

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARK-UP SESSION
WEDNESDAY, MAY 16, 1984
U.S. Senate
Committee on Finance
Washington, D.C.

The committee met, pursuant to recess, at 10:15 a.m. in room SD-215, Dirksen Senate Office Building, the Honorable Robert Dole (chairman) presiding.

Present: Senators Dole, Heinz, Wallop, Grassley, Long, Bentsen, Moynihan, Mitchell and Pryor.

Also present: Carolyn Kuhl, Department of Justice; Lou Enoff, Social Security Administration; John O'Shaunnessy, Department of Health and Human Services; Don Gonya, Social Security Administration; and Pat Owens, Department of Health and Human Services.

Also present: Roderick A. DeArment, Chief Counsel and Staff Director; Michael Stern, Minority Staff Director; Joseph Humphreys; Carolyn Weaver; and Robert Shapiro.

1 The Chairman. Let me first thank Senator Danforth and
2 others who were here yesterday afternoon, and, I understand,
3 approved 13 of the 17 provisions. Is that correct, Carolyn?

4 Ms. Weaver. That's correct. There are four remaining
5 items that members wished to discuss today.

6 The Chairman. Could I mention one thing that I would
7 like to include in the report before we take up specific
8 items?

9 I have every concern for those who should be receiving
10 benefits and we want to make certain we protect those people,
11 but I also want to be certain that we are going to continue
12 to review these cases and try to weed out those who shouldn't
13 have the benefits in the first place.

14 So I have prepared some report language which reads:
15 The committee reports reflect that nothing in the disability
16 package now under consideration should be considered as
17 meaning that we are backing away from the three year
18 eligibility review requirement in the 1980 disability
19 amendments. Just as stated in the law, all disability
20 beneficiaries, except those with permanent impairments must
21 be reviewed at least once every three years to assess their
22 continuing eligibility for benefits. This bill only affects
23 the standards of review; not the requirement of review or
24 the size of the population that must be reviewed.

25 As we discussed yesterday, there are many reasons why

1 people are and should be terminated from the rolls. Some are
2 improperly allowed in the first place, and it's not until
3 their eligibility review that the error is detected.

4 Others recover their work ability either due to
5 medical or vocation improvement and terminations are
6 warranted in these cases.

7 This bill just provides protection or reassurance for
8 beneficiaries that if they are correctly allowed on the
9 rolls, they will remain on the rolls if their condition fails
10 to improve. It does not provide anyone the reassurance they
11 will not be periodically reviewed. And that's the point that
12 I want to stress in the committee report.

13 I don't think there is any disagreement with the
14 administration or anybody who seeks to modify the proposal.
15 Mr. O'Shaunnessy, can you speak on that?

16 Mr. O'Shaunnessy. Yes. That is our assumption also.

17 Senator Heinz. Mr. Chairman, I think that's an
18 excellent statement. I think it's one that virtually
19 everyone on the committee can agree with.

20 I hope that also in the report it is pointed out that
21 we are not acting, however, just for the sake of acting.
22 There are reasons for our actions which is that the present
23 system has not worked as well as any of us had hoped that it
24 would work. And that it has been somewhat difficult to
25 operate in a consistent, equitable and fair manner. Fair to

1 taxpayer as well as fair to the beneficiary.

2 The Chairman. Well, what I might suggest then is that
3 we maybe prepare report language and circulate it to the
4 members that would cover essentially what I have indicated.

5 I don't know of anybody that would have a problem with
6 that.

7 Senator Long. Do you want to try and act on some of
8 this now, Mr. Chairman?

9 The Chairman. Maybe Carolyn can just run through the
10 items. As I understand, there are four that were not agreed
11 to yesterday afternoon. Is that correct?

12 Ms. Weaver. That's correct. Item number 1, Senator
13 Heinz requested that that remain open for further discussion.

14 Item number 6, compliance with court orders, Senator
15 Moynihan requested that that be held open.

16 Item number 8, the issue of pain, has been held open.

17 And item number 16, the COLA fail-safe, was held open.

18 And having discussed the COLA fail-safe further with the
19 administration, I think John O'Shaunnessy will clarify that
20 the draft of the proposal they were reading was an older
21 draft.

22 The Chairman. I think you were reading one that would
23 have cut into benefits and it was suggested that that be
24 changed so that would not happen.

25 Mr. O'Shaunnessy. That is correct, sir. It was my

1 mistake. I was reading from the wrong draft.

2 The Chairman. There have been a number of drafts, I
3 think.

4 I don't know of any objections to that provision.

5 What's the problem with number 8, codifying rather than
6 report language?

7 Ms. Weaver. The outstanding question is whether or
8 not to approve the Long amendment to the package which would
9 codify present regulations.

10 Senator Heinz. And the issue there was whether or not
11 we were going to sunset that as we decided to sunset medical
12 improvement.

13 The Chairman. That's the only issue then?

14 Senator Heinz. I think so. Can we talk a little bit
15 about medical improvement and then maybe deal with the two
16 together? I don't have any objection to Russell's language
17 as long as we don't lock it in forever.

18 The Chairman. The number 7, as I understand it, is
19 this thing that Senator Moynihan earlier had no problem with
20 but suggested it be held over. Is that correct?

21 Ms. Weaver. Compliance with court orders, yes, he had
22 agreed to that earlier, and then asked that it be held open.

23 The Chairman. Will he be able to be here this after-
24 noon?

25 Mr. Shapiro. He will be here.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 The Chairman. Okay, let's go back to medical improve-
2 ment. I think Senator Heinz had a question there. Hopefully,
3 not an amendment but a question.

4 Senator Heinz. Mr. Chairman, my question really
5 relates to the three year sunset. We are establishing a,
6 I think, very carefully drawn procedure in medical
7 improvement standards. As I think the Chair, and most
8 members of this committee, recognize there has been a lot
9 of very careful work done by Carolyn and the Social Security
10 Administration, and the administration as a whole, to draft
11 what is probably on balance a superior product to the House
12 bill or even to the legislation that Senator Cohen, Levin
13 and myself have introduced.

14 This really represents a lot of extraordinarily good
15 work. And I commend Carolyn, you, for all the time you have
16 spent on it as well as Mr. Enoff and Mr. O'Shaunnessy and
17 others.

18 And I don't really, given the great care that has been
19 put into the legislation, understand why the three year
20 sunset is necessary. And I would like an explanation of
21 the three year sunset of the medical improvement standard.
22 And why maybe we don't have as much confidence, at least as
23 I do, in what I think we have done.

24 Ms. Weaver. I think the major argument for the sunset
25 is simply that it is such a significant reform of the

1 eligibility review process in that there are widely
2 different views about what the impact of the new standard
3 will be on the allowance and termination rate and on the
4 disability insurance trust fund.

5 Certainly the Social Security Administration and CBO
6 have widely different assumptions about what the impact would
7 be.

8 And this amendment would basically take that into
9 account and say let's run through several hundred thousand
10 people under the new standard, see how it operates, and
11 reassess them. That would be the argument for the sunset.

12 Senator Heinz. And then that particular standard is
13 repealed?

14 Senator Long. But apparently though it follows the
15 logic with the sunset proposal together that if you think
16 it's a good idea, you think it's working well, you suspend it,
17 but if you don't think it's working well, you do something
18 else.

19 The Chairman. I think it forces us to focus on it.
20 Maybe there is nothing magic about three years.

21 Senator Heinz. Mr. Chairman, it's not the number of
22 years that I'm concerned about. It has taken this Senator
23 about three years to get this side of the Capitol and the
24 folks at the other end of Pennsylvania Avenue to focus on
25 this issue. By the way, no criticism is intended of the

1 Chairman of the committee because he was with us when
2 Dick Schweiker was Secretary of Health and Human Services
3 back in the summer or fall of 1982 when, thanks to your
4 efforts, we got then Secretary Schweiker to come down and
5 tell us what he was going to do. Unfortunately, he left
6 that part of town before he was able to do what he said
7 he wanted to do.

8 And it has been a very long process. And I have got to
9 be honest. I don't want -- three years from now, I don't
10 want to spend the next three years of my life getting
11 attention to this issue if that part of the legislation we
12 worked very hard to put into law just expires.

13 I just don't relish the job of campaigning for three
14 years to get to this point again.

15 Now I understand what everybody is saying. Surely we
16 can find maybe a more equitable alternative than just
17 repealing that one section of the law.

18 Carolyn, is there anything you would suggest there?
19 And I'm just worried that nothing is going to force us to
20 actually review it. That it will sunset and we won't notice
21 for another year or two and then we will wake up and we will
22 go through this entire process all over again.

23 Ms. Weaver. I would hope it's quite to the contrary.
24 That this will have a significant impact on the rate of
25 allowances and in a favorable way. And that the number of

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 cases who must appeal to the administrative law judge and
2 have their cases reversed from the state agency level will
3 drop significantly. That it will have a real impact on the
4 system. And that presumably that will all be very clear to
5 members of Congress, and that like payments to ALJ, which,
6 when it expired, there was quick interest in reauthorizing
7 it.

8 I would assume that if this works the way we hope it
9 will that it will be just as easy to reauthorize this one.

10 Senator Heinz. Well, if we think it is going to work
11 well, you could say it is going to work well, and if there
12 is a problem, let's deal with it if there is a problem. By
13 the same logice --

14 It's very unusual when you have an insurance or
15 entitlement program -- and this is both. It's an entitlement
16 program that is trust funded to write an insurance policy.
17 And that's what this legislation is. That's what our
18 disability is -- and have the benefit in the policy expire
19 three years later.

20 You don't write a life insurance policy and allow
21 three or five or ten years later the insurance company to
22 change the face amount on the policy.

23 Ms. Weaver. No.

24 The Chairman. I think there is another argument. And,
25 again, we haven't had any record votes. But I think the

1 question on whether you ought to move into medical improve-
2 ment is fairly close in this committee in any event. Maybe
3 the administration has come around. But just listening to
4 the debate yesterday, it seemed to me that you could satisfy
5 the concerns that some have expressed by saying, okay, let's
6 give it a shot for three years. If it's a disaster then we
7 will not stand it. But if it works, as the proponents, the
8 administration and others indicate it will, then it should
9 be extended.

10 Senator Heinz. Let me make this suggestion, Mr.
11 Chairman.

12 I'm not opposed to a three year sunset in principle as
13 long as there is a mechanism that requires us to act; not just
14 sit around and ignore the problem.

15 The Chairman. Sure.

16 Senator Heinz. It's not that we want to ignore problems.
17 We are so damn busy doing other things. It's not a
18 malingering on our part. Lord knows, you have had a bill --
19 well, part of that bill out on the floor is yours, ours.

20 The Chairman. We are so busy ignoring other problems.

21 Senator Heinz. Well, that too, Mr. Chairman.

22 In any event, what about this? Could we tie maybe some
23 kind of moratorium on processing at the end of the three
24 year so it's a balanced sunset? You know, if we allow the
25 provision to expire, we still have to take some affirmative

1 action in order for the program to keep working?

2 If you have some kind of a moratorium on reviews, none
3 of us favor ending reviews. That will give us a reason to
4 go back and revisit the program.

5 That's what the administration did. They just put in
6 an administrative moratorium as a means of giving us the
7 time to act. Maybe we should, at the end of the sunset
8 period, force ourselves to do that likewise.

9 Ms. Weaver. The problem then, too, would be if
10 Congress chose not to reauthorize the provision, you would
11 be left with the moratorium in place presumably.

12 Senator Heinz. Well, that's why the simplist notion
13 is just --

14 The Chairman. Does the administration have any ideas?
15 I understand Senator Heinz's point.

16 Senator Heinz. I understand what Carolyn is saying.

17 Mr. O'Shaunnessy. It would be possibly for the
18 administration to prepare a report in quite ample time for
19 the committee to consider the situation, a report which
20 would review our experience with these provisions, and
21 basically how the system is working. And that might be a
22 vehicle for developing the debate and action that would be
23 needed by the committee.

24 The Chairman. What are your ideas? Senator Moynihan,
25 do you have any problem with the three years?

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Senator Moynihan. Mr. Chairman, it wouldn't have been
2 an issue that I would have proposed, but if it's important
3 to some members of the committee and to advance the
4 legislation, I am more than agreeable.

5 I mean these are matters which are, by definition,
6 always be under review. We want a certain stability, but
7 we have to assume that.

8 Senator Heinz. Pat, if you will yield?

9 Senator Moynihan. Yes.

10 Senator Heinz. I feel the same way about the sunset.
11 I don't mind a review procedure. And I'm looking for some
12 mechanism, though, that will actually require that we
13 review it as opposed to just allow medical improvement to be
14 repealed. And for us, because there are other things for us
15 to do, to do nothing.

16 Unfortunately, I have searched for suggestions, and I
17 haven't -- other than putting in some kind of a moratorium
18 on processing of certain kinds of things here.

19 Maybe the moratorium that would force us to act would be
20 a moratorium on letting anybody into the program. We
21 wouldn't ignore that.

22 Senator Moynihan. You wouldn't.

23 (Laughter)

24 The Chairman. Anybody have anything else?

25 Senator Moynihan. We always turn to Carolyn in moments

1 like this.

2 The Chairman. Well, we ask her.

3 Senator Heinz. Maybe the cure is worst than the
4 disease. I don't know.

5 The Chairman. I would just as soon that we address
6 this. As you have indicated it has taken a lot of your
7 effort and efforts of Senator Cohen, Levin and others,
8 Senator Moynihan, Pryor, everyone else.

9 I think we have made a great deal of progress. But I
10 don't want to get hung up on the three year sunset because
11 I was asked again today by the schedulers on the Senate floor
12 if we could complete action today, which assumes that we may
13 get it up next week.

14 I would just as soon adopt this package unless
15 somebody feels strongly about it. And if we can figure out
16 some enforcement mechanism, as Senator Heinz suggested,
17 offer that as an amendment on the floor.

18 Senator Heinz. Mr. Chairman, that's agreeable to me.

19 The Chairman. I don't have any quarrel with that. We
20 sunset a lot of things.

21 Senator Heinz. Is there anything else here that we
22 might sunset at the same time? I think we ought to sunset
23 Senator Long's pain provision just out of equity. We don't
24 want Senator Long to feel ignored.

25 (Laughter)

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
703-573-9198

1 Senator Heinz. That is the last thing that would ever
2 happen.

3 Mr. Stern. In the question of pain, one thing that
4 you would want to have as a result of this advisory
5 council -- it might not work out to be exactly the same date.

6 Senator Moynihan. We are going to get the thing later
7 on, aren't we?

8 The Chairman. It's the last thing we have. I think
9 Senator Heinz is suggesting maybe that would ease his
10 problem a bit.

11 As I understand the quadrennial advisory council, they
12 will not report until the end of '86.

13 Ms. Weaver. That's correct.

14 Senator Moynihan. Mr. Chairman, may I speak to this?

15 The Chairman. Sure.

16 Senator Moynihan. The idea of having the advisory
17 council do this just seems to me -- what it means --- we have
18 got fine representatives from the Social Security
19 Administration, but this is such a large question.

20 There is a simple fact that any experienced technician
21 and diagnostician will tell you that there is a significant
22 proportion of disabling diseases, the disability of which is
23 characterized principally by pain for which no objective
24 evidence can be established.

25 Mr. Chairman, will you hear me on this? I mean you care

1 about this.

2 The Chairman. Sure.

3 Senator Moynihan. There is a significant number of
4 disabling diseases which a doctor and diagnostician cannot
5 provide objective evidence that that exists.

6 In some of these, you can begin to diagnose as they
7 learn more about them by the pattern. But if a person were
8 determined to deceive the Social Security Administration, I
9 would just have to learn what those patterns are.

10 In some, they begin to make early -- they discover
11 diseases of which they haven't had names, and they usually
12 give them very generic names like neuralgia of one kind or
13 another which just means pain, polyneuralgia, which means
14 many pains, by the way in which certain medications produce
15 certain changes in symptoms.

16 But they don't know anything about it. And when we
17 require the language we are putting in here, I say to you
18 when you must say that they must be established by medically
19 acceptable clinical or laboratory diagnostic techniques you
20 are excluding from rights under the disability insurance a
21 significant number of people who are as disabled as if they
22 had had a broken back and all they have is lower back pain.

23 And I don't think we should be doing it. I see that it
24 is going to happen. But what I want to say is this: Do we
25 really want to turn this question, a responsible medical

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
703-770-0198

1 question, over to 13 laypersons or whatever who at best
2 will go and ask physicians and have to take on faith the
3 answers they get because they won't be able to do it.

4 Shouldn't we ask the National Academy of Science to
5 do this?

6 Senator Long. There should be somebody from the
7 department who can tell us what that thought is and why
8 they recommended this regulation, and why they proposed it.
9 I think I understand a lot of this, but who do you have from
10 the department who can explain why the department has such
11 a regulation?

12 Mr. O'Shaunnessy. We have Ms. Pat Owens, who is the
13 head of the disability office.

14 Ms. Owens. You want me to explain why we have the
15 regulation or do you want me to explain the fact that we do
16 have doctors involved in helping us look at the issue.

17 Senator Long. Well, explain both. Why you have the
18 regulation and why you have the doctors. Just tell us about
19 it.

20 Ms. Owens. All right. The reason that we have -- that
21 we are using the definition of pain that we have now is on
22 the advice of the medical community primarily. It is very
23 difficult -- well, first of all, I think you have to go to
24 the definition of an impairment within --

25 Senator Moynihan. I'm serious about this. The advice

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 of the medical community means who?

2 Ms. Owens. I have a list of some people we have working
3 with us right now on various committees. Would you like to
4 hear that.

5 Senator Long. Read it.

6 Ms. Owens. Donlon Long who is with The John Hopkins
7 Pain Center. We have Godfrey Pearlson who is also -- he was
8 the director of The Johns Hopkins Pain Center. They are
9 both still with Hopkins. Hopkins does not have a current
10 pain center right now.

11 We have some attorneys that are also concerned in the
12 area of representing people with impairments and pain.

13 Let me mention some of the other doctors. We have
14 Clinton Compere. He's with the American Academy of
15 Orthopedic Surgeons.

16 Then we have Jay Michael Anderson, American Academy of
17 Physical Medical and Rehabilitation from Sinai Hospital in
18 Baltimore.

19 Represented from the American Society of Internal
20 Medicine, John Wesley Melton who is from --

21 Senator Long. We see these are accredited persons.

22 Ms. Owens. Yes. They are a large group of people. We
23 have actually two work groups, Senator, that are working
24 right now on the issue of pain. One is devoted solely to
25 pain itself. And then a work group in the muscular skeleton

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 area which is what you were just discussing about the low
2 back pain and the arthritis.

3 Senator Moynihan. Could I ask the members of the committee
4 to understand that there is no objective medical evidence
5 by which you can establish the presence of lower back pain?
6 It's probably the most common industrial disability. I
7 don't know.

8 Senator Long. Are you telling us the answer to my
9 question? Can you tell us who the people are?

10 Ms. Owens. And let me just say one other word on that.
11 The advisory council, which Senator Moynihan mentioned, the
12 advisory council in this provision that is currently being
13 studied, Senator, would have the ability to call in other
14 experts.

15 We have these experts working now who would have some
16 findings we would hope to be able to deliver to the advisory
17 council, and then the advisory council would also call in
18 other experts.

19 Now back to the question of what we currently use now
20 to define pain or to evaluate pain.

21 The requirements of the law itself said, and as
22 amended in '67, as your provision says, is that we need to
23 have a medically established impairment in order for there
24 to be a definition of disability. I mean in order to find
25 disability, you have to have a medical established impairment.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 And we are saying, then, that after you have that
2 medically established impairment --

3 Senator Long. Now is that in the statute itself, the
4 word "medically?"

5 Ms. Owens. That's in the statute itself, Senator.
6 The statute actually says that there must be an impairment
7 that is medically established.

8 And then what we say now is that the pain should be
9 reasonably attached to that impairment. You should be able
10 to see that the pain accrues from impairment.

11 And there are all kinds of things that we look for.

12 Senator Moynihan. Russell, would you yield to me?

13 Senator Long. Sure. Go ahead.

14 Senator Moynihan. That is perfectly reasonable. You
15 are trying to do your work, and obviously you are.

16 Now the advisory council -- this would be an advisory
17 council on the disability insurance program?

18 Mr. O'Shaunnessy. Yes. That's the recommendation.

19 Senator Moynihan. It would characteristically be made
20 up of what we call laypersons?

21 Ms. Owens. That is correct although we have specifically
22 indicated in the proposal that they would be authorized to
23 convene a task force of specialists in particular areas so
24 that if they needed to examine pain --

25 Senator Moynihan. Here is exactly my question. And

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 let's see if we can't reason a moment together.

2 There is nothing more difficult than interpreting
3 scientific data to laypersons in lay language. It's very
4 hard. There are some great geniuses at it and most people
5 aren't very good.

6 Why shouldn't we have a panel made up of the physicians
7 and psychologists whose information will either be filtered
8 through to us who only dimly understand this, by another
9 group who only dimly understands this and the net result is
10 pretty dim?

11 Why can't we have, say, the National Academy of Sciences
12 and the national institutes of health or have a special body
13 established by this law for this purpose to report in this
14 timeframe?

15 Ms. Owens. Would you be thinking in terms of coupling
16 that with codifying present regulations until such time as
17 that task force reported?

18 Senator Moynihan. Yes. We have that also in here.

19 And, Mr. Chairman, it's that very phrase -- "medical
20 evidence" -- that suggests you want medical people to tell
21 you what medical evidence is and also what it can't be.

22 The Chairman. Does the administration have any problem
23 with that?

24 Mr. O'Shaunnessy. No, we would not.

25 The Chairman. It seems to make sense to me.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Senator Long. Everybody, whether you know it or not,
2 you are prejudiced. I am. Everybody is prejudiced whether
3 he knows it or not because what you think about something is
4 limited by what you know or what your experiences were. So
5 we are all prejudiced. And we tend to have our mind made up
6 because we have an opinion on what we have learned in our
7 history.

8 Now my limited experience in this area is best
9 illustrated by a case I had. I had a case or at least I
10 thought I had a case.

11 I had a fellow who strongly insisted that he was
12 desparately in pain and he could not work. All right. Now
13 I send him to an orthopedic specialist and that man didn't
14 agree with that at all. I thought he would find somebody
15 else to testify for my side.

16 But in the course of it when I saw my client out there
17 prancing down the street looking like he was ready to play
18 football, I considered I didn't have a very good law suit.
19 And I settled it for a modest amount, practically a useless
20 settlement because I was convinced that wasn't a good law
21 suit.

22 In this case, that orthopedic specialist, in testing
23 this fellow out, had him sit in different positions. Well,
24 when the man bent over and he was in terrible pain, but if
25 you put him in the same position in a sitting position and he

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

wasn't in pain.

And as far as that orthopedic man was concerned, that fellow was lieing to him. He didn't believe him.

And I just think that more often than not in these cases that if a person says he is in pain, if your doctor says, well, he may be in pain, but he's not suffering much, and he doesn't think that is disabling -- I would assume that if I was pleading the case for the man, I would go find me somebody to testify for him and say, well, we think he is in pain.

At that point, somebody has to make the decision as to whether that person is in pain or not.

What I am contending is merely that his own self-serving statement should not be decisive of this issue. That somebody else ought to who has a responsibility to the government as to whether that fellow is in pain or not.

Now when we held our hearings before we ever put this program into law, there was a doctor -- I'm not sure if he was with the AMA or the orthopedics or who -- but this fellow said, Senator, I can have people come to me and I can take an X-ray and I can find a calcium deposit on their spine. Now that might justify a finding that that person is in severe pain. But then again that person might not be in pain at all.

He said you are going to have cases, if you put this

1 program into effect, where there is nobody who can tell you
2 for sure whether that person is in pain. That person insists
3 he is in severe pain, but there is no way you are going to be
4 able to judge whether he is or not.

5 Just as we had a case, which I mentioned, I believe,
6 yesterday, where there was a courthouse official in my
7 home state. He contended he was disabled. The VA doctors
8 didn't think so. I continued, because he was my
9 constituent, to support his cause, but I didn't have any
10 confidence in it.

11 Well, in due course it turns out he has got a tumor
12 on the brain. And so he was right. He was in bad shape.

13 But I can't fault that VA doctor because they didn't
14 have any evidence of that tumor. And not having that, that
15 VA doctor was doing his duty as the good Lord gave his the
16 right to do. He thought that man was fine.

17 But in the last analysis -- and you look at the
18 enormous numbers of people we have got out there. For
19 example, I am told that among the blacks, 44 percent are
20 without employment. A lot of them are officially listed
21 as unemployed, but I mean if you include all those who have
22 never had a job.

23 Twenty-two percent of the white males are in that
24 situation. You have got a world of people out there for
25 whom early retirement as being disabled is a very tempting

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 thing and it is tempting people to deceive you.

2 And to make the program work, you are going to have to
3 give the government at least as much benefit as you would
4 give it as if you are sueing an employer for disability
5 suffered on the job. I mean, basically, can you support
6 that -- if all you have got is a person's own self-serving
7 declaration.

8 My state of evidence indicated that back in early
9 English law they wouldn't let a person testify for himself.
10 Any plaintiff that took the stand to testify was going to
11 by lieing automatically. They just counted on that.

12 But if that is all you had, a pure self-serving
13 declaration, that you couldn't put him on the rolls just on
14 that basis -- and that, I think, is what we must protect the
15 secretary from. And I think that's what that regulation was
16 trying to protect the secretary from.

17 Now I'm not saying it shouldn't be considered. I'm
18 just saying that if you want her to put those people on the
19 rolls, that ought to be supported by more than just their
20 own individual, self-serving statement.

21 The Chairman. But I think we could accomplish that,
22 rather than waiting for the quadrennial commission. As I
23 understand, the administration can put together a panel of
24 experts. Is that correct?

25 Mr. O'Shaunnessy. Yes, we could.

1 The Chairman. Would you have a result sooner?

2 Ms. Weaver. You would need at least a couple of years
3 to study it.

4 Mr. O'Shaunnessy. Well, if there is no objection, I
5 would think the same date that would have otherwise occurred
6 with the quadrennial commission should be quite adequate.

7 Senator Wallop. Mr. Chairman, may I make one
8 suggestion?

9 The Chairman. Sure.

10 Senator Wallop. That taking to heart Senator Moynihan's
11 view of seeing things dimly because of lack of experience,
12 that it should not be only medical experts. That it should
13 include people who are used as well, administratively dealing
14 with these things, because they are the ones who have had
15 the challenges of judgment tossed up in their laps in the
16 claims for disability.

17 Senator Long. I really do think that this is one
18 situation where you would do well to have some lawyers
19 involved. I will tell you why.

20 If you have a lawyer who has got substantial experience,
21 he has been on both sides of it. There are good lawyers out
22 there who have been on the side of both trying to prove the
23 guy was disabled and trying to prove he wasn't.

24 Senator Moynihan. But I would hope we would have
25 medically trained persons who could speak to the area about

Moffitt Reporting Associates

2849 Lafora Court

Vienna, Virginia 22180

(703) 573-9198

1 what is known. Have present the kind of people who can
2 ask them the kinds of questions that have to be answered in
3 the real world.

4 Senator Wallop. Well, there is one kind of pain that
5 won't be represented or discussed here and that's the pain
6 of the American taxpayer who has a heavy load to carry if
7 we don't at least have some reasonable conclusion to all of
8 this as nearly as man can devise it that provides disability
9 for those who are disabled and not those who wish to be.

10 Mr. O'Shaunnessy. Yes. I think it would be
11 preferable not to be required to have a majority of the
12 members of the commission, committee or whatever who are
13 medical physicians or medical experts. We want to make sure
14 we have an adequate number on that --

15 Senator Moynihan. A significant one.

16 Mr. O'Shaunnessy. That sounds fine.

17 Senator Moynihan. I mean put together a good commission.

18 Mr. O'Shaunnessy. Yes, certainly. That's what we would
19 be interested in doing. I'm not sure that would require,
20 however, a majority of --

21 Senator Bentsen. I certainly share the Senator from
22 Louisiana's concern about someone just making a self-serving
23 statement. I would also like to see a few of the people who
24 had administrative problems involved in this.

25 Senator Wallop. That was my suggestion as well.

Moffitt Reporting Associates

2849 Lafora Court

Vienna, Virginia 22180

(703) 573-9198

1 Senator Heinz. Mr. Chairman, on question. Who appoints
2 this commission? The President? The Secretary?

3 The Chairman. I assume the Secretary.

4 Senator Moynihan. The Secretary.

5 Senator Heinz. I would hope and I would see no reason
6 to believe that the Secretary would appoint a group of
7 bleeding hearts to the commission. I don't think that's
8 Senator Moynihan's intention. I can't imagine any Secretary
9 doing that. What you want is people who are qualified
10 experts.

11 Senator Moynihan. Do we have the report language that
12 that --

13 The Chairman. I think it's a very important question.
14 There is no doubt in my mind that there are people out there
15 without any visible problems. I learned years ago that you
16 can't measure someone's disability by looking at them. And
17 if he is an amputee, obviously, you have got a problem.

18 But I have been around people who departed very quickly
19 after you concluded they were in good health. So I think
20 it's very important that we address the questions.

21 Obviously, you can structure appropriate commissions.
22 And if that date is all right -- is it all right to put the
23 other in statutory language?

24 Without objection.

25 Senator Mitchell?

1 Senator Mitchell. Mr. Chairman, I would like to
2 inquire about two other areas, if this is completed, if I
3 might.

4 The Chairman. Right. I think we are all right on
5 that. Is that all right with you, Russell?

6 Senator Long. Right.

7 Senator Mitchell. The first is item number 3,
8 administrative procedure an uniform standards. That's on
9 Page 4 of the material that was distributed at the outset
10 of these proceedings.

11 It has been my impression that one of the principal
12 problems, principal causes, of the confusion that has arisen
13 in the system has been that at each level of decision, the
14 standards have not been uniform. That is, specifically
15 the program operating manual system has been applicable only
16 at the initial decision. And, therefore, the administrative
17 judges using a less restrictive standard have had a rather
18 high rate of appeal.

19 My question is -- and I have read this material on
20 Page 4, and I know specifically the first paragraph entitled
21 "Proposed Changes" uses the phrase "through the issuance of
22 rulings and other informal vehicles, the SSA will retain its
23 flexibility."

24 Is this is same thing as the present system or how is
25 this to be different in an effort to establish a uniform

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 standard?

2 Ms. Weaver. The intention is to have SSA subject to
3 the rulemaking requirements of the APA with regard to basic
4 benefit eligibility questions. As far as the many
5 administrative tasks and the many administrative guidelines
6 that must regularly be issued, that we are not intending in
7 any way to reduce their ability or flexibility to issue
8 those through the informal mechanism.

9 Senator Mitchell. Then if I understand you correctly,
10 Carolyn, what you are saying is that with respect to the
11 decision as to eligibility, the standards which apply at the
12 initial level of determination will be identical to the
13 standards to be applied at each succeeding step in the
14 process?

15 Ms. Weaver. That's the goal of this legislation. Yes.
16 To help improve that uniformity between the levels of
17 decision-making.

18 Senator Mitchell. And there is nothing in this
19 language, in the descriptive material of proposed changes in
20 the legislation, that contradicts that in any way?

21 Ms. Weaver. No. Not intentionally.

22 Senator Mitchell. Everyone agrees on that?

23 The Chairman. Does SSA agree with that?

24 Mr. Enoff. Yes. We agree. We have tried already to
25 do that. But, yes, we agree with your interpretation, what

Moffitt Reporting Associates

2849 Lafora Court

Vienna, Virginia 22180

(703) 573-9198

1 Carolyn said.

2 Senator Mitchell. Now the second paragraph deals with
3 the question of the applicability of the Administrative
4 Procedures Act to the SSA's proceedings. Any my question
5 is:-- and I'm asking again for an interpretation of this --
6 are those procedures set forth in the Administrative
7 Procedures Act to be applicable to the Social Security
8 Administration?

9 Ms. Weaver. Under the proposed change which is
10 described in the first paragraph graph of proposed changes,
11 all of the requirements of the VA-PA would apply to the
12 Social Security Administration with regard to disability
13 matters.

14 The final paragraph simply alerts you to what the
15 administration's position on that is. They would prefer us
16 to clarify that any judicial review of regs was on a post-
17 implementation rather than pre-implementation basis.

18 Senator Mitchell. When you say it clarifies what they
19 would like it to be, is that what we are about to do?

20 Ms. Weaver. The proposed package is described in the
21 first paragraph, the proposal in the Dole package.

22 Senator Mitchell. So is it accurate then to say that
23 the administration's proposal concerning what I would call
24 an exemption from the judicial review standards of the
25 Administrative Procedures Act is not included in this

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 legislation?

2 Ms. Weaver. That is correct.

3 Senator Mitchell. And the processes or the procedure
4 set forth in the Administrative Procedures Act will be
5 applicable here as it is to other agencies?

6 Ms. Weaver. That is correct.

7 Senator Mitchell. Thank you.

8 I have one other area that I would like to inquire about,
9 Mr. Chairman. And that is the item listed as number 16, whole
10 or fail-safe is the description on the table of contents. And
11 it appears on Page 17 of the written material.

12 As I understand it, this takes the process included in
13 the 1983 amendments to the Social Security Act and applies
14 them narrowly and explicitly and exclusively to the disability
15 insurance fund. And, in fact, may even go a little bit
16 further.

17 And I would ask whether that is correct. And if it is
18 not, if you would tell me what manner is not.

19 Ms. Weaver. No. That is not quite right. Let me
20 clarify it.

21 The 1983 amendments include a provision which applies to
22 all Social Security cash benefit recipients, retirement and
23 disability alike. That if the trust fund, the aggregate
24 reserve ratio, falls below a stated reserve level, then if
25 wages are growing less rapidly than prices, the wage

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 adjustment would be made rather than the full price
2 adjustment. So nothing automatic necessarily happens when
3 the reserves fall low, not unless you also have adverse
4 economic circumstances.

5 What this proposal does is simply to say that if the
6 disability insurance trust fund, if its reserves are
7 depleted, then something very explicit and direct
8 automatically happens. The COLAs will be scaled back in
9 order to keep reserves at 20 percent.

10 Senator Mitchell. Now a central factor in the
11 question of whether or not anyone of the three trust funds
12 falls below a certain level is, of course, the allocation of
13 the tax among the three funds. Is that not correct?

14 Ms. Weaver. That is correct.

15 Senator Mitchell. And is it not a fact that that
16 allocation has been changed in recent years to reflect
17 circumstances that occurred different from what the
18 actuaries estimated at the time the allocation was made?

19 Ms. Weaver. The allocation has been changed over the
20 years.

21 Senator Mitchell. Has been changed several times.

22 Ms. Weaver. Uh huh.

23 Senator Mitchell. Now is it not possible, then, that
24 if we adopt this provision we will end up with a circumstance
25 under which the cost of living adjustment would be

1 unavailable to persons who are disabled but would continue
2 to be available to persons who are Social Security
3 beneficiaries other than those on disability?

4 Ms. Weaver. That's exactly the way it would work.

5 Senator Mitchell. And does that not then place ...
6 enormous significance upon the allocation decision, a
7 significance which heretofore has not existed?

8 Mr. Humphreys. Well, I believe it has heretofore
9 existed because traditionally the theory of the Social
10 Security funds is that you can only pay out benefits as long
11 as you have adequate money in the funds. And up until --
12 each time these allocations have been changed -- and they
13 are always changed by law. They are not administrative
14 allocations -- the theory is you provide enough money for
15 the program to pay its benefits, and if there is not enough
16 money, if that allocation is insufficient, then Congress
17 either has to act or the fund would be unable to meet its
18 obligations.

19 Senator Mitchell. Right. But this introduces a new
20 element which has not heretofore existed. And that is
21 depending upon the allocation that is made, the trust fund,
22 one of the three trust funds, may or may not fall below a
23 certain level. And, therefore, one category of beneficiaries
24 alone may be deprived of the cost of living adjustment,
25 based upon that.

1 Mr. Humphreys. Based upon this particular adjustment,
2 but in theory that could happen. I mean if the funds ran
3 out of -- if the DI fund, because of the allocation, became
4 exhausted and we didn't have any specific provision in law,
5 and unless Congress acted, the Secretary would have to not
6 pay benefits, would have to do something like this. It
7 doesn't say what would happen, but would somehow or another
8 have to cut back benefits to the disability population.

9 Senator Mitchell. But at the same time the Secretary
10 would be doing the same with respect to others or shifting
11 funds back and forth.

12 Mr. Humphreys. There is not ordinarily any authority
13 to do that. There is temporarily now in the short-term the
14 '83 amendments that provide a short-term ability to shift
15 funds back and forth. But as a matter of the ordinary
16 situation that has prevailed over the history of the
17 program, no, the Secretary wouldn't have the authority to
18 shift funds back and forth.

19 They would have cut out the DI benefits, if that was
20 the fund that ran short.

21 Senator Mitchell. That has not happened yet, though,
22 has it?

23 Mr. Humphreys. Because Congress has -- it would have
24 happened, but Congress has always acted to put more money
25 into the DI fund.

1 Ms. Weaver. And the July 1 reporting requirement on
2 the part of the Secretary. That is, she must alert Congress
3 by July 1 before any adjustment is made in December for the
4 January benefits. That presumably gives Congress just the
5 opportunity you are describing -- to consider the alloca-
6 tion of the tax rate and potentially readjust it.

7 Senator Mitchell. Well, I would just like to say, Mr.
8 Chairman, that I seriously question -- and I ask the members
9 of the committee to consider -- imposing upon this one fund
10 the possibility of the elimination of the cost of living
11 adjustment for one category of beneficiaries under Social
12 Security. The '83 Act was premised upon the fact that we
13 would consider the three funds in the aggregate, and any
14 remedial action that resulted from the funds falling below
15 a certain level were applied to all beneficiaries.

16 And, of course, that made sense because again the
17 allocation is a decision that, you are quite right, Congress
18 makes. But in each case, I believe, it follows closely if
19 not identically the advice of those who are charged with the
20 responsibility for making the actuarial recommendations. I
21 don't think members of Congress sit up here and decide
22 1.05 to this fund and 6.75 to that fund.

23 Senator Moynihan. Would the Senator yield for comment
24 here?

25 Senator Mitchell. Yes.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Senator Moynihan. Those actuarial projections on the
2 DI have been really not the faultless of all. They rarely
3 have the decision of the old age survival. So you could
4 find yourself triggering this mechanism and it turned out
5 to have been a mistake in estimates.

6 Senator Mitchell. I thank the Senator for that comment,
7 but even beyond that I wonder if we want to get into that
8 kind of a situation where all of a sudden an allocation that
9 has been used as an approximate division based upon present
10 estimate of future needs, with the certain knowledge that it
11 can and probably would be changed in the future, to reflect
12 changing circumstances, as has occurred several times in
13 recent years, ought not now to become the triggering
14 mechanism for a very fundamental decision that could affect
15 one category of Social Security beneficiaries alone.

16 The Chairman. With the earlier warning system that is
17 built into that change, I think it was an up-front decision.
18 I mean the proponents of all these changes indicate it is
19 not going to cost a great deal of money -- it is going to
20 cost a great deal of money, but it's going to stay within the
21 limits projected.

22 As far as I am concerned a deliberate effort to make
23 certain that we somehow have some provision there to protect
24 us if it doesn't work.

25 Now the initial provision even went a bit further. It

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 would even go back and permit the reduction in basic
2 benefits. That was removed. And we believe that with the
3 notice to Congress in time, we can either authorize transfer
4 of funds, ignore this provision. But it's a fast growing
5 program, that I think needs some little break on it.

6 Senator Long. Could I just refer you to the history
7 of this program?

8 When we started out, Bob Kerr was a very effective
9 member of this committee. In fact, some thought he was the
10 most effective member of the Senate at that point.

11 And Bob Kerr was not willing to go along with this
12 program at all unless we created a separate fund just on the
13 basis that he did not want this program to pull the whole
14 Social Security program under with it. And his thought was
15 that you can lose control of this thing, as later on
16 happened.

17 And it could pull the whole program under, including
18 very well actuarially considered programs. And so this
19 was set up under a separate trust fund.

20 And as it went along, we did find that at one point we
21 had five times as many people on the rolls as was estimated.
22 Wasn't that about the number?

23 Mr. Stern. That's correct.

24 Senator Long. At one time we had five times --

25 Mr. Stern. In terms of incidences of disability.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Senator Long. Right. So we had five times as many
2 people on these rolls as was anticipated. And so then we
3 went to the -- we then tried to get the thing under control.
4 We voted for a big tax increase. Our Republican friends
5 described that in the next campaign as the largest tax
6 increase in history, I remember. I know my opponent
7 described it that way in Louisiana.

8 Now there is a charge for that. But the Department
9 themselves supported the position that rather than try to
10 pay for all this, that we ought to say that the Secretary
11 can look at these cases and those who could not meet a
12 strict test should not be on the rolls so we ought to try to
13 reduce the number on the rolls, and we should also come up
14 with more revenue at the same time.

15 Now we hope we have got this thing under control so it
16 will work, and that it is not going to explode again. But
17 who knows.

18 Now when we passed the Social Security thing I fell out
19 of this committee. We had an amendment that we called a
20 "fail-safe" amendment, which I had sponsored myself at the
21 time, and that amendment said that if this program, the
22 Social Security program, if it goes beyond the estimates
23 that you just have to reduce the level of benefits.

24 Now we lost that in conference. But this doesn't say
25 that you would reduce the level of benefits other than just

1 that you would look at what the cost of living increase would
2 be and that you would reduce the cost of living increase
3 enough to keep this within what you are hoping to do.

4 Now it's my hope that this type of amendment would cause
5 all those who are administering the program to understand
6 that we expect them to try to control the cost of the program
7 because otherwise unless Congress sees fit to pass subsequent
8 legislation, these people would not get the full cost of
9 living increase.

10 Now if they can stay within those estimates -- and I
11 pray that they can -- then everybody gets a full cost of
12 living increase. So we would hope that they can administer
13 a good type program, well administered, as I think the
14 Secretary wants to do, and certainly all those you see here
15 would like to do, and they would get the full cost of living
16 increase.

17 But what if the thing gets out of control? There ought
18 to be some pressure on the people, the day to day examiners,
19 to feel that if we just load all these people coming in here,
20 if we just put everybody on those rolls, then they aren't
21 going to get the full cost of living increase or Congress
22 will just have to act to do something.

23 But I don't like to have us feeling that, go ahead --
24 and there has been a lot of feeling -- there have been
25 people down at HEW that say just get the program going no

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 matter what it costs. If it exceeds the estimate, the
2 Congress will just have to put more taxes on and pay more
3 money.

4 And the public has about got enough of that. I think
5 that this has got to the point where we, in the Congress,
6 can't keep going back to the well more and more times to
7 raise those taxes. People are getting sick of paying those
8 increases.

9 Senator Mitchell. Well, Mr. Chairman, if I may say --
10 and due respect to Senator Long -- we happen to disagree on
11 this. The argument that this program has five times as
12 many people on the rolls as was anticipated is an argument
13 heard frequently in the Congress regarding many programs.

14 Upon careful examination, it almost always turns out
15 that the original estimate was based on incomplete
16 information and it just simply is not substantive basis
17 upon which to make a decision.

18 I don't know how somebody guesses many years ago that
19 there would be X number of people disabled in this country
20 10 or 20 or 30 years hence. And so the fact that the
21 reality differs from the expectation is not necessarily
22 evidence in my judgment that the reality is distorted.

23 Secondly, I'm certain that the Senator is quite accurate
24 in his description of the case he had about a person who
25 pretended to be disabled. And that no doubt there are abuses

1 in this program.

2 But I want to say that in my experience in this
3 program it is extraordinarily tightly administered. The
4 test is applied very rigidly at the initial level of
5 determination. And in my own personal experience, which
6 is necessarily limited to one state, it is not a case of
7 these bureaucrats running around saying let's find all the
8 people we can and get them on the rolls and not worry about
9 the costs and so forth.

10 The people who make these determinations do so very,
11 very rigidly, carefully, prudently, and make what many people
12 believe to be far too restrictive analysis of cases.

13 And while I can understand and appreciate the
14 interest -- and we can all share the concern that Senator
15 Wallop expressed about the burden on American taxpayers -- I
16 just question what sense it makes from the standpoint of
17 equity, fairness, or logic to impose upon one category of
18 beneficiaries under Social Security a potential penalty which
19 is not borne by others.

20 We haven't done that before. Previously, in the last
21 time we dealt with this, we applied whatever remedial action
22 was to occur in the aggregate because we recognized that this
23 allocation is nothing more than an estimate and could be
24 wrong, has been wrong, has been changed.

25 Now this puts enormous pressure and significance upon

1 that allocation decision, which has not heretofore existed.

2 The Chairman. Senator Bentsen.

3 Senator Bentsen. I get the problem of the current
4 benefits possibly being curtailed. People have become
5 accustomed to that level of assistance and like to plan their
6 lives with that in mind.

7 I wonder if there isn't at least that kind of a floor
8 that can be under what the Senator from Louisiana is trying
9 to accomplish.

10 The Chairman. It was not there. It has been added.
11 That's why the administration objected to it because they
12 thought we were going into current benefits. That was an
13 old draft.

14 Senator Mitchell. Well, I have made my point on that,
15 Mr. Chairman.

16 If I may one more inquiry on something separate?

17 The Chairman. Do you want to offer an amendment?

18 Senator Mitchell. Not at this time. I think I had
19 better determine the lay of the land first.

20 The Chairman. I've already checked.

21 (Laughter)

22 Senator Mitchell. I thought you were rather forthcoming
23 in not giving me the opportunity to offer an amendment.

24 The Chairman. No. I don't know where the votes are.
25 I know where the proxies are.

Moffitt Reporting Associates

2849 Lafora Court

Vienna, Virginia 22180

703-573-9198

1 (Laughter)

2 Senator Mitchell. And so do I. May I make one more
3 brief inquiry, Mr. Chairman, about an unrelated matter?

4 I have been advised that yesterday the Social Security
5 Administration announced they were working on guidelines
6 for the current moratorium. I received a number of
7 inquiries from persons in that regard.

8 And do you have any information on when the guidelines
9 will be available?

10 Mr. O'Shaunnessy. We hope very shortly. We are still
11 working on that. But we are trying to get them out as
12 quickly as we can.

13 Senator Mitchell. Very shortly to a Senator and very
14 shortly to a layman might mean two different things. I
15 don't want to pin you down unnecessarily.

16 Mr. O'Shaunnessy. No more than a few weeks, I would
17 hope.

18 Senator Mitchell. Fine.

19 Mr. O'Shaunnessy. That is my statement, but I can't --
20 The Chairman. Within a month?

21 Mr. O'Shaunnessy. Yes. We are trying to do that.

22 Senator Mitchell. I thank you. Thank you, Mr.
23 Chairman.

24 The Chairman. I think we have agreed, as Senator
25 Heinz suggested, that we might sort of offset, sunset,

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
703) 573-9198

1 number 1 with number 17. I don't see any objections to that.

2 Ms. Weaver. That's correct.

3 The Chairman. Are there any other issues to be raised?

4 Senator Heinz. Mr. Chairman --

5 The Chairman. We need to work that out because you will
6 need some time after the report is available.

7 Senator Moynihan. Why don't we just make it a uniform
8 3-1/2 years at the end of calendar year '87?

9 Ms. Weaver. That's the end of '87.

10 Senator Moynihan. That's 3-1/2 years from now.

11 The Chairman. Three and a half years from when.

12 Ms. Weaver. We presumably, after enactment, want to
13 allow, say, six months for regulations to be established,
14 and then run the full -- '85, '86, '87.

15 The Chairman. All right. Is that satisfactory with
16 the administration?

17 Mr. Stern. What actually happens when this statutory
18 provision expires? At that point whatever is in the
19 regulations obtains?

20 Mr. O'Shaunnessy. Presumably one goes back to --

21 The Chairman. Extend the sunset.

22 Mr. Stern. Well, this is a status quo. That's why I
23 asked the question.

24 Ms. Weaver. Go back to the current regulations. Yes.

25 Senator Moynihan. That's why we are going to have a

1 commission.

2 Ms. Weaver. Uh huh.

3 The Chairman. Are there any other amendments, comments,
4 suggestions?

5 Senator Moynihan. Yes. A comment, Mr. Chairman.

6 I would like to say how helpful the members of the --
7 the representatives from the Social Security Administration
8 has been. And once again say that without Carolyn Weaver
9 we would be -- there are a million people in this country --

10 The Chairman. Well, I want to extend my thanks to
11 Carolyn and to Joe and Mike and other staff members in
12 addition to all the administration people. I think
13 particularly the persons who have been working on Senator
14 Cohen's, Senator Levin's staff. They are not on the
15 committee, but they have been here probably more than we have.
16 So we appreciate their efforts. And efforts of other
17 Senators who are interested in moving this along.

18 I think it might good, unless somebody has an objection,
19 to indicate our support for the compromise. That we could
20 have a record vote and the absentee members could record
21 themselves.

22 And, obviously, you would be given authority to make
23 technical changes.

24 As I understand, Rod, all we have left to do this year
25 in this committee is one nomination?

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Mr. DeArment. Mr. Chairman, we also will have some
2 matters, other committees' bills, that have matters of our
3 jurisdiction that we are getting referrals on. One we are
4 just entering into is a unanimous consent agreement to get
5 a referral over for 30 days over the inland waterways. That
6 agreement, hopefully, is going to be entered into today.

7 We would have until the 8th of June to --

8 The Chairman. The 8th of June?

9 Mr. DeArment. The 8th of June to complete action on
10 that.

11 The Chairman. It has to be fairly swift because we are
12 not back here until the 4th.

13 Mr. DeArment. We were hoping to have a hearing on
14 either the 4th or the 5th.

15 The Chairman. What we would like to do is to spend some
16 time focusing on some areas that members may have an
17 interest in; particularly, the trade deficits, some of the
18 tax proposals floating around, consumption type. Some of
19 the members want to have flat tax hearings again.

20 So we would be happy to comment.

21 Mr. DeArment. We have a series of hearings also that
22 we agreed to make to various members on the floor that
23 raised various matters that they wanted to look into.

24 Senator Moynihan. Mr. Chairman, in that respect, just
25 one thought I would like to put before this committee.

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 Should we allow the notions of legislation to impose
2 quantitative restrictions on imports to escape the reference
3 to this kind -- our committee altogether, the regulation of
4 imports has been a matter of tariffs. I would just like to
5 raise that thought.

6 The Chairman. All right. Let's call the roll on
7 this.

8 Mr. DeArment. We did, indeed, make that formal
9 request.

10 Mr. Packwood?

11 The Chairman. Aye.

12 Mr. DeArment. Mr. Roth?

13 (Inaudible)

14 Mr. DeArment. Mr. Danforth?

15 (No response)

16 Mr. DeArment. Mr. Chafee?

17 The Chairman. Aye.

18 Mr. DeArment. Mr. Heinz?

19 Senator Heinz. Aye.

20 Mr. DeArment. Mr. Wallop?

21 Senator Wallop. Aye.

22 Mr. DeArment. Mr. Durenberger?

23 Senator Durenberger. Aye.

24 Mr. DeArment. Mr. Armstrong?

25 The Chairman. I have his proxy. Aye. I had it

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 yesterday. I think it's still good.

2 Mr. DeArment. Mr. Symms?

3 The Chairman. Aye.

4 Mr. DeArment. Mr. Grassley?

5 Senator Grassley. Aye.

6 Mr. DeArment. Mr. Long?

7 Senator Long. Aye.

8 Mr. DeArment. Mr. Bentsen?

9 Senator Bentsen. Aye.

10 Mr. DeArment. Mr. Matsunaga?

11 Voice. Aye by proxy.

12 Mr. DeArment. Mr. Moynihan?

13 Senator Moynihan. Aye.

14 Mr. DeArment. Mr. Baucus.

15 Senator Moynihan. Aye by proxy.

16 Mr. DeArment. Mr. Boren.

17 Voice. Aye by proxy.

18 Mr. DeArment. Mr. Bradley.

19 (No response)

20 Mr. DeArment. Mr. Mitchell?

21 Senator Mitchell. Aye.

22 Mr. DeArment. Mr. Pryor?

23 (No response)

24 Mr. DeArment. Mr. Chairman?

25 The Chairman. Aye. Let me indicate I indicate I didn't

Moffitt Reporting Associates

2849 Lafora Court

Vienna, Virginia 22180

(703) 573-9198

1 have Packwood's proxy. It's Danforth's proxy I have. I
2 do have Packwood's? Oh, I do have Packwood's.

3 Mr. DeArment. And Senator Danforth votes aye?

4 The Chairman. Yes. Senator Roth wanted to be
5 notified.

6 Mr. DeArment. Yes. There will be just two absent
7 members and we will check with them.

8 The Chairman. The vote, then, is 18 ayes and the nos
9 zero.

10 I would hope we might reach some time agreement so we
11 can persuade Senator Baker to let us bring this up on next
12 Tuesday or Wednesday and get to conference. So if all the
13 interested parties -- unless you feel compelled to suggest
14 your policy to offer an amendment -- if we can bring this up
15 in 15 minutes on the side or whatever, we could pass it
16 fairly quickly.

17 Senator Heinz. Mr. Chairman, may I just thank all
18 members of the committee, but most especially you, Mr.
19 Chairman, and Senator Long and the staff for having worked
20 out a very good bill, as evidenced by the 18 to nothing
21 vote.

22 What I think we have achieved is ending a period of
23 nearly three years of pain to beneficiaries and embarrassment
24 to the Congress and the administration that was becoming
25 acute. And we have nothing to apologize for in our actions

Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

1 here today. We have a good bill. And while there are
2 probably some improvements in it everyone of us could think
3 up, it is truly an excellent product and one that will meet
4 the test of equity and fairness, regardless of who applies
5 that test.

6 Senator Moynihan. And I join in those comments, Mr.
7 Chairman.

8 The Chairman. Thank you very much.

9 I think in cases where members want to report language,
10 I think we should obviously go over that report language with
11 the member and with the chairman and ranking members.

12 Senator Long. I just want to add some additional views.

13 The Chairman. Right.

14 (Whereupon, at 3:40 p.m., the mark-up session was con-
15 cluded.)

16

17

18

19

20

21

22

23

24

25

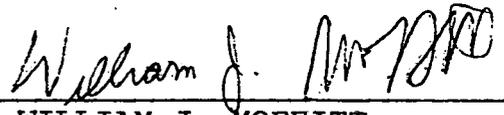
Moffitt Reporting Associates

2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This is to certify that the foregoing proceedings of a mark-up session before the Committee on Finance, Wednesday, May 16, 1984, were held as herein appears, and that this is the original transcript thereof.



WILLIAM J. MOFFITT
Official Reporter

My Commission Expires April 14, 1989

Moffitt Reporting Associates
2849 Lafora Court
Vienna, Virginia 22180
(703) 573-9198