter how far. But for the benefit of prisoners the social security field representatives make regular visits to the jails to sign up criminals who want to apply. It is also my information that these same social security field representatives go out of their way to point out the rights of the inmates in these claims.

The convicts have other advantages, too. A citizen may have to pay to have his record reproduced and sent on to a social security office, at least this was the case in the past. A convict has this done for free by the State. A convict also has the advantage of a free and comprehensive medical examination, something a private citizen may have to pay for.

Some convicts have another leg up, too. They already have been declared mentally unstable by a doctor who committed him or examined him in jail.

And, if he has to appeal, he can frequently file in pauperis and get legal aid attorney to handle the case for him for free while a citizen must pay a fee of 25 percent from the moneys that are recovered from the social security payment.

A citizen must also go before an administrative law judge wherever court is held, but the judge comes directly to jail to hear the convict's case, and they come frequently.

Convicts are almost sure to appeal if turned down. The jailhouse lawyers tell them: "All it costs is your time, and you're already doing time."

In my opinion, the corrections administrators are quite satisfied to allow such questionable claims because these inmates become placated and cause them fewer problems within the prison system.

Lastly, what happens to these inmates when these inmates emerge from jail? They have received and will receive a monthly subsidy but only as long as they don't go to work at a job where social security earnings are taken out and reported. Their monthly social security check, therefore, gives them a built-in incentive to return to a life of crime. Otherwise, if they take an honest job, they will lose it.

My championing of this cause won't be popular where I work. It may result in retaliatory discipline by the administrators and harassment by inmates who stand to lose thousands of dollars if you gentlemen pass this legislation before you today.

But I believe that allowing inmates to collect while denying decent citizens is wrong. Don't we have a responsibility to those who do obey the law?

We believe that this legislative body of guardians of the public trust have a legal and a moral obligation to pass the proposed enabling legislation before it.

This remedial action is needed by your constituents. I ask you again, pass this legislation.

Thank you.

Mr. JACOBS. Thank you, Sergeant.

You asserted a moment ago that you have direct knowledge that the figure of 30,000 across the country, and I think \$60 million is the correct figure that the Social Security Administration is paying out to incarcerated felons. We have been in a dilemma here today about that.

How did you determine this number?

Mr. DAVIS. As I remember when I made that statement, I said that it was true and complete and I had direct knowledge, as you so indicated.

I come at that figure by the fact that I am, as I have already indicated previously, I am a union official. I am a career employee, and I have direct knowledge of the events within the institutions and, I might add, for me to go into detail and say explicitly and specifically which institutions and how many, would certainly not be met with support.

I can make available in camera, if the committee so chooses, the information that I have available to support that allegation.

Mr. JACOBS. I was thinking about the previous witness' testimony, Mr. Trout, who said that the deceit is becoming illusive, because the checks apparently are being mailed to dependents and, therefore, I suppose it will not be long before they arrive at the prison in the form of money orders.

I was thinking too about the difficulty if the Social Security Administration tells us it has been identifying checks for incarcerated felons, among those checks that are sent out every month, even though an effort, as I understand it, is being made now to make that determination.

You are talking about an inference that you draw from your own experience, the microcosm, and applying it to the macrocosm, I presume?

Mr. DAVIS. I am specifically making my 10-percent figure as related to a State institution.

Mr. JACOBS. Ones with which you are familiar?

Mr. DAVIS. Yes, sir.

Mr. JACOBS. Just to clear that up. In your testimony you said that a prisoner acts crazy, is transferred to a mental facility, and then regains his wits enough to make the application. This strikes me for some reason or another, they seem to do better than Corporal Clinger; don't they?

Maybe we should look into that.

Mr. DAVIS. Sir, I believe that to be true and complete, and I also might add at this point, I believe Mr. Trout's statements were quite accurate in that regard.

Mr. JACOBS. I am pleased to welcome you to the committee. I happen to be a former police officer myself, and I know some of the frustrations that you have implied.

Mr. DAVIS. As I have already indicated, I don't think my testimony will be met with popularity by the administrators for the reasons that I have outlined. I certainly hope you will bear that in mind.

Mr. JACOBS. In this business you will find you will be popular with some and unpopular with others.

Mrs. Hall, we are pleased to welcome you to the committee and accept your testimony.

At this time you may give a written statement to the clerk for inclusion in the record and proceed extemporaneously or you may read the statement, whichever you choose.

STATEMENT OF EDNA B. HALL, NEWPORT, TENN.

Mrs. HALL. Mr. Chairman and members of the subcommittee, my name is Edna B. Hall and my address is Route 6, Rich Road, Newport, Tenn., 37821.

My purpose in testifying today before this committee is to relate to you the personal knowledge I have of a convicted felon who lied and faked illness in order to qualify for social security and Veterans' Administration benefits.

In October 1971 I married John B. Stamey. He had undergone surgery at the Veterans' Administration Hospital at Oteen, N.C. in the spring of that year. Before we were married, he told me he had fallen from a building at American Enka Corp. in Lowland, Tenn., while doing construction work for Daniels Construction Co. A rib was supposedly broken and punctured the left lung, necessitating the removal of the lung.

When he had to make return visits for checkups, he was told not to eat or drink anything beforehand. According to him, they used a bronchoscope to check the healing process, which necessitated using a small amount of anesthetic from which he was to awaken in about 30 minutes.

He was taking any and every pill he could get his hands on. On these mornings, according to him, he would pop a handful in his mouth, wash them down with coffee, sugar, and cream, and go for the checkup. He did not wake up until dark and the doctors were frantic. He found this very amusing.

My husband gambled constantly, staying awake for days at a time. After having lost every cent he had, of which I was unaware, he borrowed from his gambler friends. When they insisted on repayment, he put a stocking over his head, went to a branch of the National Bank of Newport and robbed it. He was arrested the same afternoon. He later told me it was he who had twice robbed the Westland branch of the same bank several years before. These robberies were never solved.

I was at work when I heard about it. He was convicted and received a 12-year sentence for armed robbery and 2 years for possessing a sawed-off shotgun. He started serving his time in May or June of 1972 in the Federal penitentiary in Atlanta.

At the time, my younger daughter was in high school and I also had to support my older daughter, her daughter, and her husband, who was a student. By the way, I was making less than \$500 a month.

John had also bought two new cars, for which he said he had paid cash. He had not and they were in my name. I had to make the payments to have transportation to work. I was worried sick to the point that I dropped from 146 pounds to 126 pounds on a 5-foot-8-inch frame. About 3 to 4 months after his incarceration, I was on the verge of a breakdown and was off from work 4 weeks.

While he was incarcerated, he immediately started trying to get social security benefits. He was already getting VA benefits. After several months and a number of refusals, he was granted benefits in 1973. Upon release on March 10, 1975, he began working as a building contractor. He could work all day in the hot sun without any ill effects. He only reported a very small portion of his income and his benefits continued.

After a year he wanted to buy an old restaurant in the downtown area of Newport, getting me to use my home to secure a loan from the bank. I might say that this was my home before we were married. Again, everything was in my name. After about a month, he started gambling again just across the street from the restaurant. The business just barely paid expenses due to his absences. The business was in my name; and when income tax time came I wanted it right. He kept his set of books with erroneous amounts posted. I kept my own which I used in filing income taxes.

On April 14, 1977, after dinner, John left the house. About 8 o'clock he called me to drive to a local shopping center and ride with him to a small town 15 miles away where he talked with someone regarding building an addition on their home. While we were gone, he had a young local man with a criminal record wire my car with dynamite. Upon returning, John let me out of his truck 100 feet from the car, gunned his truck and shot out of the parking lot.

When I turned the lights on at 10:32 p.m. the car was blown over five feet off the ground. I lost both legs below the knee, a mangled right hand and broken wrists, severely damaged lungs, burns from hot metal on portions of my chest, my face and left eye were filled with blacktop, causing blindness in the eye for several days. If I had not remained conscious and struggled out of the car on the passenger side, I would have burned to death.

I might say I have to continue to have checkups on this eye because it is still filled with the blacktop. They—my doctor in Knoxville, Tenn.—won't touch it unless it starts to move. Close supervision is required due to the possibility of cataracts, glaucoma, or retina detachment. I have to pay these expenses. I have not been reimbursed by medicare for any expenses I've had since or relative to my disability. A month from the date of the explosion, John Stamey, the young man, and his wife were arrested. The two placing the bomb in my car were tried and convicted of illegal use of dynamite and destruction of personal property. John's indictment was the same. No charges of attempted murder were placed. John was not tried. He confessed. The attempt on my life was to collect insurance to again pay off gambling debts. Again, I was left owing all the bills. I was hardly in any condition to think rationally, but the pressures of life continue. Five months after my injuries, I called the social security office in Morristown, Tenn., to apply for benefits. I was told I had to come into the office to do so. I had no wheelchair, so I had to struggle inside on crutches and legs so sore I could not get out of a chair without assistance.

I had to sell my home to pay off the restaurant. I then had the contents of the restaurant auctioned off at a loss. If I had not carried the insurance at work for dismemberment, which was optional, I would not have a home today. Although I suffered a living death month after month, underwent additional major surgery in June 1979 and will receive additional treatment at Emory University Pain Clinic in Decatur, Ga., in July, due to the criminal and inhumane acts of this man, it is I who must pay the costs, not him. It is I who sleeps 2 to 4 hours a night due to the pain, fear, and nightmares.

His benefits from social security and Veterans' Administration are his to keep. As soon as possible after his arrest, he had social security send his checks to another address. Although we remained married until December 30, 1977, his money remained his while I was fighting for my life and paying his bills. He has no food to buy, no taxes to pay, no utilities, no yard maintenance to pay for, no medical bills, no glasses to buy, no prostheses and accessories to buy, no clothing, no car to maintain, gas, tags, license, no insurance to pay, no postage to pay, to get to doctors and no income tax forms to fill out. Even though prisoners can and do earn small salaries, they do not have to report it.

I had to pay his bills without any means of forcing reimbursement. In the 3 years and 2 months since becoming disabled, I have earned \$10, and that was in May 1980. I have to fill out an income tax form every year due to the fact that I have less than \$72 in retirement benefits and long-term disability which they say is gainful employment.

John laughed at the doctors who gave him breathing tests because of their inability, or not caring, to determine he is a fake. When he had to take breathing tests, he would hold back, leading the doctors to believe he had difficulty breathing. After all the above occurred, I checked through his papers and found that he did not have a whole lung removed. He did, in fact, have the upper lobe of the left lung removed, not as the result of a fall but from tuberculosis.

He went so far at one time to tell me the doctors at Oteen said he had cancer. Another time while in prison in Atlanta, he called me at work and said he'd had a stroke. He is a person who is capable of the most cruel and cold form of mental cruelty. And, as I later discovered, also capable of extreme physical cruelty. It seems ironic that approximately 22 to 23 years ago his home was dynamited—during his absence—while his first wife and a daughter about 10 were in the house. Again—unsolved.

I cannot understand how anyone with normal intelligence can say that there is any fairness in the present laws governing the issuing of social security benefits to criminals. I do not feel that stopping benefits while one is in prison is an infringement on their constitutional rights. To the contrary, I feel my rights are being violated by the present double standard of prisoners having their cake and eating it too.

Doesn't it make more sense to direct at least a portion of those benefits to the victims of their crimes?

Thank you.

Mr. JACOBS. Mrs. Hall, I will say on behalf of the committee that in the annals of unjustly favorable treatment to the criminal versus the victim, yours is the most poignant case that I think has ever come before any committee of Congress.

We are very much indebted to you for taking the time to come up here and give your testimony.

Mr. KOOPMEINERS, you may proceed in your own fashion.

STATEMENT OF GILBERT KOOPMEINERS, ST. PAUL, MINN.

Mr. KOOPMEINERS. Thank you.

My name is Gilbert Koopmeiners and I am an accounting officer at the Minnesota Correctional Facility in St. Cloud, Minn.

Among my responsibilities is inmate funds. When inmates first started receiving Social Security checks, I didn't like it but thought what can I do about it and thought they must be legitimate or Social Security would not be sending the checks.

This went on for about a year or more when I discovered that an inmate was getting a check every month and had not been in an educational program for 13 months.

Since that time I have monitored all social security payments, and when I find that an inmate might not be entitled to a check I send it to the local Social Security office asking them if the inmate is entitled to the check.

I used to be able to do this by phone but this is no longer possible due to the Privacy Act. They will either keep the check or return it with a note, not to me, but to the inmate that, yes, you are entitled to this money. In the case where the inmate was drawing a check for 13 months without being in school, I asked Social Security what they would do when this happens.

They said, we will collect from him, if we can, which I know is impossible, or deduct it from his parents' monthly benefit, if they are drawing it, which I thought isn't right, or deduct it from his benefits when he draws a retirement, which I am sure wouldn't bother the inmate one bit because if he is not able to get a social security check when he reaches retirement age he knows he can make a living on some other giveaway programs.

I had another case where an inmate quit school on June 20, so I returned his next check to Social Security, advising them that he had quit school. In the meantime, the inmate advised social security that he intended to return to an educational program within 4 months.

So Social Security wrote us a letter stating that their records showed that the inmate was last a full-time student on June 20 and as long as he intends to return to school before December 1 they can continue to pay him and please see that his checks are delivered to him.

Now, those of you who saw the "Prime Time Saturday" program probably remember the inmate in the vocational body shop. At the time of the interview, he said this is what he wanted to do for a living when he got out of the institution.

Four days after the interview, he dropped out of the program. Our education department did an interview to find out why he dropped out. He said:

Well, it is not my real interest; my real interest is to be a fry cook when I get out of the institution, but there is no sense in taking that because I cannot collect a social security check; it's not a vocational program.

He also stated his intent was to get back into another vocational program within 4 months so he will not lose his monthly check.

We have inmates who are in educational programs when they are released from the institution and if he violates parole, is returned to the institution and gets back into an educational program within 4 months from the time he was released he gets paid for the time he was out even though he was not in an educational program. He can even go so far as to get backpay.

I don't think inmates in an institution are entitled to social security benefits because they get free education, free room and board, free medical, free dental, plus earn an average \$1.05 a day spending money.

The intent of the educational benefits, as I understand it, is to help the student on the outside who must pay his way through school, not to give an inmate a check each month to blow on various things such as color television sets, radios and carpeting for their cells, lavish spending at the canteen, and sending money to girl friends who, in turn, bring in the goods.

There is also a lot of strong-arming going on whereby an inmate receiving a social security check is forced to share his money with other bully-type inmates. We had one inmate beaten up so badly that he had to be hospitalized because he would not share his checks.

Some people also think that the inmate will save this money so he will have it when he is released from the institution, but I have yet to see an inmate leave the institution with a large amount of money as a result of receiving social security checks.

We had another case where an inmate applied for supplemental security benefits. Social Security sent me a form requesting earnings information, which I supplied. But I also wrote a note along with it that he had no living expenses and therefore should not be entitled to a supplemental security benefit. Three weeks later he received a check from Social Security in the amount of \$157.18.

We had one inmate recently receive a monthly social security disability benefit of \$611.20 per month. I asked Social Security why he was getting such a large monthly check. If he was getting family benefits I felt he should be sending some to his family instead of blowing it. There was no indication that he was sending it to his family.

Their reply was that he is entitled to the money; \$611.20 per month is a nice income when you have no living expenses.

Mention was made today that an inmate drawing social security should pay for part of his room and board. If this were done, I am sure the inmate would either drop out of the program so he wouldn't have to pay even if he only had to pay a portion of his check, or he would find some way of getting the checks so we would not know that he was getting it, either by direct deposit or having it sent to a girl friend or some other address.

Also, mention was made of an escrow account so he would have a nest egg when he leaves.

I am sure the inmates would manipulate and draw this money out before they left. It would not be there when he got out. I think this committee should also take a good look at all social security benefits, other than retirement. There are students on the outside who attend school long enough to get their checks coming and then say the heck with it. They live happily ever after until they get cut off and they lose their checks. Also I know of one man in his mid-forties, who claims a back injury. Social Security wanted him to take an accounting course so he could be reemployed. But he refused because he would have had to bear part of the cost. He told me he would rather stay on social security as long as he can and have an easy life. I know another man in his mid-forties who owns 160 acres

of wooded property. He claims a back injury and is considered unemployable in the American society, yet he cuts wood, hunts, fishes, and has a great life without working for a living.

I also know of a family where the father died. The mother remarried but the new husband would not adopt the children because they would then lose their social security benefits.

I would personally like to see social security get back to what it was originally intended—that is a retirement income for our senior citizens, and have all the other benefits taken care of by the local welfare where it would probably be more tightly controlled. This may seem extreme, but something has got to be done to save the social security program or there will not be any when you and I get there. With due respect our Congressmen are always looking for new ways to fund the program, and no matter what they come up with it is always the middle income wage earners who foot the bill. How about chopping some of the easy benefits out?

I thank you for the opportunity to speak before this committee. [The prepared statement follows:]

STATEMENT OF GILBERT KOOPMEINERS, ST. PAUL, MINN.

My name is Gilbert Koopmeiners and I am an accounting officer at the Minnesota Correctional facility in St. Cloud, Minnesota. Among my responsibilities is inmate funds. When inmates first started receiving social security checks, I didn't like it but thought what can I do about it and thought they must be legitimate or Social Security would not be sending the checks. This went on for about a year or more when I discovered that an inmate was getting a check every month and had not been in an educational program for 13 months. Since that time I have monitored all Social Security payments, and when I find that an inmate might not be entitled to a check I sent it to the local Social Security office asking them if the inmate is entitled to the check. I used to be able to do this by phone but this is no longer possible thanks to the Privacy Act. They will either keep the check or return it with a note, not to me, but to the inmate that yes you are entitled to this money. In the case where the inmate was drawing a check for 13 months without being in school, I asked Social Security what they would do when this happens. They said we collect from him if we can, or deduct it from his parents' monthly benefit, if they are drawing it, or deduct it from his benefits when he draws a retirement, which I am sure wouldn't bother the inmate one bit because if he is not able to get a Social Security check when he reaches retirement age he knows he can make a living on some other give-away programs.

I had another case where an inmate quit school on June 24th, so I returned his next check to Social Security, advising them that he quit school. In the meantime, the inmate advised Social Security that he intended to return to an educational program within four months. So, Social Security wrote us a letter stating that their records showed that the inmate was last a full-time student on June 20th and as long as he intends to return to school before December 1st they can continue to pay him and please see that his checks are delivered to him.

We have inmates who are in educational programs when they are released from the institution and if he violates parole, is returned to the institution and gets back into an educational program within four months from the time he was released he gets paid for the time he was out even though he was not in an educational program. I don't think inmates in an institution are entitled to Social Security benefits because they get free education, free room and board, free medical, free dental, plus earn an average \$1.05 a day spending money. The intent of the educational benefits, as I understand it, is to help the student who must pay his way through school, not to give an inmate a check each month to blow on various things such as color television sets, radios and carpeting for their cells, lavish spending at the canteen, and sending money to girl friends who, in turn, bring in the goods. There is also a lot of strong arming going on whereby an inmate receiving a Social Security check is forced to share his money with other bully-type inmates. We had one inmate beaten up so bad that he had to be hospitalized because he would not share his checks. Some people also think that the inmate will save this money so he will have it when he is released from the institution, but I

have yet to see an inmate leave the institution with a large amount of money as a result of receiving Social Security checks.

We had another case where an inmate applied for supplemental security benefits. Social Security sent me a form requesting earnings information, which I supplied. But I also wrote a note along with it that he had no living expenses and therefore should not be entitled to a supplemental security benefit. Three weeks later he received a check from Social Security in the amount of \$157.18.

We had one inmate recently received a monthly Social Security disability benefit of \$611.20 per month. I asked Social Security why he was getting such a large monthly check. If he was getting family benefits I felt he should be sending some to his family instead of blowing it. Their reply was that he is entitled to the money. \$611.20 per month sure is a nice income when you have no living expenses.

I think this committee should take a hard look at all Social Security benefits, other than retirement. There are students who attend school long enough to get their checks coming and then say the heck with it. I know of one small man in his mid-40s, who claims a back injury. Social Security wanted him to take an accounting course so he could be re-employed. But he refused because he would have had to bear part of the cost. He told me he would rather stay on Social Security as long as he can and have an easy life. I know another man in his mid-40s who owns 160 acres of wooded property. He claims a back injury and is considered unemployable in the American society, yet he cuts wood, hunts, fishes, and has a great life without working for a living.

I also know of a family where the father died. The mother remarried but the new husband would not adopt the children because they would then lose their Social Security benefits.

I would personally like to see Social Security get back to what it was originally intended—that is a retirement income for our senior citizens, and have all the other benefits taken care of by the local welfare where it would probably be more tightly controlled. This may seem extreme, but something has got to be done to save the Social Security program or there won't be any when you and I get there. Our Congressmen are always looking for new ways to fund the program, and no matter what they come up with it is always the middle income wage earners who foot the bill. How about chopping some of the easy benefits out?

Mr. JACOBS. Mr. Koopmeiners, we are in your debt for your testimony. There is a vote on the floor. Therefore, it will be necessary to recess for approximately 10 minutes when we shall reconvene. I think it proper procedure, if the panel does not mind, for you to return to your places in case Mr. Pickle might have some questions. Then we will move on to the next witness following that.

[Brief recess.]

Mr. JACOBS. The committee can resume its sitting. Mr. Pickle will be here shortly, I believe. Mr. Koopmeiners, you have ventured into other areas than just prisoners' benefits in commenting upon the social security system. You may have been present earlier in the day when I raised questions about other governmental benefits that might flow to those convicted of felonies and incarcerated in the prisons. Have you an opinion about that, about civil service retirement pensions; for example, in terms of terms?

Mr. KOOPMEINERS. Yes, I believe they should not get it, because they have no living expense whatsoever. They get free room and board, free medical, whatever they need they can get.

Mr. JACOBS. We have the *Hiss* case, are you familiar with it, the Alger Hiss case?

Mr. KOOPMEINERS. No.

Mr. JACOBS. Decided by the Supreme Court a while back.

Mr. KOOPMEINERS. I am not.

Mr. JACOBS. It dealt with that question somewhat. I am just wondering if the claim that there is an obligation of contract, the defeat of which, or the abrogation of which is forbidden by the Constitution, if we would not be on more solid ground to deal with the theory of offset, paying the room and board, avoiding the

double dip, on the one hand, or if it might almost have to be in the form of a fine imposed by the sentencing judge or jury; it might just happen to be the same amount of the pension, disability pension that has already been established. Because of your expertise in the area of accounting and so forth would you care to comment on that?

Mr. KOOPMEINERS. Well, probably to charge room and board to just certain individuals might cost more than what it is worth. I am also sure that they would find ways of deviating, so they would not—you know they have 24 hours a day to think of how to beat the system and I am sure they would beat it and have it sent someplace so you would not get it.

Mr. JACOBS. Thank you. The chairman has returned.

Mr. PICKLE. Mr. Davis, I understand that you had stated to the committee that you could give positive proof of the fact that some 30,000 prisoners were drawing social security and that you would supply it to us "in secret." I assume from that that you mean you would not supply it now but would supply it to the committee separate and apart. We would like to have that information, we would like to have that data. Would you supply it to us?

Mr. DAVIS. Yes. I would like to supply it if I had it but I think we have a little bit of a mistake here, sir. I have said that you are talking about comparing Federal institutions versus State institutions. Now I can show, and Mr. Jacobs quite rightly pointed out in his questioning of me, that within my knowledge I can show 10 percent of the population of one institution. I hesitate to mention that institution publicly, but I can make that available to you in camera, as I said, with the names, the amounts, providing it is held that way.

Mr. PICKLE. If you will make that available to our committee, our subcommittee staff attendant, as soon as you can, we would be glad to have it.

Mr. DAVIS. Yes, sir.

Mr. PICKLE. I thank each of you witnesses for your testimony and appreciate your coming this distance and testifying both in group and as individuals. Your testimony will be very helpful.

Now I want to ask one other witness to come. You may be excused or we have Mrs. June Davis.

Mrs. DAVIS. I am here.

Mr. PICKLE. You are at the witness table. Mrs. Davis is an individual who has a statement to make, either by the script or following it, we would be glad to receive your testimony, Mrs. Davis.

STATEMENT OF JUNE A. DAVIS, CINCINNATI, OHIO

Mrs. DAVIS. My name is June Davis and I live at 2517 Teuton Court, Cincinnati, Ohio 45244. My purpose in being here today is to testify about the inequities in our social security system that permit prisoners to receive disability insurance benefits. The following case is one I am sure you will not soon forget.

After a stormy marriage and a divorce, my brother, who is now 40 years old, came to stay in my 79-year-old mother's home, who had moved next door to my sister after our mother's husband passed away. We thought we could take care of her and make her

comfortable during her old age. After watching my brother become more depressed with erratic behavior, cursing my mother and other people, making accusations that simply were not true, we urged him to get psychiatric care, which his wife had forced him to do while they were married. He was in a State institution for 3 months at one point, and the conclusion of the psychiatrists there was that there was nothing wrong with him, he was simply an alcoholic. After going to court and having him bodily removed from mother's home, she unfortunately let him return. The following day, he went into the kitchen, picked up a hammer, came into the living room and as my mother sat in her chair, this 6-foot, 175-pound, so-called man picked up a hammer and with all of his strength hit my 5-foot, 2-inch mother on the side of her head. The beating caused irreparable brain damage and brain surgery was necessary. As a result of the assault by my brother, mother is very weak on her left side and can barely walk even with the aid of a three-prong cane. Her food must be pureed and she must endure the indignity of having it dribble down the left side of her mouth because she has little muscular control on that side of her face. In addition her sight has been greatly impaired and she has congestive heart failure. Since trying to take care of her for the past 1½ years my sister and I have regretfully had to put her into a nursing home. All of mother's savings are fast disappearing at the rate of approximately \$1,100 a month and she will soon be forced to turn to medicaid. And I will have to be the one to go begging for that.

In contrast this so-called man who did this dastardly act is sitting in prison in Ohio receiving approximately \$257 a month with a raise due in July of this year. And I will tell you that he has refused to work up there, because he is on social security disability. His high school daughter who works part time is also receiving approximately \$100 a month from social security even though her mother and sister with whom she is living is working and making a substantial living.

This is one of the very reasons why our social security system is in trouble today. Anyone incarcerated should have to at least have their checks sent to wherever they may be to help cover the cost of their stay or completely cut off until they are out of prison. Remember this is our money. People who have worked for years are looking forward to retirement. However, after doling out money to drones like my brother, there is not know going to be anything left for the people who really deserve it.

I hope and pray that this hearing today will result in a change of the law such as the one proposed by Congressman Whitehurst. Thank you.

Mr. PICKLE. Mrs. Davis, I know this must be difficult for you to present this testimony for several reasons. I know there was a hesitancy on your part to do it. But I think this is the kind of testimony, as bizarre or as cruel as it may sound, that our committee and the Members of Congress ought to know. So I appreciate you coming. Mr. Jacobs, did you have any questions?

Mr. JACOBS. I certainly echo the sentiments of the chairman. Mr. Chairman, just for the record, I barely suggest that we might well consider, in cases of this kind, not cutting off the disability benefit

to the incarcerated felon, but requiring that it be paid as restitution toward the maintenance of the victim of the crime.

I just think that perhaps it would be good to have that on the record. I do not know the ramifications. We would have to look into that.

Mr. PICKLE. There is another aspect of the overall problem but I think it is a valid observation, Mr. Jacobs. I do not know how it could work, but we ought to give that consideration just as well as some of the others, because I think there are many instances similar to this.

Mr. JACOBS. It occurs to me in the case Mrs. Davis has brought to us, one of the more striking elements of your statement was the question of pride, going to medicaid. Your mother's savings exhausted, so on, so forth. This would be more in the nature of a right, I guess restitution might stave off, might preserve the dignity of a victim whose dignity probably needs more than perservation but restoration to some extent.

Mr. KOOPMEINERS. Could I make an additional comment, please. Mr. PICKLE. Please.

Mr. KOOPMEINERS. I feel any payment to the inmate and he in turn has to send it out for restitution or whatever, I do not think it is going to work. I think the only way really is to chop it off so he cannot get ahold of the money.

Mr. JACOBS. What I had in mind was a direct payment to the victim.

Mr. KOOPMEINERS. Directly?

Mr. JACOBS. Yes.

Mr. KOOPMEINERS. Very well.

Mr. JACOBS. Well, we are really grateful to the panel. Sometimes we get these things a little mixed up. I am not sure this should not have been the first panel today. But we are very grateful for your testimony. The theory is fine, abstract logic is good, but the actual real-life experiences are those which guide our way best, I think. So in behalf of the Chair we thank the panel for the trouble you took to come here and testify.

Mr. PICKLE. Thank all of you. We appreciate your testimony. Now this will conclude the hearings today on this subject. The Chair is not in position to advise whether we will have additional hearings or at least immediately. We may have a hearing of the Social Security Subcommittee next week but it will be on the subject of the general financing of the social security system and not on this subject. The hearings will be kept open for at least a week for anyone else to submit testimony or to make statements. And to make those requests in writing to the committee if you know of anyone who wishes to make such a statement.

This will conclude the hearing as of now and the committee stands adjourned.

[Whereupon the hearing was adjourned at 3 p.m.]

[The following was submitted for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 11, 1980.

Hon. J. J. PICKLE,
Chairman, Social Security Subcommittee, Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to make a statement concerning the payment of social security benefits to persons incarcerated in penal institutions, which may be included in the June 20 hearing's record.

I commend you for taking up a bill about payment of social security benefits to those persons who are convicted felons and are incarcerated in penal institutions. I have no problem with the legislation that has been introduced to prevent prisoners from receiving social security benefits. When all is said and done, they are being supported at public expense, being fed and clothed, and it is hardly the taxpayers' fault that they are incarcerated. At the very most, some minor portions of their benefits may be set aside for them for that time when they are released and need to make the transition to normal life.

Sincerely,

SAM M. GIBBONS,
U.S. Congressman.

STATEMENT OF HON. CLARENCE J. BROWN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OHIO

As the government-induced recession continues to deepen, the tax burden on Americans has not lessened, and Americans continue to suffer under excessive taxation. Despite the worsening economic situation, the Carter Administration has refused to cut taxes or to slow swelling government bureaucracy. Therefore, Congress must see that the hard-earned income of American taxpayers is put to its best use and not misspent by overzealous bureaucrats. H.R. 5610 rids the American taxpayer of an expensive and unnecessary tax burden. In my mind, Congress cannot allow prisoners to continue to receive social security disability benefits.

American taxpayers pay approximately \$4.4 billion to maintain the correctional facilities which house, feed, and clothe more than 400,000 prisoners. This is an unfortunate, but necessary, responsibility of society. However, Americans today bear an additional and unnecessary burden in supporting the prison population. I am speaking of the estimated \$60 million in social security disability benefits now being paid to some 30,000 prisoners across the nation.

It is unfortunate that convicted felons such as David Berkowitz, the notorious "Son of Sam" killer, should be permitted to turn their separation from civilized society into a profitable venture. But it is unspeakable that these profits are being paid by American taxpayers—the very people who already provide \$20,000 per prisoner per year to be protected from the dangerous behavior of these individuals.

This misuse of taxpayer money is a result of overzealous bureaucracy and loosely-drawn legislation. Our social security system is on the brink of financial disaster and yet social security field representatives are today visiting our prisons, actively seeking convicts who might qualify for social security disability benefits.

This is a gross misuse of the social security trust fund. If the majority of Americans wish to pay these individuals a salary to stay behind bars, perhaps Congress should address the situation but in the straight forward manner of establishing a specific program for this express purpose. However, I do not believe a proposal, if introduced, would enjoy the support of the majority. And I cannot, therefore, condone using social security benefits for this purpose. Therefore, I have joined as a cosponsor of H.R. 5610, and I strongly urge the Social Security Subcommittee to report the measure favorably and in a timely manner.

STATEMENT OF HON. BEVERLY B. BYRON, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MARYLAND

Mr. Chairman and members of the subcommittee, I am pleased to join a number of my colleagues in supporting Congressman William Whitehurst in the attempt to prevent prison inmates from receiving Social Security disability benefits.

The public is doubly victimized by this flagrant exploitation of the Social Security System. Taxpayers are obliged to finance the room, board, and rehabilitation of convicted criminals as well as swallow the outrage of seeing their social security taxes pay the disability benefits of convicts whose injuries may have occurred

during the commission of a crime or whose criminal activities are used to establish eligibility for disability benefits. This is an affront to honest citizens.

I am frequently contacted by constituents whose disability claims have been denied. I share their deep concern when they read that convicted felons are entitled to receive the same benefits that my constituents need to survive. Prison inmates are already being fully supported by the public—they do not deserve a disability allowance which is designed to pay for expenses that prisoners do not incur.

STATEMENT OF HON. BILL CHAPPELL, JR., A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

Mr. Chairman, I am, indeed, grateful for the opportunity to contribute to the committee's consideration of a situation which has been the subject of increasing controversy in recent months. I am referring, of course, to the current practice of allowing convicted felons who otherwise qualify, to collect disability insurance benefits under the social security system. The consideration of this matter by the committee is most timely. While the issue has generated intensely emotional feelings, it is my belief that a thorough and rational investigation of this practice will show that continuing these payments to prisoners or allowing them to qualify for payments while in prison is not justified and ought to be prohibited. I am pleased to have joined as a cosponsor of H.R. 5610, introduced by our colleague, Mr. Whitehurst, which would prohibit future payments of this nature, and I urge the committee to favorably report this bill or similar legislation.

Current estimates of the number of prisoners collecting disability benefits range between about 4,000—according to the social security administration—and upwards of 30,000—if we are to believe recent press accounts. Unfortunately, no truly accurate count is available at this time. However, we can certainly be sure that the results of the Government Accounting Office investigation now underway, will reveal that thousands upon thousands of individuals are involved, draining millions of dollars from an already overburdened system.

When we consider the cost of maintaining each of the 300,000 inmates in the United States and the purpose of the social security disability system in the United States, I do not believe that it is unreasonable to preclude payments of the nature we are discussing. Figures for fiscal year 1979 indicate that it costs the taxpayers in excess of \$10,300 each year to provide for the needs of one inmate under the jurisdiction of our penal system. In other words, it costs more to incarcerate an individual for a year than it does to send a student to one of the Nation's finest universities for an equivalent period of time.

In any event, Mr. Chairman, the issue which we are addressing today concerns the efficacy of continuing social security disability insurance payments to prisoners. The reasoning behind the payment of any disability benefits arises out of the philosophy that they are necessary for earnings replacement, should an individual become unable to work as a result of some impairment, whether mental or physical. In my view, this replacement is uncalled for in the case of a prisoner, since his basic needs are being met by the institution. Arguments are made, however, that the inmate is eligible, as is everyone else who has worked for a "substantial period" in covered employment, to receive benefits based on a "vested right" philosophy. This philosophy holds that an individual has earned the right to receive compensation since he has contributed to the system in the past. It cannot be disputed, however, that SSDI payments are to replace earnings. Since prisoners do not engage in gainful employment, a disability has no effect on their work status and earning potential. Obviously, once they are released, the situation changes and SSDI benefits would again come into play if they otherwise qualify. As with so many other programs, it appears that the intent of the law in this case has been circumvented.

Mr. Chairman, there is one facet of this issue which I believe merits special attention. While I wholeheartedly support the termination of disability insurance payments to prisoners, it is important that the welfare of their families not be jeopardized on their account. Often, these benefits are an important source of income for families in which the head of the household has become disabled. It is my view that disability benefits which were legitimately obtained by an individual prior to his incarceration for the commission of a crime should be continued for the support of the dependents the prisoner has left behind. In these cases, however, I believe that a system of direct payments to the inmate's dependents would be more desirable than allowing that inmate to first receive payment for subsequent disbursement to his family. Consideration of this matter should be included in any congressional action which addresses the practice of providing disability payments to persons confined in correctional facilities.

We have all heard the startling accounts of notorious criminals receiving disability benefits by citing their crimes as evidence of their impairment. While these sensational examples may be few in number, they have acted as a catalyst to raise public awareness of an unacceptable situation. I believe that I am reading the mood of our citizens correctly when I state that the majority favor discontinuing the practice of allowing prisoners to collect social security disability benefits. A great many individuals in Florida's fourth district have contacted my office to express their concern over this matter. I believe that allowing its continuance would not only be an abrogation of congressional intent, but represents as well an affront to the integrity of every hard working American seeking to support his family within the law. Why, in addition, should he be expected to condone the misuse of his, and his neighbor's hard earned dollars, which our social security fund can ill afford to lose.

I thank the Chair for allowing me the opportunity to participate in today's discussion. I applaud the committee's timely consideration of this issue of great social significance.

STATEMENT OF HON. ROBERT W. DANIEL, JR., A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF VIRGINIA

Mr. Chairman, the Social Security Fund needs help. This is the conclusion of a front page story in today's Washington Post. According to the Post, reports reveal that the entire system could be left with insufficient funds to meet its obligations by the beginning of 1983.

The impending bankruptcy of Social Security must be terrifying news to the many Americans who rely on these checks for their very existence. I believe we should take every possible precaution to ensure that the Social Security Fund remains solvent, so that those who deserve benefits will continue to receive them. Therefore, I was astounded by reports that criminals who reside in penal institutions are eligible to receive Disability Insurance. Some inmates have even managed to put away a nest egg of thousands of dollars at the expense of hardworking American taxpayers.

Just as convicted felons are generally deprived of their right to vote, so should they lose the right to receive Disability Insurance. Many Americans who have obeyed our laws all their lives are being forced to curtail their standard of living because their Social Security payments are insufficient. Prisoners, who already have their material needs taken care of by the state, have no right to drain the already scarce resources of the Social Security Fund. It costs the taxpayers many thousands of dollars to keep a convict behind bars. What justification could there be for forcing the taxpayer to subsidize the convict's bank account? Instead of punishing him, we are paying him overtime.

My friend Bill Whitehurst has introduced legislation to prohibit the payment of Disability Insurance to individuals while they are confined to a penal institution. I have cosponsored this bill, H.R. 5610. Considerable attention has been focused on H.R. 5610. This attention is well deserved. The public is rightfully enraged about this misuse of Social Security funds. I urge prompt action on H.R. 5610 by the House Ways and Means Committee, so that the full House may correct this injustice.

STATEMENT OF HON. EDWARD J. DERWINSKI, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Mr. Chairman, I urge approval of H.R. 5610, a bill to prohibit Social Security disability benefits from being paid to individuals who are confined in penal institutions or correctional facilities. I was pleased to join my colleague, Mr. Whitehurst, in cosponsorship of this measure.

At a time when the financial integrity of the Social Security system is in question, we cannot allow any loopholes in the law to be exploited. The idea that persons convicted of crimes can use their crimes as a basis for claiming eligibility for disability benefits is outrageous. One publicized example of this abuse of the social security system is that disability benefits are being paid to David R. Berkowitz, the notorious "Son of Sam" killer.

I understand that the General Accounting Office is now conducting a study of the extent of the problem, but I think Congress must make it clear that it is not the intent of the disability benefit program that convicts be eligible. The program was meant to provide the means to acquire the basic necessities of life to those who

qualified as disabled. Obviously, the taxpayers are already burdened with these costs as part of our prison system.

Approval of H.R. 5610 would rectify an abuse of a program which helps many disabled people meet basic needs. I hope it will be processed as promptly as possible by the Committee so it can come to the Floor of the House.

STATEMENT OF HON. DAVE W. EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

I want to add my support to that of my colleagues for the bill, H.R. 5610, which will prohibit prisoners from receiving Social Security benefits.

I am sure many of you were as shocked as I was to learn that there is nothing in existing law which states that an incarcerated individual will have his or her benefit terminated or at least suspended. This is outrageous! The idea that notorious criminals are sitting in prison cells collecting Social Security checks while hard-working, honest retirees are trying to live hand to mouth from the same program is offensively ironic.

What is even more ludicrous is that no one knows how many prisoners receive benefits. The figure I have seen from the Social Security Administration is that approximately 3,000 prisoners are recipients, based on a study "several years old." Other sources put the figure at about 30,000.

I am grateful for my colleague, the sponsor of this bill, Congressman Whitehurst, for his diligent efforts to correct this matter and for requesting a General Accounting Office study which will reveal the scope of the problem. However, whether 3,000 or 30,000, the number is far too many.

We have spent much time since I have been in Congress discussing ways to ensure the viability of the Social Security system. We have sought methods to end the drain on SS funds and restore the confidence of those who have earned their benefits through years of honest labor. It is certainly a well placed step to wipe out this unconscionable drain on an already flagging system.

I congratulate my colleague in his effort to end the inequity of paying prisoners while we speak threateningly of the future of responsible citizens depending on Social Security. We pay enough for crime as victims and in public costs of trying, convicting, and housing, rehabilitation, etc. without adding to the burden on public funds by paying criminals once they are off the streets. The irony that it comes from funds for those who are frequently the victims of crime is all the more cruel.

I urge the support of the subcommittee and my other colleagues in seeing that this legislation wins expeditious and well-deserved approval of Congress.

STATEMENT OF HON. MARC L. MARKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

I am very grateful for this opportunity to submit to your subcommittee testimony regarding Social Security benefits for prisoners. I commend the subcommittee for conducting these hearings.

My interest in this issue results from a deep personal concern about the overall financial stability of the Social Security system. It also is the result of expressions of justified indignation conveyed to me by many of my constituents who learned only recently, as I did, from press reports that some eligible and indeed are receiving Social Security disability benefits.

Let me at the outset make an important distinction between retirement benefits and disability benefits. Retirement benefits are designed to compensate an individual for lost income resulting from retirement. An individual becomes eligible for retirement benefits after paying into the Social Security system for many years. Retirement benefits have traditionally been viewed as an earned contractual right and should be. I do not believe retirement benefits should be denied to prisoners who have paid into the system over a life time.

Disability benefits, however, are designed to compensate and assist individuals who have lost their gainful employment due to a physical or emotional disability. Persons under twenty-four years of age may qualify for disability payments if they have worked eighteen of the last thirty-six months prior to the period the disability begins. Between twenty-four and thirty years of age, eligibility is established simply by working half the time between twenty-one and thirty. These regulations show the short term of employment required to establish eligibility for disability benefits. In light of the ease of eligibility, it is easy to see that large numbers of prisoners may be able to establish eligibility under current law, if they can document medically a physical or emotional disability. However, to provide prisoners with disability

benefits makes no sense at all. These people aren't working because they are incarcerated, not because they are suffering some disability. Indeed, prisoners cannot work even if they are in perfect health by the very fact of their incarceration.

Many of my constituents and, I am sure, most Americans are disturbed that such a loophole exists in our present Social Security law. Frankly, I am surprised that the Social Security Administration has not previously recommended that the Congress correct this glaring abuse of the system. Those of us who served in the 95th Congress were asked to approve a sharp increase in withholding taxes to keep the Social Security system solvent. Recent studies indicated that despite the burden these new taxes placed on many working men and women, they were willing to pay because they believed in the Social Security system and recognized the changing economic and demographic conditions that made additional taxes necessary.

However, I am confident that they cannot understand how Congress could design a system which is subject to abuse by convicted felons, as has been documented here today.

In view of the fact that this House only this year was discussing the financial problems of the disability trust fund, and indeed passed legislation making major changes in benefit levels, I think it imperative that this Congress act promptly to correct this type of abuse of the Social Security system.

I have joined several of my colleagues in cosponsoring H.R. 5610 which will deny disability benefits to prisoners. I would hope that following these hearings this subcommittee would report H.R. 5610 or similar legislation to the full committee. Likewise, I would hope the full committee would report this legislation promptly to the full House so that this year we could effect the necessary changes in the Social Security system to put a halt to the present practice of providing some prisoners with disability benefits.

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am pleased to have this opportunity to comment on the payment of Social Security disability benefits to convicted felons. I oppose these payments and believe very strongly that they must be stopped. They represent both an unnecessary bleeding of our Social Security System, and a circumvention of the intent of the disability program.

Disability benefits were originally designed to assist seriously disabled individuals, who are not longer able to work, to meet basic living expenses. Prisoners serving sentence do not require such assistance. Their food, clothing, housing and other expenses are already met through other state and Federal expenditures. In fact, the Federal Government spends approximately \$4.4 billion annually—between \$18,000 and \$20,000 per inmate—to maintain our Nation's prisons. I personally believe that appropriations of this magnitude should be enough, without also having to dole out a monthly allowance.

I read in the Wall Street Journal today that a severe recession could again put Social Security in the throes of bankruptcy. It is obvious to me that we are in the midst of a worsening recession, the severity of which we cannot yet determine. I think it is essential, therefore, that we prevent a financial crisis for this important program by beginning now to trim the fat from a bloated Social Security bureaucracy. Eliminating disability payments to inmates is a step in the right direction.

There is no question in my mind that widespread public support exists for legislation to stop disability payments to prisoners. Many of the papers in my District, for example, carried articles on this subject generally, using as a particular example the case of convicted murderer Sam Berkowitz, the "Son of Sam" killer. Berkowitz receives more than \$300 each month in disability benefits. Hundreds of my constituents have either written or spoken to me in protest of these payments and have asked that I support legislation to bring them to a halt.

Long before this issue captured the attention of the press, my colleague, Congressman Whitehurst, introduced legislation (H.R. 5610) to prohibit disability payments to inmates. I am an original cosponsor of this bill, which was introduced last October. I urge that your Committee lend its quick and positive approval to H.R. 5610. We in the Congress have the opportunity to end an annual \$60 million giveaway, and I hope that this hearing will provide the impetus for accomplishment of this objective.

STATEMENT OF HON. LARRY P. McDONALD, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF GEORGIA

Mr. Chairman, it is a pleasure to submit this testimony on behalf of H.R. 5610, a bill which would prohibit prisoners from receiving federal Social Security disability insurance benefits.

My office has received numerous complaints from the hard-working people of my District and from individuals throughout the nation about the deplorable situation.

Most notorious, of course, is the case of David Berkowitz, New York City's infamous "Son of Sam" murder. Berkowitz is now receiving up to \$300 per month from the Social Security Administration because he allegedly is considered "disabled by mental illness and unable to work." The "Son of Sam" is serving a 315-year sentence in Attica state prison for six cold-blooded, premeditated murders.

For the Social Security Administration to pay Berkowitz one cent in benefits is a gross insult to the families of those six victims and to the truly disabled people in my District and throughout the United States. It is also another blatant example of government waste and inefficiency.

However, Berkowitz is only the most glaring example of bureaucratic bungling and a twisting of the intent of Congress. There are many more vicious prisoners serving sentences in institutions across America on convictions ranging from child molestation to murder who are also receiving Social Security disability payments.

The General Accounting Office (GAO) is in the process of conducting a thorough investigation of this ridiculous situation but, unfortunately, the results will not be available for consideration by this Subcommittee this week. However, I am hopeful that this public hearing of the issue will shed additional light on the severity and magnitude of the problem and serve as a springboard for corrective action by Congress in the immediate future.

I would urge this Subcommittee to complete its study as rapidly as possible and issue a favorable recommendation for passage of H.R. 5610 before the end of the 96th Congress.

Thank you.

STATEMENT OF HON. GEORGE M. O'BRIEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF ILLINOIS

Mr. Chairman, I wish to submit the following statement for the record.

During recent years the Social Security program has been under a barrage of criticism, some of it has been constructive and some has been ludicrous. But, I suggest that no criticism has been more righteously inflicted than that pertaining to the payment of disability insurance to incarcerated individuals.

Originally, Social Security funds were meant for the elderly for use during the years following their retirement. It provided them with food, clothing, rent and perhaps some other needs. Since then the program has been altered to also include benefits for the mentally ill, the handicapped and other worthy recipients. The present program is so comprehensive that it includes people with virtually every disability imaginable but nowhere will you find even a remote reference to the murderers, rapists, and thieves which are presently benefitting from the program.

When justice is exercised and an individual is incarcerated, he is being punished for a crime committed against the state. The basic needs of the prisoners are provided by the state with no monetary cost to the prisoner. This burden is tremendous enough, but add to that the pension which the prisoners have created through the collection of the monthly checks and thus, we have the ridiculous state of affairs we are involved in today. The elderly and the other would-be recipients are in jeopardy while convicts are eating candy and watching televisions in their cells. Since the prisoners have no other costs, the benefits obtained are permitting them to lead a jail term of luxury, while it would provide a truly disabled person with simply adequate amounts.

This is why, Mr. Chairman, that I urge the committee to do everything it can to help the passage of this legislation and permit the funds to flow to the people who are truly in need of such aid.

STATEMENT OF HON. MATTHEW J. RINALDO, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW JERSEY

Mr. Chairman, thank you for this opportunity to present testimony for inclusion in the record of these hearings. An important matter is before the committee; one which affects the lives of many Americans, and has aroused considerable interest among my constituents in New Jersey's 12th Congressional District.

The issue at hand is whether individuals committed to penal institutions, who might otherwise qualify for Social Security disability, should receive these benefits while incarcerated.

Recently, it has come to public attention that some prisoners are afforded disability aid under the federal program. I respectfully submit that this practice is contrary to the spirit of the law and offensive to the citizenry. The intent of the disability program is to extend to workers, who become disabled, financial assistance to meet their basic needs. When an individual is imprisoned, those needs are met by the institution at the taxpayers' expense. To additionally proffer inmates disability benefits is, in effect, duplicating these payments, and rewarding criminals at the expense of law abiding citizens.

I favor legislation denying disability benefits to an individual committed to a penal institution for the term of the sentence. Furthermore, should it be determined that these payments cannot be legally interrupted, then consideration should be given to assigning a portion of the compensation to the institution of commitment to help defray the cost of beneficiary's care.

These proposed adjustments in the Social Security Disability Program should not affect the eligibility of dependants of inmates who may be receiving benefits at the time of incarceration, or who may later qualify. Nor should the level of payments to dependants be in any way diminished so as to cause greater financial hardship.

Thank you once again, Mr. Chairman, for the opportunity to submit this testimony. May effective legislation halting this objectionable practice result from this hearing with House action in the immediate future.

STATEMENT OF HON. BILL ROYER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF CALIFORNIA

The introduction of H.R. 5610 represents a bold attempt to correct one of the great inequities in the administration of our Social Security disability insurance program. I ask that the bill be favorably reported out of the Subcommittee on Social Security of the House Ways and Means Committee.

This long-overdue legislation forbids Social Security program administrators to authorize disability benefit payments to prisoners on the basis that diminished physical or mental capacities preclude them from gaining and holding a job. It rightfully puts an abrupt halt to the ability of criminals serving time in penal institutions to collect government funds and deposit them in private, outside bank accounts.

It should be obvious that the ability to gain employment is irrelevant to those who have been incarcerated for crimes they have committed, and thus removed from the job market. How can our government, which complains so vociferously about a financially faltering Social Security System, condone the payment of precious funds to those who plainly have no need of employment? How can our government continue to allow felons to profit financially from their misdeeds, while our unemployment rate among honest, law abiding citizens soars, and the compensation given them barely reaches the subsistence level? This is a travesty that demands corrective action.

I am advised that Social Security disability payments to prisoners is a long-standing practice that costs upwards of \$60 million annually. The Government Accounting Office is currently attempting to verify this figure, but its study, I am further advised, will not be completed for the sub-committee hearing. GAO officials, however, are expected to testify, and it is my hope that their comments will point up the absurdity of the present law and that proper corrective legislative action will result.

STATEMENT OF HON. ROBERT S. WALKER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF PENNSYLVANIA

Mr. Chairman and members of the committee, I am grateful for this opportunity to testify in support of a vitally needed reform in our nation's Social Security program, and I thank my colleagues for their hard work and contribution to these timely hearings. Moreover, I would like to express my wholehearted support for H.R. 5610, which I am convinced embodies the proper corrective steps needed to close this dreadful loophole in our Social Security system, which opens the door for convicts to become beneficiaries. I feel that no contribution that I could make to this forum would surpass the comments I received from my constituents in recent weeks regarding the matter of convicts receiving benefits. Therefore, I would simply like to

submit for the record a portion of several letters I have received from persons in my District which I feel address the issue very poignantly.

My constituents comments are as follows:

"I worked all my life and started collecting Social Security a year ago only getting \$124 per month. I cannot understand how a murderer can get over \$600 a month for never contributing a cent to qualify. Some prisoners are getting \$700 a month for schooling. What good is all that schooling when he isn't going to get out of prison. Personally, I feel this is another way the taxpayer is being duped by a government agency."

"I was shocked after watching Prime Time television's account of the prisoners receiving Social Security benefits. Seeing these men in prison and knowing they are receiving Social Security made me ill. The men are there because they have broken the law. They are provided with all the physical comforts necessary and are underserving of anything more."

"There are many things being done by our government that I don't approve of but I think the worst and most unfair is the fact that Social Security is being paid to many prisoners. They are receiving free room and board, medical care, and educational benefits. How can they possibly be entitled to Social Security benefits? I wouldn't mind paying more taxes if the money was used wisely, but it is shameful that money is abused like this by our government."

"One prisoner is getting more in Social Security than his wife, who he tried unsuccessfully to kill but whose legs he did succeed in destroying by planting a bomb in her car. Suffice it to say that while our wonderful country is taking its lumps these days on an international level, I hardly think we need to condone such an internal paradox of subsidizing that segment of society which least deserves it—whether or not it was earned prior to conviction or not, it should be forfeited when the gravel falls along with other rights. This is social welfare abuse in the highest, and one that should end once and for all."

I trust that these hearings will serve to bring a sense of urgency before the full House in addressing a much needed reform and that the House will expeditiously act on H.R. 5610. Again, thank you for this opportunity to be a part of this discussion.

CITIZENS UNITED FOR REHABILITATION OF ERRANTS,
Austin, Tex., June 25, 1980.

Congressman J. J. PICKLE,
Chairman, Subcommittee on Social Security,
Washington, D.C.

DEAR CHAIRMAN PICKLE: CURE welcomes the attention of your committee to the issue of social security benefits for prisoners. As Congress becomes outraged over the possible abuses of certain prisoners receiving benefits, I know your committee will also look at both sides of the issue.

On the other side are prisoners who while serving their country became addicted to drugs and are now incarcerated. I know this may concern only veterans' benefits but there is a deplorable lack of data on this issue of benefits to prisoners.

Also, what will be the impact of curtailing benefits to prisoners who receive no money at all in the form of wages or allowances.

Finally, we hope that your committee will make certain that all prisoners who work eight hours a day can receive social security credits.

STRIKE THREE

We do not excuse their crimes but we believe their culpability somewhat diminishes for certain veterans especially of the last war.

For many, this would mean strike three in regard to their country if their benefits were cut off. Strike one occurred when they volunteered or were drafted into that demoralizing war. Strike two occurred when they returned to unemployment and no treatment for a drug problem.

These two strikes are more real in Texas since minorities (Black and Mexican-American) were over-represented in Viet Nam and are now over-represented in prison. (Over 60 percent out of a general population of less than 30 percent.)

I cannot prove this correlation statistically because the prison system will not gather the data. However, from our experience of corresponding and working with over a thousand prisoners a year for the past eight years, I am convinced that a great many veterans of the Viet Nam era are in the state prison.

DESTITUTE

Texas is one of three remaining states that do not pay any wage or have any allowance. For example, page 10 of your Committee Print mentions that the Florida state prison system gives an allowance of \$15 a week.

If benefits were cut off from Mr. Scott (letter enclosed) there is a possibility that he would not have sufficient funds to buy his loved ones a birthday card.

Mr. Scott is also dying of cancer and is trying to be paroled in order that he "be allowed the dignity of dying in freedom." One of the requisites for parole is a guaranteed job and residence. However, he is hoping that this will be waived since with his benefits accumulated and constant he would not only be financially independent but also be able to pay for his chemotherapy.

SOCIAL SECURITY CREDITS

As you know, I have written you previously concerning this issue. Of course, since Texas pays no wage prisoners cannot receive social security credits. Texas is known for its long sentences and all prisoners must work in the state prison. Thus, even though they have worked for years in prison, many in later years when they are released end up on the welfare rolls.

In the past legislative session we were able to pass in the House a small wage for prisoners. I am hopeful that we can pass this wage next session. One of our arguments will be that the prisoners could then pay into social security and not in their later years become a burden on the taxpayer.

HEARING IN HUNTSVILLE

You mentioned in a previous letter that you have asked your subcommittee staff to look into prisoners paying into social security. I believe all three of these points should not only be researched but also testimony taken from prisoners. Thus, by this letter I am requesting that you have a hearing in Huntsville, the headquarters of the Texas prison system, where prisoners would have the opportunity to testify. Perhaps then, solid data can be gathered rather than relying solely on sensational cases.

Sincerely,

CHARLES SULLIVAN,
Executive Director.

HUNTSVILLE, TEX., June 16, 1980.

CHARLES AND PAULINE SULLIVAN,
Austin, Tex.

DEAR MR. AND MRS. SULLIVAN: I presume that you folks have heard of the Archer-Conable Bill that has been introduced in the United States House of Representatives. Rep. J. J. Pickle, D-Texas, chairman of the House Ways and Means Committee on Social Security has scheduled June 20 hearings on this new form of government theft.

This bill would deny Social Security Disability and student benefits to prisoners. Veterans Disability and educational benefits would be denied under another bill now pending in the House.

What we would all like to know is: What the hell is this? I might be a convict now, but have worked most of my life and paid into Social Security. I now draw Social Security Disability and I am entitled to it. I am also honorably discharged from the United States Navy and am also entitled to my Veterans Rights simply because of this fact.

Furthermore, most states pay their prisoners small sums of money for various jobs within the prison system. They also deduct Social Security Taxes in the appropriate amount from these small earnings. Are we now going to be told by our glorious leaders that even while we are paying our taxes that we are going to be disallowed the accrued benefits should we become disabled?

How about the refugees, Cubans and illegal alien immigrants to this country who have not paid in one red cent but nevertheless are able to get their unearned share of the taxpayers money. We, even as convicts, remain citizens of the United States of America and I think that most of us also remain patriotic to our homeland. However, things like this make one wonder whether it is all worthwhile.

We are doing our time; we are paying our debt, and we hope to come out of the prisons better for the experience, but legislation like this by our government would be a severe blow to the corrective efforts of our prison systems inasmuch as it's obvious propensity to sour the minds of all prisoners on the fairness of our government could be debilitating to the very concept of rehabilitation.

CONTINUED

1 OF 2

Why don't they introduce a bill that would take away our citizenship too? They might just as well. Then we could really tell them to "Jam It". As aliens or disenfranchised Americans we would then be eligible for other benefits in monetary amounts greater than what we had before. Maybe the Congress of the United States could deport us to one of the nice quiet islands in the South Pacific and send us U.S.D.A. approved peanut-butter in five gallon cans—the same as we have been getting all along at most of our prisons. With some fishing equipment we could do quite well and, just think, red-neck congressman like Archer and Conable would then be free to pick on old age pensioners and others who most surely need their help.

Very truly yours,

NEIL E. SCOTT.

HUNTSVILLE, TEX., June 5, 1980.

DEAR MR. AND MRS. SULLIVAN: I thought that I had already sent you a copy of the attached article, but want to be sure, so here is another.

It seems that something could be done about this deplorable situation. A case in point: James G. Miles, 269527, died at John Sealy Hospital in Galveston on May 29, 1980 with cancer of the lung. In February, with full knowledge that Mr. Miles did not have long to live, the Parole Board put him off for a year. He only had a 12 year sentence with 3½ yrs served on it. His mother, Bessie Fincher of 1002 Mt. Auburn in Dallas and his two brothers had tried over the past three months to get him a medical reprieve or parole reconsideration. They have money and could have cared for him. This was *cruel*.

The people here (employees of T.D.C.) really want to see us get out, but there is not much they can do about it except to write to the Board about our medical condition, and then only on request from the Board.

In my case, I am still able to "walk around" after having had surgery and chemotherapy. At my own request and for therapeutic reasons, I continue to work as a bookkeeper, but I still have some pain and realize that I could go the same route as Mr. Miles at any time. I have a place to stay for "free"; I draw disability and I am a Navy Veteran with an honorable discharge. (Korea) I have served 5 flat years on my life sentence.

I have seen a lot of guys die here that could just as well have been sent home. It is flatly pitiful and I sure hope that you folks will exert all of the influence you have in getting the governor to commute the sentences of these prisoners or to effect some remedy to the current mess.

Very truly yours,

NEIL E. SCOTT.

CANCER PATIENTS IN PRISON

It is not in the best interest of the State, the Taxpayers or of Justice to keep terminally ill prisoners; particularly those who have a place to go—to homes and families who will care for them; To Veterans Hospitals, Nursing homes and to private hospitals and other facilities for those who are able to afford it. Social Security recipients and those who are eligible for Medicaid, Medicare, Supplemental Security Income, Disability and other benefits are able to provide for themselves outside of a prison situation. These patients should be allowed the dignity of dying in freedom.

Alternative cancer therapies are not available to prisoners. They have only one choice—John Sealy Hospital in Galveston where orthodox treatment is administered; Chemotherapy, Radiation & Surgery. Other, and in many cases more effective cancer treatments are totally beyond their reach.

Psychological variables do influence the course of disease. Suppressed emotions, tension and a sense of hopelessness are inherent to any prison environment and combine to adversely effect even partial recovery.

The Medical Reprieve and Commutation of Sentence provisions in our state law are not now being used to any considerable extent. A bill should be introduced in the State Legislature that would require or allow the sentencing court to review a terminally ill prisoners case in the light of what length of sentence would have been imposed had the defendant had a serious or terminal disease at the time of sentencing, OR, to review the sentence in the light of how much time the prisoner has served to date, his prison record and his present life expectancy.

In cancer, particularly, the denial, by incarceration, of alternative therapies, proper diet and nutrition and an atmosphere compatible to at least temporary recovery is fundamentally a denial of the right to live.

There may be those who would say, "Oh Well, if the prisoner is able to walk around, if he is able to steal, rob or rape, he may just go wild in his terminal condition because he has nothing to lose." Let me assure you that this is not the case: A dying man reforms his morality and his general attitude toward his remaining life, his God and his fellow men. With his disease the punishment is now twofold. The very thought of dying in prison is appalling and continued incarceration of those individuals is inhumane. They have paid—And they have changed—In Spades!

At this time there are approximately 14 terminal cancer patients in the Texas Department of Corrections. Fourteen—our of almost 28,000 prisoners! Is it too much to ask for mercy? These men have sentences ranging from two years to life and even those who are currently eligible for parole are not always released. I know all of these men. I am one of them with a medical prognosis of 40% X 5 Years and a Life Sentence. There is no possibility that I can survive to do this time. Some patients improve, but in cancer these improvements or "remissions" are not permanent. There is no "cure". The fight against the disease is constant and difficult under normal circumstances; in prison it's "out of sight", but that's a book in itself.

The cancer has increased the severity of the original sentence. Must we die here? That was not the intent of the sentencing court. Almost everyone gets out sometime. The severity of the punishment no longer fits the crime.

Large numbers of prisoners are paroled and discharged from T. D. C. each year. On any given day of the week the total number of prisoners paroled and discharged is greater than the total number of terminal cancer patients. Certain considered risks are involved in the parole process. Certainly no more risk would be involved in releasing the cancer victims. Indeed, as indicated above, much less or none.

Is there no compassion left in government?

CORAM, N.Y.

DEAR CONGRESSMAN: We would like to go on record as supporting you in your effort to see that Berkowitz and other criminals are denied Social Security while serving their prison terms. This is carrying American "rights" much too far. Thank you.

RUTH AND IRWIN ABRAHAM.

AMERICAN BAR ASSOCIATION,
Washington, D.C., June 18, 1980.

Hon. J. J. PICKLE,

Chairman, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We have received notice that the Subcommittee on Social Security has scheduled a hearing on Friday, June 20, 1980, on the receipt of social security benefits by persons incarcerated in penal institutions.

I wanted to let you know that, while the Association does not have a presently established formal policy on this criminal justice related issue, the ABA House of Delegates will be considering several matters touching upon the substance of your hearing at the Association's July 31–August 6, 1980, Annual Meeting.

Specifically, the Standing Committee on Association Standards for Criminal Justice will be presenting recommendations to the House of Delegates for adoption of new Standards on the Legal Status of Prisoners. Several of the proposed standards are relevant to your Subcommittee's inquiry. For example, proposed Standard 23-8.7(b) provides, "persons convicted of any offense or confined as a result of a conviction should not, for that reason alone, lose any otherwise vested pension rights or become ineligible to participate in any governmental program providing relief, medical care, and old age pension." In addition, several other proposed standards which govern prisoners' wages, hours and conditions of employment involve social security issues. Finally, the commentary to the proposed standards recommends that the Social Security Act should be amended to allow coverage for work performed in penal institutions.

At this point in time the proposals I've outlined are merely proposals and do not represent Association policy. Nonetheless, I thought it would be helpful for you to know that our House of Delegates has these matters on its August agenda.

I will advise you promptly as to the American Bar Association's final action on the proposed standards which relate to social security benefits for incarcerated persons and hope that this information will assist you in your deliberations.

Sincerely,

HERBERT E. HOFFMAN, *Director.*

AMERICAN CORRECTIONAL ASSOCIATION,
College Park, Md., July 25, 1980.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security, Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: It has come to our attention that your Subcommittee recently held hearings concerning the receipt of social security benefits by prisoners.

As the professional association for corrections in the United States, we would be pleased to share with you our position on the issue.

Please let us know if you contemplate conducting further public hearings on the subject. We feel very strongly that denying incarcerated offenders social security benefits would have a further deteriorating effect on our efforts to effectively utilize available resources to prepare the successful reentry of offenders back into the mainstream of society.

Thank you.

Peace,

ANTHONY P. TRAVISONO,
Executive Director.

STATEMENT OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The Lawyers' Committee is strongly opposed to the bills now pending before Congress which are designed to limit the entitlement of incarcerated and/or convicted prisoners to social security benefits. These comments address our opposition to the denial of benefits under any circumstances, as well as our objections to particular provisions contained in the pending pieces of legislation.

The termination of benefits to incarcerated criminals would be a drastic and unprecedented change in the social security program, and would be an arbitrary denial of benefits, unconstitutional under both the Due Process Clause of the United States Constitution and the clause prohibiting bills of attainder. In addition the Lawyers' Committee objects to a number of specific provisions contained in the pending pieces of legislation:

(1) The pending legislation as it applies to individuals who committed crimes or were convicted prior to passage of the legislation constitutes a legislatively imposed punishment for past acts and thus violates the constitutional prohibition against ex post facto laws.

(2) Those legislative proposals that apply to incarcerated individuals who have not yet been convicted of a crime or who are incarcerated by reason of insanity are invalid.

(3) Those proposals that apply to dependents of incarcerated persons are invalid.

I. IT IS IMPROPER TO DENY SOCIAL SECURITY BENEFITS TO INCARCERATED INDIVIDUALS

A. Such a sweeping denial of benefits is unprecedented

Under existing law, benefits may only be terminated in three limited situations. The first applicable provision is 42 U.S.C. § 402(n), which provides for the termination of benefits to any individual who is deported for several narrow categories of offenses including illegal entry, subversive activities or designated crimes. The second provision, contained in 42 U.S.C. § 402(u), permits a court, as part of its sentence, to terminate social security benefits of individuals convicted of subversive activities, espionage, treason, sabotage and similar federal crimes against the government. The final provision, contained in regulations, denies entitlement to survivor's benefits or payments on the earnings record of a worker if the beneficiary is convicted of a felony for intentionally causing the worker's death.

Each of these provisions is addressed narrowly to a particular group of beneficiaries deemed unworthy of receiving social security benefits. The various bills now under consideration would deny certain categories of benefits to all incarcerated and/or convicted beneficiaries regardless of the reason for their imprisonment and

the severity of their crime. Such a sweeping denial is contrary to the more measured benefit terminations in existing legislation.

Experience in the area of civil service retirement for federal employees indicates that broad denials are unwise. The "Hiss Act" was enacted in 1954 with the purpose of preventing Alger Hiss from receiving a federal pension for his years as a government servant.¹ The Act which had the effect of denying benefits to a great many government employees who committed nontreasonous offenses such as bribery, fraud, embezzlement, rape and murder, was amended in 1961 to restore benefits to such individuals. The legislative history demonstrates that these "punishments have been absolutely wrong and have gone too far." *Hiss v. Hampton*, 338 F. Supp. 1141, 1152-53 (D.D.C. 1972). Especially in light of the fact that the number of prisoners receiving social security benefits and the types of benefits being received are unknown, Congress should not take such drastic action without further study. The proposed legislation not only sweeps too broadly, but also affects the poor and minorities most severely since the prison population is disproportionately comprised of these groups.

B. The proposed legislation violates the due process clause of the Constitution

This legislation which would deny benefits to incarcerated individuals is arbitrary and irrational and therefore unconstitutional. Social security benefits are viewed by most recipients as entitlements for years of productivity in the labor market. A comment of Senator George, the Chairman of the Finance Committee when the Social Security Act was passed supports this view:

"Social Security is not a handout; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right, the individual is eligible to receive his benefit in dignity and self-respect." 102 Cong. Rec. 15110.

Flemming v. Nestor, 363 U.S. 603, 623 (1960), *reh. denied*, 364 U.S. 854. Although social security benefits are not, strictly speaking, vested property rights, Congress may not exercise its power to modify the statutory scheme free of all constitutional restraint. Arbitrary denials of benefits violate the Due Process Clause of the Constitution. *Id.* at 611.

The only conceivable legitimate legislative purpose in passing this amendment is fiscal economy. However this does not appear to be the legislative reason for passage of the legislation. Concerns that some prisoners who are not really disabled are receiving benefits can be handled by more careful administration of the program. Further, there has been no effort to deny benefits to persons housed in other types of state or federal institutions or to require all prison inmates to pay for their own support as in Florida. It is true that the legislature need not regulate an entire area in order to regulate at all. However, the present legislative proposals must properly be viewed as strictly penal and unrelated to the purposes of the social security program, since legislation on the subject is proliferating without careful study of the issues involved and in response to concern that individuals such as Son of Sam are receiving disability benefits.

The penal nature of this legislation is clear when it is recognized as a hasty and emotional response to the outrage felt by many that vicious members of society may receive social security benefits. This is in contrast to the response of New York when it passed the Waterfront Commission Act of 1953 which prohibited the collection of dues and contributions by any union if an officer of the union had been convicted of a felony. This was valid regulation of the waterfront and not merely punishment of felons. The Supreme Court found that:

"New York was not guessing or indulging in airy assumptions that convicted felons constituted a deleterious influence on the waterfront. It was acting on impressive if mortifying evidence that the presence on the waterfront of ex-convicts was an

¹The Act, 5 U.S.C. § 8312 provides:

"(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual—

"(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; * * *

"(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954: * * *

"(3) Perjury committed under the statutes of the United States or the District of Columbia * * *

"(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States * * *"

important contributing factor to the corrupt waterfront situation." *EdVeau v. Braisted*, 363 U.S. 144, 159-160 (1960).

C. The proposed legislation is an unconstitutional bill of attainder

Penal legislation is also unconstitutional as a bill of attainder. *Trop v. Dulles*, 356 U.S. 86 (1958) (a statute, which decreed denationalization for those found guilty of desertion, held to impose an unconstitutional penalty.² Since any effort to deny incarcerated criminals social security benefits is not a rational regulation under the social security program, but is a penalty imposed on an identifiable group by legislative act, such legislation, if passed, would be unconstitutional as a bill of attainder.

II. PROBLEMS WITH THE LEGISLATIVE PROPOSALS AS PRESENTLY DRAFTED

Even if legislation designed to terminate the social security benefits of incarcerated criminals were constitutional, the legislative proposals currently before Congress would be infirm in a number of respects.

A. The current proposals violate the constitutional prohibition against "ex post facto" laws

The current proposals are invalid *ex post facto* laws violative of Article I, Section 9, Clause 3 of the United States Constitution, as to those individuals who committed crimes or were convicted prior to the enactment of any legislation. "The mark of an 'ex post facto' law is the imposition of what can fairly be designated punishment for past acts." *De Veau v. Braisted*, *supra*, at 160. Congress may only impose penalties or disabilities for prior conduct if the restriction "... comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession." ... On the other hand a statute is an *ex post facto* law, and invalid, if its purpose and effect are to punish for past conduct and not to regulate a profession, calling or present situation." (citations omitted) *Hiss v. Hampton*, *supra*, at 1148.

In *Hiss*, the court determined that the retroactive denial of pension benefits to Alger Hiss under the "Hiss Act," enacted in 1954, was penal. The court held that as applied retroactively to the plaintiff who was a government employee only until 1947 and was convicted of perjury in 1950, the statute was invalid as an *ex post facto* law. The court stated that retroactive punishment of former employees for their past misdoing "has no reasonable bearing upon regulation of the conduct of those presently employed." *Id.* Similarly the denial of social security benefits to already incarcerated convicts is an *ex post facto* law since it renders acts punishable retroactively in a manner in which they were not punishable when committed, and does not serve to regulate the present conduct of those convicted. See *Burrelo v. Commonwealth, State Employes' Retirement System*, 411 A.2d 852 (Pa. Commw. Ct. 1980) (statute is unconstitutional as an *ex post facto* law since it provides retroactively that public employee pension benefits are forfeited if the employee was convicted of a crime related to public office).

B. Insofar as the current proposals terminate the benefits of incarcerated individuals who have not yet been convicted of a crime, they are invalid

A number of the current legislative proposals would deny benefits to individuals who are incarcerated but who have not yet been convicted of a crime. H.R. 5610 terminates disability payments during any month that an individual is confined in a penal institution. H.R. 3524 would deny benefits to any individual who was entitled to disability, old-age, survivors or dependent benefits. Although the proposal introduced by Senator Wallop, S. 2722, generally requires conviction as well as incarceration, it would also apply to inmates in a facility for the criminally insane who have been found not guilty of a crime by reason of insanity or have been found mentally incompetent to stand trial.

It is unconstitutional to impose punishment prior to conviction. Only indigent individuals unable to make bail will be penalized by such provisions. Further, individuals in facilities for the criminally insane should not be denied benefits. They are incarcerated for treatment, not punishment, when they have not been tried or have been found not guilty by reason of insanity. One cannot rationally distinguish between such individuals and individuals civilly committed to public mental institutions.

² See "Annotation Bill of Attainder," 4 L.Ed.2d 2155 (1960), which defines a bill of attainder as "any legislative act which takes away the life, liberty, or property of a particular person named or an easily ascertainable person or group of persons because the legislature thinks them guilty of conduct which deserves punishment." *Id.* at 2156.

C. Insofar as the current proposals deny benefits to dependents of incarcerated individuals, they are invalid

Under Senator Wallop's bill, benefits to dependents of incarcerated persons would be withheld. As a practical matter such denials are unwise, since dependents of incarcerated individuals are often left without support and will be forced to seek other means of governmental support if denied dependents benefits under the social security program. Further, such a denial works an illegal penalty on innocent individuals. In *Heikkila v. Celebrezze*, 222 F. Supp. 629 (N.D. Cal. 1963), the court considered whether to deny a lump sum benefit to the widow of a primary beneficiary denied benefits under 42 U.S.C. § 402(n). The court considered it an "inequitable, unconscionable result as against an admittedly innocent citizen and resident who has not offended any law of the United States—nor done anything inimical to the public interest." *Id.* at 631. The court concluded: "To deprive plaintiff of the claimed benefit would work a punishment and penalty upon the widow." *Id.* Similar considerations counsel against the denial of benefits to dependents of incarcerated individuals whose social security benefits are terminated.

III. CONCLUSION

The Lawyers' Committee requests that the Subcommittee on Social Security reject the proposed amendments to the social security program.

STATEMENT OF ROBERT J. MYERS, SILVER SPRING, MD.

Mr. Chairman, and Members of the Committee, my name is Robert J. Myers. As you know, I have the honor of being a consultant to the Committee on Ways and Means. However, I am not testifying in that capacity, but rather in my individual capacity.

I am currently a member of the statutory National Commission on Social Security, having been appointed as one of the two members designated by the House of Representatives. I was Chief Actuary of the Social Security Administration from 1947 until my resignation in 1970. I am Professor of Actuarial Science Emeritus, Temple University. Currently, I do extensive consulting work in the fields of Social Security and employee benefits. The views that I am expressing are solely my own and are not necessarily those of any organization with which I am affiliated.

Currently, there is considerable discussion about the fact that Social Security benefits are payable to persons who are imprisoned. Payment cannot, of course, be made to an individual whose crime was the murder of the person on whose earnings record the benefit is based.

Most of the cases of payment of benefits to prisoners are those where disability benefits are awarded on the basis of mental conditions. There may be a few cases of aged prisoners being eligible for old-age or survivors benefits. Also, there are a number of prisoners who are under age 18 or who are aged 18-21 and taking educational courses and whose parent is an old-age or disability beneficiary or has died.

Prohibiting such payment of benefits appears to raise significant constitutional questions. There are also problems as to persons being in jail for only short periods, even only awaiting trial.

One solution to this apparent anomalous situation would be for the government operating the prison to charge a realistic amount for maintenance for prisoners who have a steady, continuing source of (and reasonably large) income. Allowance might be made for use of Social Security benefits of prisoners by their families.

It would appear that the determinations of disability due to mental conditions are too lax. The individuals involved were generally engaged in gainful activity before imprisonment and in many instances their physical and mental condition has not changed at all—just their opportunity to perform such activity. Some tightening up in this area should probably be done in the administration and adjudication of disability.

As to prisoners receiving benefits on the basis of full-time school attendance, I think that this could be ruled out on several grounds. But to do so will take some substantial efforts on the part of the administrators. A change in the law might be made to make it clear that courses taken in prison do not meet the requirement of "full-time school attendance."

NATIONAL RETIRED TEACHERS ASSOCIATION AND
AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, D.C., June 27, 1980.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security, Committee on Ways and Means, Wash-
ington, D.C.

DEAR CONGRESSMAN PICKLE: The National Retired Teachers Association and the American Association of Retired Persons would like to express their interest in the legislation discussed at the hearing of June 20 before the Subcommittee on Social Security concerning the denial of social security benefits to prison inmates. We would appreciate it if our comments could be placed in the hearing record.

While the Associations recognize the existence of certain abuses within the system and the need that they be eradicated, we would like to express concern over the possible ramifications of potential legislation in this area. We feel that it is important that any legislation directed toward this problem adhere to the basic principles and philosophies of the social security system. Several problems inherent in legislation denying benefits to prisoners were brought up at the hearing, and they must be given due consideration.

Some of the problems, with suggested legislative remedies, relate to the unequal treatment of different groups within a similarly situated class. Convicts with sentences less severe than imprisonment (such as probation) could presumably continue to receive benefits if otherwise eligible while those sentenced to imprisonment would not. In addition, those suffering pre-trial detention could suffer additionally while suspects who have been released would not.

The fact that only those in prison would lose benefits is a result of what appears to be the rationale for such legislation, that is, the denial of benefits should be based on a lack of need for them. This bases denial of benefits on the status of being incarcerated and not the underlying reason for such incarceration. It is argued that prisoners whose basic needs (i.e., food, shelter, clothing) are taken care of by the state, ought not be permitted to receive additional "windfall" funds from the federal government, which in many situations are allegedly used to purchase extravagant luxury items. Such a theory, however, is inconsistent with the philosophy behind social security. Social security is not, and has never been, a system based on need. It is an earned right based on individual contributions. To deny benefits simply because they are supposedly "not needed" would not be in the best interest of the system. Any denial of benefits which does not comport with the basic principles of the social security system would tend to weaken the system as a whole and would set a dangerous precedent in paving the way for future denials.

The so-called needs theory would also negate the argument that those who commit crimes against the state must bear the risk of losing certain rights, in that under this theory the denial is not based on the status of criminality but rather on the status of incarceration.

The Associations are of the opinion that any forthcoming legislation in this area should be cautiously considered. Great care must be exercised in determining such questions as: To whom are benefits to be denied? What types of benefits are to be denied? For what reasons will benefits be denied?

It is hoped that the Congress will not act hastily in an effort to eliminate a small number of glaring abuses. Perhaps the most reasonable course of conduct would be to amend some of the eligibility requirements within the Act in an effort to cut what are apparent abuses and inequitable receipts of benefits due to crime-related "disabilities" while leaving the basic system of distribution intact.

We appreciate having had the opportunity to express our concern about the potential for the weakening of social security principles that is apparent in the "needs-tested" remedies.

Sincerely,

PETER W. HUGHES,
Legislative Counsel.

END