

STATEMENT TO BE PRESENTED BY
ADMINISTRATIVE LAW JUDGE, GERALD I. KRAFSUR

Good Morning

I am here because of a friendly Subpoena kindly issued by this committee.

I am also here to report to this committee and the Congress of the United States that SSA and in particularly ODAR has seriously interfered with my First and Fifth Amendments rights. The SSA has been harassing me with series of Merit System Protection Board disciplinary complaints, the first of which has been recently dismissed. I will be filing a complaint with the Office of Special Counsel in this matter for retaliation and whistle blowing though my Attorney Charlton R. DeVault.

My name is Gerald I. Krafzur, I am an United States Administrative Law Judge assigned to the Social Security Administration and positioned at the Kingsport, Tennessee ODAR office.

I want to give you my adult background. I served in the United States Army. Thereafter I graduated from Babson Institute, now known as Babson College in Wellesley, Massachusetts in June of 1959 with a Bachelor of Science Degree in Business Administration.

In May 1962 I received my Masters in Business Administration from Wayne State University in Detroit, Michigan where I assisted faculty in Teaching Management Line and Staff.

In June 1962 I began my employment with the Ford Division Ford Motor Company in its Product Planning Office and varied other company activities.

In 1968 I was encouraged by my Ford Executives to apply for Law School. In June of 1971 I was awarded a Doctor Degree in Juris Prudence from Wayne State University.

Shortly thereafter I entered the practice of law during which I was co-counsel in several major cases among them Bass v. Spitz in Wayne County Circuit Court, Detroit, Michigan and Michael Baden v. Mayor Edward Koch in the

Eastern Federal District Court in New York.

After twenty years of litigation in the private sector, I was awarded the opportunity to serve as an United States Administrative Law Judge. On July 18, 1991 I was officially appointed an United States Administrative Law Judge in the office of hearings and appeals, Social Security Administration, Department of Health and Human Services assigned to the OHA office in Detroit, Michigan.

In the mid-nineties the Social Security Administration office of hearings and appeals, now known as ODAR, directly came under control of SSA.

Thereafter the functions of Line and Staff began to merge contrary to sound management practice.

I will now describe what was and always has been since July 18, 1991 my constitutional duties as an United States Administrative Law Judge.

During ALJ training in July and August 1991 we were taught what is commonly known as the “three hats.”

The First Hat

It is my responsibility to perform my constitutional duties, uphold the Constitution of the United States, administer the Federal Rules and Regulations as they apply to SSA and administer SSA rules and regulations together with Federal Court Decisions as they apply to SSA cases and conduct fair and impartial hearings.

The Second Hat

This hat involves the protection of claimants’ rights before, during, and after their application for disability benefits. This is performed in non-adversary formal hearing by matching claimant testimony with medical and vocational testing records presented by Representatives and/or individual claimants.

The Third Hat

To represent the best interests of the Social Security Administration to protect the Trust Fund. This hat is why I believe I was originally requested to appear before this committee. SSA has never provided me with evidence of

disability that I could personally verify. I am restricted from deposing any and all individuals who generated the records provided me. ODAH hearings are the only forum where one side presents evidence and the other side, namely the SSA, fails to provide any verifiable evidence.

In order to overcome the deficiency, I have requested that SSA perform a series of Medical, Psychological and Psychiatrist tests on various claimants. I realize the cost of this may be expensive. If these functions cannot be completed as described then SSA should enable ALJs to depose any and/or all parties who generated any document which is to be presented at the formal hearing. SSA may believe written interrogatories are effective but any litigator knows cross-examination under oath and live testimony are critical.

I believe if I had the authority as outlined, my favorable decisions v. unfavorable decisions as a percentage would be diminished.

Now I would like Congress to investigate the mismanagement and misconduct of SSA officials in authorizing secret job evaluations in violation of the Administration Procedures Act by conducting what is known as "post effectuation reviews of final decisions." SSA is using this secret process to listen to hearing tapes and analyze decisions in violation of the Privacy Act and the APA. The SSA then uses the information to seek removal of ALJs from service.

Before closing I have three recommendations. First, ODAH be physically separated from SSA and function independently. Secondly, have all ALJs present and in the future attend the National Judicial College to be taught "the three hats." The College would be required to seek input by SSA and other organizations necessary to undertake the task as mandated by Congress and watched over by an independent body. Thirdly, On Record Reviews by the Appeals Council of favorable decisions should be abolished and replaced by a direct appeal to the appropriate Federal District Court to prevent SSA from "getting a second bite of the apple."

Having heard thousands of disability cases, I have never had any case returned by the Appeals Council because the claimant was not disabled.