Testimony before the Committee on Oversight and Government Reform
Subcommittee on Energy Policy, Healthcare and Entitlements
June 27, 2013 Congressional Hearing

Statement of Judge J. E. Sullivan
U.S. Administrative Law Judge

Chairman Langford, Minority Member Speier, and Members of the Committee: thank you for holding this hearing and for the opportunity to testify before you. I appreciate your interest in federal administrative judicial work and with the problems occurring in the Social Security Administration's (SSA) disability adjudication program.

From April 2008 to June 2011 I served as a U.S. Administrative Law Judge in the SSA disability adjudication program. I currently sit as a U.S. Administrative Law Judge with the U.S. Department of Transportation, where I preside over formal litigation involving transportation regulatory hearings. My testimony today is in my individual capacity, and not as a representative of the U.S. Department of Transportation.

In my testimony today, I want to focus on the SSA management's mistaken emphasis on "production goals" within the adjudication offices.

"Production" is the code word for when a Judge signs a disability decision. Speedy and high volume "production" by a Judge in a short period of time (e.g., "making goal") is the prism lens through which all SSA management decisions regarding adjudication are made.

A Judge's "production" or "making goal is SSA management's singular and exclusive focus in its administration and oversight of SSA's disability appeals adjudication program. For SSA management, "making goal" is more important than the adjudicatory process, the quality of work, and any considerations in decision-making.

Instead of engaging in responsible stewardship and management of a meaningful federal adjudication program, SSA management has substituted a factory-type "production" process. This mistaken approach has allowed SSA management to present Congress and the American public with some impressive "production" statistics. But these statistics have been achieved by causing incalculable damage to a meaningful adjudication system.

But in reality, SSA management is failing in its adjudication stewardship. That failure is costing all of us American citizens millions of dollars in the issuance of poorly considered and

rushed decisions granting disability benefits. It also creates terrible individual consequences because of poorly considered and rushed decisions denying disability benefits.

You'll be hearing today and in the future from a wide variety of individuals who will be giving you statistics, formulas, mathematical calculations and citing to all manner of caselaw and studies.

My testimony is primarily based on two things: 1) my personal experiences working for 3 years as a U.S. Administrative Law Judge for SSA and interacting with local, regional, and national SSA management regarding the adjudication and issuance of disability decisions, and 2) my 24 years of state and federal service as a trial and hearings Judge.

A brief summary of my own legal background has been filed with this statement. In brief, when I joined SSA in April 2008, I had already served as a Judge for 19 years in Washington State. I had substantial judicial experience presiding over high-volume, complex litigation. I had served for 10 years part time as a Judge and Commissioner on the state trial court of general jurisdiction, and 9 years as an Industrial Insurance Appeals Judge (in which I held formal hearings equivalent to the trial court of general jurisdiction). I also had 5 years of experience serving as a criminal defense trial lawyer and as a deputy prosecuting attorney.

In April 2008 I began working as a U.S. Administrative Law Judge in the SSA disability adjudication program. From April 2008 through June 2011 I served in two different SSA disability offices (West Virginia and Oregon), under the management of two different SSA regional offices (Region 3 and Region 10). When I was located in West Virginia, I presided over disability cases in a four state area (West Virginia, Maryland, Pennsylvania, and Ohio) for almost 2 years (April 2008 - January 2010). In February 2010 I was assigned to work full-time as 1of 8 SSA Judges representing all the SSA Judges during the Association of Administrative Law Judges' (AALJ) collective bargaining negotiations with national SSA management.

In providing this testimony today, it is not my intent to personally disparage or publicly shame any SSA manager. There are many SSA managers and Judges who truly believe that their participation in "production" and "making goal" means that they are pursuing the will of Congress and "protecting" the claimants who file for disability benefits. I strongly disagree with this perception. Nevertheless, I don't need to name an individual SSA manager to explain what is happening. As a result, in my testimony I refer to individual managers by their title, and to Judges and other individuals by their initials.

SEVEN (7) PRIMARY POINTS IN TESTIMONY

These are seven (7) primary points I wish to make in my testimony today:

1. SSA Management measures the adjudication program solely by a Judge's speedy issuance of a high number of disability decisions (i.e., "production" or "making goal").

2. The SSA's high volume and speedy production goals result in SSA management perceiving the Judge's final decision as the only valuable and necessary part of a Judge's work.

3. In reality, meaningful adjudication (i.e., the totality of a Judge's work) takes time and involves complex work processes.

4. SSA management's high volume and speedy production goals are incompatible with a Judge's meaningful adjudication work.

5. The SSA management's high volume and speedy production goals agenda result in SSA management pressuring Judges to stop engaging in meaningful adjudication.

6. The SSA management's high volume and speedy production goals result in the "production" of a large number of disability decisions that have not been properly reviewed, analyzed, and decided.

7. SSA management's "production" mandate, and pressure for high volume and speedy disability decisions, results in high rates of error in Judges' decisions. In turn, this results in the loss of billions of dollars incorrectly expended from the Trust Fund, and in hardship for countless American citizens throughout the country.

In my statement today, I will be briefly reviewing some of the examples contained in my written statement that support these points.

1. **SSA Management measures the adjudication program solely by a Judge's speedy issuance of a high number of disability decisions (i.e., "production" or "making goal")**

a) SSA's "production" goal is linked solely to the Judge, and is a mathematical calculation.

(i) The "goal" per year: SSA management has set a minimum of 500-700 decisions issued per Judge per calendar year as the production "goal".

- The goal per month: The production "goal" assigned to each Judge is always a minimum of 50 decisions per month, but often will be higher, depending on the regional office.
- Goal compliance tracking: SSA management closely tracks (e.g., daily, weekly, monthly, yearly) each Judge's "production" and encourages and supports any Judge willing to "produce" even more than 700 decisions per year.

(ii) The goal calculation:

- In a 4 week month, a Judge must "produce" 2.45 case decisions per day x 20 work days = 49 decisions per month.
- In a 5 week month, a Judge must "produce" 2.45 case decisions per day x 25 workdays = 61.25 decisions per month.

b) The SSA's "production" goal focuses exclusively on the existence and speed of a Judge's final work product, and ignores the totality of a Judge's adjudication work.

(i) Goal Ignores Actual Judicial Work: SSA management's calculation of the "production goals" ignores all the factors inherent in a Judge's workload that precede the issuance of a final decision (e.g., reading and analyzing evidence in the file, researching and reading the law, creating work product notes, ordering development on a case, holding a hearing, communicating with staff and other Judges about the case, writing instructions for a decision-writer, editing the decision, etc).

(ii) Goal Ignores Judicial Experience and SSA Study: The production goal is also contrary to actual judicial experience regarding meaningful adjudication work, and contrary to an SSA study of judicial work.[1]

[1] *See, e.g.*, The 1994 study in SSA's *Plan for a New Disability Claim Process*. This study, performed by SSA management at a time when disability claim applications were not as complex, showed an average disability case could take 3 to 7 hours of judicial time. A Judge presiding over 24 hearings per month was within the average bell curve.

(iii) Goal Ignores Judge's Actual Available Work Hours: The SSA regional management "production" calculation does not give any consideration for a Judge's actual available time. Judges are not machines, charged and operating for 24 hours each day. Like everyone else, Judges have the right to go home at night, take a day of sick leave, or go on vacation with family. Judges also have professional obligations that are separate from managing a case from start to finish. The SSA management "production" number does not consider any of these factors. As a result, even if you believe that SSA's imposition of production goals for a Judge's work is acceptable, SSA management's current "production" required from Judges is presumptively unreasonable.

c) The SSA "production" goals demonstrate SSA management's failure to understand, support, and manage a meaningful adjudication program

2. The SSA's high volume and speedy "production" goals result in SSA management perceiving the Judge's final decision as the only valuable and necessary part of a Judge's work

For SSA management, speedy production of decisions is everything. Thus, SSA management works very hard to pressure Judges into accepting SSA's vision that the only judicial work that matters is "making goal." Here are some examples:

2008 SSA New Judge Mentor Guide: In the SSA's 2008 New Judge Mentor Guide, SSA management recommended to SSA mentors that every new Judge schedule a minimum of 20 cases the first month of work. Each month thereafter, the SSA mentor was to "encourage" a new Judge to add at least 5 cases every month to his hearing docket. Thus, within eight (8) months of hire, the new Judge would be scheduling and hearing "a minimum" of 50 cases a month. The Guide repeatedly referred to this plan as "achiev[ing] full productivity."

New Judge Training: During my initial nine month SSA "judicial training" period (April 2008-December 2008), the Hearing Office Chief Administrative Law Judge ("HOCALJ") was my designated "judicial mentor." He "mentored" me by referring me to an attorney in the office for any disability adjudication questions I might have. He then monitored how many cases I was scheduling per month for hearing and "producing" as final decisions. He repeatedly urged me to keep adding cases to my hearing docket, so that I could "get up to speed" and "start making goal." Every new Judge I met while at SSA experienced the same monitoring and pressure for case production from their local SSA management.

Making Goal is Everything: Half-way through my nine-month SSA "judicial training" period, I asked the HOCALJ if he would give me a few words of feedback and encouragement about my SSA judicial work. In response, the HOCALJ told me that he had nothing positive to say, since I wasn't "making goal." According to the HOCALJ, the only thing that mattered was whether or not I was going to produce "the numbers" the office needed to "make goal." He told me that my adjudication work was meaningless if I wasn't going to help the office "make the numbers." The HOCALJ and other SSA managers maintained this perception and approach to my judicial work (as well as every other Judge's work) throughout the time I worked in the West Virginia disability adjudication office.

RCALJ Pressures For Production: In October 2009, when I met the Regional Chief Administrative Law Judge ("RCALJ") for the first time, he repeated that message. During a private meeting with the RCALJ in my office, he told me he was "very concerned" about my low "production." He wanted me to increase my hearing caseload. It was very important. He wanted me to "produce" more case decisions per month.

All Other Adjudication Work Irrelevant: Neither the HOCALJ nor the RCALJ expressed any interest in the time I spent working, the quality of my adjudication work, or the analysis that I provided to support my decision-making. It was irrelevant that I diligently spent hours each day reading and analyzing complex medical records. It was irrelevant that I was fully developing and preparing cases, and holding meaningful hearings. It was irrelevant that the denial decisions I issued were repeatedly affirmed by the SSA Appeals Council and the U.S. District Courts. The only thing that mattered to SSA management was my monthly "production" numbers.

No Work Value If You're Not Making Goal: In approximately July 2010 I accepted a transfer from the WV hearing office to an Oregon hearing office. After accepting the transfer, I telephoned the HOCALJ at the Oregon hearing office to introduce myself. I explained that I was currently off caseload, because I was on the national collective bargaining assignment. The HOCALJ expressed dismay about my joining the office at a time when I wasn't producing decisions. In his opinion, I had no value if I wasn't helping the office "make goal."

That same day, I also telephoned the RCALJ for SSA's northwestern region to introduce myself. He too, expressed dismay about my transfer. He told me that it was wasted space if I occupied an Oregon Judge's office when I wasn't producing cases.

"Making Goal" is the Job: National representatives of SSA management repeatedly expressed these same beliefs while we Judges were negotiating with them at the collective bargaining table. "Making goal" was very important. It was easy if you "worked hard." Anyone who "cared" about the backlog would have "no trouble" issuing at least 500 decisions per year, if not more, for the agency.

3. In reality, meaningful adjudication (i.e., the totality of a Judge's work) takes time and involves complex work processes

The work of a Judge providing meaningful adjudication is complex, difficult, and time-consuming. On occasion a Judge may be assigned an "easy" case (e.g. a dismissal), but that is the exception. This a brief description of what meaningful adjudication work encompasses, and why it takes time.

A claimant seeking approval of disability payments (i.e., payment from the Trust Fund) must prove that his inability to work (i.e., inability to sustain continuous gainful employment for 1 year or more) is related to one or more physical or mental medical conditions.

Disability cases are Not Easy: By the time most disability cases reach the SSA adjudication division, they have been through two levels of SSA medical review and been denied twice. Most of these cases are not "easy."

Multiple and Complex Medical Conditions: Most claimants filing disability applications will allege multiple medical conditions in support of their request for disability payments. (Exhibit A, page 2). These medical conditions are often complex. As a result, most claimants will also file multiple medical records to support their allegation of an alleged disabling condition. (Exhibit B).

Multiple Medical Experts = Multiple and Voluminous Medical Records: This means that the test records and notes of multiple medical experts (e.g., physicians, psychiatrists, therapists, etc.) need to be requested and added to the file (either by the Judge or the claimant). It is not unusual for a file to contain 30-50 exhibits, with each exhibit containing multiple medical records. (Exhibit B). Just one medical exhibit may contain up to 4000 pages of medical records.

Reading the Evidence and Learning and Applying Facts and Law: Part of a Judge's adjudicatory work is reading these medical records, and learning about all kinds of different medical conditions. (Exhibit C). A Judge must learn how medical conditions are expressed in symptomology and how those conditions might be treated. The Judge must know the law about disability. (Exhibit A, page I-2). The Judge must then apply that knowledge to analyzing the facts in each case.

Testing and/or Resolution of Conflicting Evidence: When an American citizen seeks disbursement from the Trust Fund on the grounds of disability, there must be a proper review of the evidence, as well as a testing of evidence to ensure that if payment from the Trust Fund is authorized, such payment is necessary. The Judge must resolve any conflicts and/or inconsistencies in the evidentiary record, as well as determine if the citizen is credible in alleging medical disability. (Exhibit D). Medical disability, and the time span of such disability, must be proved by the evidence.

Difficult Issues are Complex and Time Consuming: Many disability cases involve a combination of medical conditions (physical or mental or both), drug and alcohol abuse, and non-compliance with treatment. (Exhibits B and C). In meaningful adjudication on the question of disability, these applications are particularly time-consuming and difficult to analyze.

Every Disability Applicant Needs Help: Every single American citizen who files a disability application needs help. A Judge who is engaged in meaningful adjudication must seek the truth behind the disability application and determine whether authorizing disability payments is the correct answer to that cry for help. Oftentimes, no matter how heart wrenching the problems, the Judge must deny the claimant's application because the citizen's need for help is for reasons other than medical disability (Exhibit D).

List of Basic Meaningful Adjudication Tasks (not exclusive): A Judge who is performing meaningful adjudication of disability appeals will engage in these basic tasks:

a) Reading Evidence Takes Time
b) Identify poverty cluster issues
c) Analyze any secondary gain motivations
d) Learn about the medical conditions and symptoms
e) Take time to read and apply the law and regulations
f) Hold meaningful hearings (Exhibit E)
    i) Be prepared
    ii) Rule on motions
    iii) Allow a claimant to present his evidence
    iv) Allow a claimant representative to ask questions
    v) Ask the claimant about evidentiary inconsistencies
    vi) Call and examine any needed experts
g) Grant continuances when needed
h) Read and edit draft decisions before signing
i) Issue a disability decision on the case

Disability applications aren't just about medical conditions: As part of my litigation experience, I learned to work with the full panoply of issues that are related to poverty (e.g., scarce resources, lack of education, homelessness, etc.), as well as mental illness, mental limitations, and/or drug/alcohol addiction (much of which also occurs within the poverty cluster). If one is educated to that complex cluster of poverty problems, then one can identify them, and also potentially separate such issues from the issue of work disability.

Many Claimants Have "Poverty Cluster" Problems: In my caseload at SSA, the majority of claimants had problems with poverty, mental illness, and/or addiction. But that didn't mean this same claimant was functionally disabled from working. Indeed, in my years of litigation experience, virtually every person for whom I advocated, every person I prosecuted, and every

person over whom I presided in litigation had one or more of these poverty problems to deal with in their lives. But that didn't mean they couldn't work. (Exhibit D).

SSA Management Ignores Poverty Cluster and Need for Education If an individual hired by SSA to be a Judge (or attorney reviewer) doesn't have the knowledge, education, and experience to identify and understand these clusters of human problems, such a decision-maker can easily fall into the trap of perceiving an individual who suffers from any of these problems as "disabled." And of course, a decision to pay someone is not only easy, but it is a "feel-good" decision impacting someone "in need" (e.g., "I've helped someone have a better life today"). Far too many claimants are getting paid, in part because there is a lack of SSA institutional support for understanding and identifying these "cluster" issues as potentially separate from work function and capacity.

Unfortunately, SSA management actively discourages SSA Judges from discussing poverty cluster problems with claimants. There is absolutely no SSA training on it.

Secondary Gain Motivations are not Relevant: According to SSA management, the only relevant material any Judge should be considering was medical information. It was "inappropriate" to ask a claimant about secondary gain motivations (e.g., outstanding debts, a missing spouse, a dependent parent, lack of child care options, lack of a driver's license, etc.). Any factual inquiry beyond the claimant's medical complaints and allegations was "irrelevant."

This SSA management blindness to the realities of American poverty, and failure to encourage Judges to learn about it and address it, helps to explain the high pay rate (i.e., 60% of all appeals) in the SSA adjudication system.

4. SSA management's high volume and speedy production goals are incompatible with a Judge's meaningful adjudication work.

According to SSA management, speedy and high volume production is everything. Thus, SSA management persistently seeks to reduce or eliminate any adjudication work process that involves time. SSA management trains Judges to stop meaningful adjudication. In pursuit of "making goal," SSA management pressures Judges to engage in a superficial "guessing" process to decide disability cases. Here are the steps SSA management recommends (not exclusive):

a) Don't develop the case before hearing
b) Stop reading the evidence – Most of it is irrelevant
c) Decide the issues before reading the evidence
d) Poverty cluster issues are irrelevant
e) Secondary gain motivations are irrelevant
f) Use an Egg Timer - Limit evidence review to 20-60 minutes
g) Use 50 Thumbnails to skim
h) Guess about the evidence
i) Find a reason to pay a case
j) Stop holding meaningful hearings
    i) Don't test the evidence
k) Don't grant continuances - Speedy production is more important
l) Don't bother reading and editing decisions
m) Issue a disability decision on the case

The best example of SSA management's abandonment of meaningful adjudication is a special "training" session that the RCALJ set up for me and my judicial colleagues in January 2010, to teach us how "efficiently" review files so we could "increase" our monthly production. This training covered a majority of the SSA management work practices listed above. This is a summary of the SSA management "training:"

Meeting with RCALJ: In October, 2009 the RCALJ came to our office. As part of that visit, the RCALJ met privately with me, and said he wanted me to "produce" more case decisions per month. I told him I was working more than full-time, and I asked how I could add to what I was doing.

The RCALJ offered me computer training. In response, I told him I was competent on the computer. I also used Dragon Speak. My caseload production wasn't an issue that could be fixed with a computer program. I was working more than full-time hours, and doing the very best I could. The issue, in my opinion, was that I was reading the evidence, which took time. I knew that some Judges had opted not to read evidence, but I was not willing to do that.

I asked the RCALJ what he thought I could do differently to produce more case decisions per month, and yet still ethically do my job, which included reviewing the evidence?

The RCALJ said he really did not know. He recalled that when he was a hearings Judge, he had chosen not read all the Veteran's Administration (VA) records. Instead, he just would read the VA admission/discharge hospital summaries. [I did not respond to his choice not to read evidence].

I explained to the RCALJ that this issue involved more than just VA records. We had lots of medical evidence filed in our cases. I was already taking shortcuts. Even then, there were still hundreds of pages often filed in every case. It was not unusual to have 25 - 50 new medical exhibits filed in just one case after the last state agency denial. The medical issues and medical evidence involved difficult, complex material. It simply took time to read and analyze.

The RCALJ replied he did not personally have any other suggestions. He did know, however, several Judges who seemed to be able to read the evidence more quickly, and produce large decision numbers. The RCALJ then offered to put me "in touch" with 1 or 2 Judges that he knew who produced large numbers, who might be able to help me. I accepted the offer.

RCALJ Arranges Special "Production" Training

The next month, in November 2009, I received an e-mail from Judge H----, who served as a "Special Assistant" to the RCALJ. Judge H--- did not conduct hearings full-time, in part because she was a designated SSA management trainer, traveling to different offices each month to train Judges on how to use SSA's new eBP (electronic business process) computer program. Judge H--- offered to meet by video with me and other Judges in my office to show us how to read evidence more quickly.[2]

In January 2010, Judge H--- appeared by live video to explain her method of file review. I attended with two other Judges from my office. Judge H---- did not ask us any questions about

[2] In my first email, I specifically noted:

"We are primarily interested to know if you have a technique or style in which to read new medical material. We typically have 100s of pages of new Exhibits filed after the DDS reconsideration. We know some Judges who have just stopped reading material, or who choose to only read 1 page out of every 50, but that is not our goal. So we would be most interested in your techniques. Thank you in advance."

Judge H--- responded: "I have a hearing scheduled for Thurs. that has 4134 pages in the F section alone. There are strategies and approaches. I will be glad to share with you."

our backgrounds, our work, or what we were interested in discussing. Judge H--- had a specific presentation about file review, and provided it in a lecture format for approximately 1.5 hours. We occasionally interrupted her during the 1.5 hours to ask a question.

a) SSA Management Training: Don't Develop the Case Before Hearing

At the beginning of the January 2010 video presentation, Judge H--- stated that when she read a case file, she only worked on and reviewed "un-pulled" cases. That meant none of the evidentiary documents had been sorted or exhibited or worked up. Judge H--- also did not look at the file until 24 hours before the hearing.

(Comment: Judge H--- limited her work load, because she did not review the file in time to develop any medical evidence for the record before the hearing. By working with unmarked evidence, she "helped" SSA management by agreeing to hear the case without any pre-hearing file assembly. The witnesses at the hearing would not be able to refer to exhibits if there was a challenge to the evidence at the hearing or on appeal).

b) Stop Reading The Evidence – Most Of It Is Irrelevant

Judge H---- began her January 2010 presentation by stating that she didn't know any Judge who spent more than one (1) hour reading evidentiary material and reviewing exhibits. She explained that "Judges don't read all the exhibits. They just pick and choose." Judge H---- acknowledged that "some" Judges read every document in the evidentiary file, but asked us, "Who has the time?" She said: "Don't be afraid" to stop reading the evidence.

c) Decide the Issues before Reading Evidence

Judge H--- repeatedly urged us to stop reading all the evidence in the file, since much of it was "irrelevant." Judge H--- emphasized for an "efficient" file review, we simply needed to know what we were looking at. She advised us that it was essential for us first to decide what the issues were. Once we decided what the issues were, we only needed to look for information on those issues. If we used this method, we could pick and choose what to read, and even ignore PCP (primary care physician) notes.

Judge H--- gave us multiple examples of evidence that she did not read or consider. For example, Judge H--- didn't read anything in the E-section of the file (e.g., claimant lay reports, etc). She did, however, quickly glance at the E-section, to make sure that she knew about any third-party report, since failing to mention it in a denial decision could result in a reversal. Judge H--- did not read physical therapy notes or chiropractic notes. She did skim them, however, to make sure there weren't any MS statements in them. She did not read most of the hospital records. She read only the hospital admission/discharge reports and the laboratory reports. She did not read most of the VA records. We were "reading way too much" if we were reading all of the VA records.

d) Use An Egg Timer - Limit Evidence Review To 20-60 Minutes:

Judge H--- repeatedly told us: "Most Judges use no more than one hour to review a file." Judge H--- gave herself very strict time limits to review any case. She only spent 15-20 minutes reviewing "regular" cases. At the very most, she would only spend one hour reviewing any case, including "a bear" of a case (e.g. her case involving 4000 pages in one exhibit). Like "most Judges," she never spent more than one hour preparing any case.

- Use Egg Timer and Just Move On

  We asked Judge H--- how could she limit her review to one hour, especially when she had just had a case that had 4000 pages in just one exhibit? Judge H--- explained that she would often use an egg timer at her desk to ensure that she kept to her time limits. When the timer bell rang, she would stop reading and go on to the next case. She encouraged us to set similar time limits, and to use an egg timer at our desks. This would help "force" us to move on (i.e., stop all case review when the egg timer bell rang).

e) Use 50 Thumbnails to Skim

Judge H--- explained that for her file review, she skimmed the exhibits electronically to look only for certain things. She did that by using the computer's "thumbnail" feature in the E-file. This allowed her to look at up to 50 Exhibit pages on one page. The thumbnails were obviously too tiny to actually read any of the material on the page, but she had learned to know what certain medical records looked like.

(Comment: a "thumbnail" is a miniature reproduction of an 8.5" x 11" document page on the computer screen. It is reduced to the size of a 1" x 1" postage stamp.)

f) Guess about the Evidence

Based on the 50 page thumbnail feature, Judge H--- stated that she could accurately guess what the Exhibit was about, and then choose which pages she would then enlarge and skim. She also used a double-page feature on the computer, so that she could quickly compare a lab result or test result with a medical treatment note, to see if it was consistent.

g) Stop Holding Meaningful Hearings:

Given her case preparation, we asked Judge H--- to describe her hearings. She told us that she scheduled hearings every 30 minutes. Despite that schedule, sometimes her hearings actually took 45 minutes (except for when she paid a case, at which point the hearing lasted no more than 10 minutes). She did not allow the attorney or representative to ask questions until after she was finished with her inquiry. She had a list of boilerplate questions and she asked those same boilerplate questions to every claimant. If needed, she would ask a question about inconsistencies in the file.

This type of 30 minute hearing is typical for Judges who set 50 hearings or more per month on their calendar. In 2008, when I sat and watched the HOCALJ do several hearings, this was the process he used to conduct hearings.

This type of "speedy" hearing process eliminates all meaningful discussion and testing of the evidence, and does not provide a genuine forum for the claimant and his witnesses to present testimony. In contrast, I have provided a sample of a very short hearing (1 hour 16 minutes) that involve the testimony of the claimant, and one expert witness. (Exhibit A).

SSA management's attacks on meaningful adjudication are also demonstrated by the attempts to pressure Judges to hold hearings without the medical evidence, and to stop granting continuances in cases.

Continuances Are A Part Meaningful Adjudication: Judges and lawyers with litigation experience know that a hearing may need to be continued (i.e., postponed) for many different reasons. People are not machines, and many events or problems may occur during the dispute process that support the need for a brief postponement of a scheduled hearing. Continuances are part of meaningful adjudication, which is a process that allows flexibility in each individual case.

A Continuance Takes Time: A continuance, by its nature, requires time. As a result, such a common legal process during litigation is antithetical to SSA management's speedy "production" mandate.

The examples here demonstrate SSA management's attempts to control and limit a Judge's responsibilities to provide meaningful adjudication. The first 3 examples show that SSA management is willing to engage in inappropriate advocacy on behalf of claimants, as well as to encourage the Judges to abandon their duty to be prepared for a case (i.e., obtain and read medical evidence before taking testimony at the hearing). SSA management is also encouraging unethical behavior, because the RCALJ is pressuring the Judges to pre-decide continuances in favor of one litigant (e.g. the claimant) over another (e.g. the American public).

The fourth and last example shows that the real reason behind the SSA management's lobbying against continuances is because continuances take time, and thereby interfere with their speedy production agenda.

1. The Claimant Shouldn't Have to Wait:

When the RCALJ visited our office in October 2009, he specifically told us Judges that continuing cases was "not preferred" by SSA management, no matter what the reason. The RCALJ explained it was not "good practice" for any Judge to continue a case, even if an attorney or litigant filed lots of new medical evidence at the last minute or had failed to file evidence. It did not matter what the medical evidence was, or the amount of evidence that was filed or that was promised to be filed in the future (after the hearing). It also did not matter if the attorney had

been newly retained, and asserted he had not had time to prepare. The claimant had a right to a hearing, and shouldn't have to wait. Continuances were unfair to the claimant.

2. Hold the Hearing without Evidence: The RCALJ explained that the "preferred practice" was to hold the hearing without the evidence, read the evidence if it was submitted later, and then decide if a supplemental hearing needed to be scheduled.

3. Don't Believe the Claimant's Attorney: If an attorney had been retained even 2 weeks prior to the hearing, then Judges should presume, regardless of what the attorney said, that the attorney had had adequate time to file all needed documents, and could appear and adequately represent the claimant at the hearing. If the attorney asserted, prior to the hearing, that he had a conflict on his/her schedule, Judges should not presumptively believe the attorney.

The RCALJ did not explain how any Judge could competently question the claimant or any other witnesses at the hearing, while remaining completely ignorant about the missing or late-filed medical evidence. The RCALJ also did not explain why an attorney, who is an officer of the court, should be presumptively disbelieved when asserting a need for more time, or a calendar change. (Comment: It is noteworthy that the RCALJ advocated for the claimant only to the extent that a continuance should not be granted. Obviously, if SSA managers were truly concerned about the claimant, they would be advocating for the claimant's attorney to have time to be prepared, and be able to attend the hearing.

4. It's Really about SSA Management's Scheduled-To-Heard Production Ratio:

Two weeks later, during the November 9, 2009 meeting with the HOCALJ and the HOD, the HOCALJ stated that it was simply "not acceptable" cases for Judges to continue cases. He explained that the office was given a "schedule-to-heard" ratio set by regional management. Scheduled cases had to be heard in order to meet monthly and yearly regional goals of production. The national level for case continuances was approximately 20%. Any Judge who continued more than 20% of his/her cases was continuing cases above the national average. That was unacceptable.

The HOCALJ told us that cases should not be continued unless it involved a pro se claimant needing to get an attorney. Any Judge who granted continuances beyond the 20% national average, or for reasons other than for a pro se claimant, would be watched very carefully. Postponing cases resulted in fewer case decisions being issued, which meant that the office might not meet the regional production goals. In addition, the HOCALJ stated that any Judge who did grant a continuance might be required to add additional hearings to his/her dockets so that the office could retain the ability to meet its monthly production goals.

5. The SSA management's high volume and speedy production goals agenda result in management pressuring Judges to stop engaging in meaningful adjudication

SSA management utilizes all kinds of different pressures to "push" Judges to issue decisions. "Making goal" is the beginning, middle, and end of all discussions with management about adjudication work. Here are just a few examples, which I personally experienced.

a) A Judge who can't "make goal" is a problem

For me, the pressure to produce volume decisions began before I even started work. In February 2008 I accepted a position with SSA, with a start date of Sunday, April 13, 2008 in a West Virginia (WV) office. Before driving across the country, I telephoned the Hearing Office Chief Administrative Law Judge (HOCALJ) of the WV office to introduce myself. The HOCALJ knew that I had been hired. He expressed dismay and disappointment about my hiring. He was not interested in hearing about my legal background. He explained that I was an "outside" hire with no specific SSA experience. My hire created a problem for the office. He explained that each SSA disability office had monthly "production goals" to meet. There was a backlog of disability cases, and the SSA Commissioner wanted each Judge to produce a minimum of 500 case decisions a year. Because I did not have an SSA background, I would not able to immediately help the office "meet the numbers." The HOCALJ would have to "allow" me a nine-month learning curve before expecting me to reach "full production." The HOCALJ hoped I would be able to "get up to speed" as soon as possible.

b) The "goals" are actually a quota

On Monday, April 14, 2008 I started my first day of work. The HOCALJ met with me to discuss my judicial work. He focused exclusively on how I was supposed to help the office meet its mandatory monthly production quota (Note: The HOCALJ repeatedly used the word "quota" during this meeting). This production quota had to be met by the last Friday of each month.

The HOCALJ provided me with the following judicial quota formula: In a four-week month I was required to produce 2.45 case decisions per day x 20 work days. This meant I needed to produce 49 case decisions per month. In a five-week month the formula changed to 2.45 case decisions per 25 workdays. This equaled 61.25 case decisions I needed to produce each month. If any month had a federal holiday, I would be allowed to subtract that one day from the quota formula.

The HOCALJ did not explain how I was supposed to conduct meaningful adjudication and still meet these production numbers. We didn't discuss adjudication at all.

c) Make the goal so you can get back home:

On my first day, the HOCALJ also warned me that if I didn't "make the numbers" I would likely never get a transfer back to my home state. You had to "make goal" to get back

home. He advised me to try and schedule 72 cases each month, so that I could "always make goal."

d) You are "lazy", "uncaring," and not a "team player" if you don't "make goal"

On my first day in the office, the HOCALJ explained to me how to "make goal." He then warned me to avoid two of the Judges in the office. The HOCALJ described these two Judges as "lazy" Judges, who "failed to help" the office reach its production requirements. They were "low producers" who were "not team players." They "did not care" about the office numbers.

The HOCALJ was correct that these two Judges did not "make goal." But in all other aspects, he was profoundly mistaken. Both of these Judges were dedicated, hard-working, public servants. They were ethical professionals who cared deeply about their work, and who spent hours and hours of time poring over medical records and holding hearings, trying to analyze and correctly decide cases.

Nevertheless, SSA management has reduced the value of all judicial adjudication work to a monthly production number. A Judge must "produce" the monthly number. Thus, according to SSA management, only the SSA Judges who "make goal" are "hard-working" and "care" about the American people. Any SSA Judge who fails to "make goal" is automatically defined by SSA management in a variety of negative ways (e.g., "inefficient," "nonproductive," "wasting time," "lazy," "malcontent," "uncaring," "disruptive," etc).

In October 2009, the Regional Chief Administrative Law Judge (RCALJ) made a rare visit to our office to re-emphasize that "production" was absolutely imperative. During an all staff meeting, the RCALJ gave a PowerPoint presentation in which he asserted that 80% of SSA Judges throughout the country were "producing" 500 or more decisions per year. The RCALJ explained to the staff, in front of us Judges, that any "hard-working" SSA Judge could produce at least 500 or more decisions per year. He then excused the clerical staff from the meeting, and met solely with the Judges to expand on that message.

The following month, in November 2009, I was trying to persuade the HOCALJ to meet with Judge J--- and me so we could discuss certain concerns the Judges had about management directives. The HOCALJ repeatedly refused. He said he knew the difference between his caseload and mine. He knew that he, at least, worked hard. He was concerned about the backlog. Unlike me, he didn't have time for meetings. When I showed the HOCALJ that his calendar for the next week was exactly the same as mine, he expressed shock. He then agreed to meet with Judge J--- and me for 20 minutes.

The following week, Judge J--- and I met with the HOCALJ about multiple judicial concerns on behalf of all the Judges in my office. During this meeting, the HOCALJ personally attacked me for failing to "make goal." He accused me of not working "full-time", and not meeting my case "obligations." I reminded the HOCALJ that I and all the other Judges in the

office all worked full-time. In fact, all of us were routinely working at least 55-60+ hours per week, and more. I pointed out that Judge A---, who was supposed to be on vacation all month, had actually been in the office next door, working "off the clock" for most of the week (including while we were meeting), in order to prepare cases before he "officially" returned from vacation. (Comment: In essence, Judge A--- had failed to take his vacation because of the relentless pressure by management on Judges in the office). The HOCALJ replied that Judge A--- obviously "cared" about his job, and was willing to put in the hours that "were needed."

This disparagement and shaming of Judges who do not "make goal" or who challenge the SSA management "goal" agenda is pervasive on all levels (i.e., locally, regionally, and nationally). As a member of the AALJ's national bargaining team, I repeatedly heard SSA management representatives talk about how any "hard-working" Judge could easily "make" the 500 per year production goal. Any Judge who was not "producing" was negatively labeled. Although this type of shaming tactic should be beneath any adult in the workplace, it is pervasively utilized by SSA management to pressure Judges into production compliance.

e) It's easy to issue decisions with a "pay" decision form

When I began work in April 2008, the HOCALJ gave me his SSA Mentor Guide ("Guide") to use. This Guide instructed SSA mentors to encourage new Judges to write fully favorable decisions ("pay" decisions), in order to expose them to the use of bench decisions as well as the help them learn how to use electronic "FIT" fully favorable ("pay") decision tool. It was noteworthy that SSA provided no electronic boilerplate forms for issuing "denial" decisions. SSA management repeatedly discussed this "FIT" pay form with Judges at every judicial training session I attended.

f) It's Just a Game – Play Along

One of the ways that the HOCALJ in my office tried to "encourage" us Judges to produce more cases decisions per month was to characterize our judicial work as a competitive sport. We received constant emails throughout the week (sometimes up to 3 emails in one day), in which the HOCALJ gave us an updated report on our "production" numbers. In these e-mails, the HOCALJ would characterize the Judges as a sports "team" playing against the attorney-reviewer sports "team" to "make "goal" for the office. At the end of each month the HOCALJ would send an email reporting on whether the office had made or exceeded "goal," and congratulating the sports "team" that had won the completion (i.e., had produced the most decisions to "make goal"). Not surprisingly, many of the clerical staff began to refer to the Judges by last name only, as if we all football players (e.g., "How many has Sullivan signed this week?).

g) We Must Help the RCALJ to Win

On November 9, 2009 the HOCALJ and the Hearing Office Director ("HOD") convened a meeting with 3 of the 6 judges in my office. During this meeting the HOCALJ mandated that all Judges in the office were to start traveling more, as well as increase the number of hearings set and heard per day at the remote travel site. We questioned the need for this mandate,

especially without any objective justification, or without any input from us about our cases or our personal schedules.

The HOCALJ and the HOD admitted that our office was well ahead of the national average for hearing and deciding older cases. However, they explained that our RCALJ had just issued a new "regional" production goal for issuing more case decisions (i.e. "production"). The RCALJ's new regional goal exceeded the nationally mandated target goal, because our RCALJ wanted to make sure that his region was the "Number 1" region in the country in "making goal." The HOCALJ and HOD needed to make sure that our office met the RCALJ's new "regional goal." As a result, the HOCALJ was mandating us Judges to travel more, set more hearings during travel, and produce more decisions per month on all travel cases.

h) Help "make goal" by paying some cases

In November 2009 the HOCALJ reminded me (as he often reminded all of us Judges) that when SSA manager R--- was in the office, R--- always went through the master docket before the end of the month, and then paid enough cases OTR (on the record) so that the office always made its monthly goal. The HOCALJ stated that if I was so concerned about the backlog, and the cases in the office, he would be happy to give me the master docket, and let me start looking through so I could pay cases OTR the way SSA manager R--- used to. That way I could help the office continue to make the monthly goal. I advised the HOCALJ that even if he gave me the master docket for review, it was unlikely that I would authorize cases to be paid OTR the way R--- had done.

i) The RCALJ's regional goals are mandatory

At the November 9, 2009 meeting with the HOCALJ and the HOD, the HOCALJ stated that meeting the RCALJ's regional "target goals" was mandatory. As a result, all Judges (except himself) would be required to travel for one full week every month. All travel dockets had to be set during the first 3 weeks of the month, so that every Judge would be physically in the office during last week of the month, in order to sign and issue as many decisions as possible so that the office could "make goal."

j) Scheduling travel is easy if you "make goal"

At the same November 9, 2009 meeting, the HOCALJ agreed that scheduling travel dockets was difficult enough (especially in December and other holiday months) without such a 3 week limitation. He emphasized, however, that "making goal" was paramount. If a Judge was helping to meet Regional goals, both as an individual and for the office, then the HOCALJ would allow that Judge flexibility in scheduling travel. But, any Judge who failed to "make goal" would be denied the ability to set any travel docket during the last week of any month. Judges who were not complying with the goals would not be allowed flexibility in setting travel dates.

h) Stop reading your decisions to help make goal: The HOCALJ also told us that he would allow a Judge to travel during the last week of the "goal" month only that Judge gave up editing and signing his pending decisions for that month. The Judge would be required to authorize the HOCALJ to "edit" and sign the Judge's pending decisions while the Judge traveled, so that the office production levels were met. The HOCALJ also warned us that he would be closely watching the production of each Judge in the office.

k) It's not a quota – but "making goal" is mandatory

In late November 2009 Judge J--- and I again met with the HOCALJ about multiple concerns the office Judges were raising. One of those concerns was that the HOCALJ was mandating that the Judges travel to a remote hearing site with no E-file (electronic file) access, and hear a minimum of 24 hearings in 5 days or less.

During this meeting, the HOCALJ denied he was mandating judicial caseload quotas. He admitted, however, that he had certain monthly "target goals" set by the RCALJ that he had to meet. As a result of these management "goals," the HOCALJ insisted he could force Judges in the office to hear a minimum of 5 hearings per day, and travel for at least one week at a time, regardless of each Judge's personal commitments, the complexities of the cases on each Judge's docket, or the physical inadequacies of the travel site location.

Judge J--- and I asked the HOCALJ to explain to us what the difference was between a "target goal" on a hearing docket and a case "quota." The HOCALJ explained that the difference was that he wasn't calling it a "quota." He would never call it a "quota." He was simply stating that he had an obligation to meet regional "target goals" of production. As a result, he had the authority to require that Judges meet "target goals" on travel dockets. He refused to explain how this was any different from setting a caseload quota, other than to say that he would never call his requirements a "quota." If we Judges did not set our schedules as he mandated, so that we met the office "target goals," then he would refuse the travel docket on the grounds that it was not cost-effective. The HOCALJ said that he would not be authorizing Agency expenditures so that we Judges could be "on vacation" when we traveled. The HOCALJ refused to describe what he meant. He simply repeated that he had regional "target goals" that our office had to meet. Any Judge's travel docket that did not set a minimum of 24 hearings per week at the travel site, in order to meet "the goals," was not "cost-effective" and would not be approved.

6. The SSA management's high volume and speedy production goals result in the "production" of a large number of disability decisions that have not been properly reviewed, analyzed, and decided

It is impossible to measure the number of SSA disability applications that have been issued based on poorly adjudicated and rushed decisional output. But the inescapable reality is that a large number of disability decisions are being produced in the absence of any meaningful judicial adjudication, based on SSA management's mandate for production. For SSA management, "making goal" has replaced all meaningful adjudicatory process.

As part of my testimony, I am including two examples of real SSA disability cases that were reviewed by two different SSA Judges. (Exhibit F).

In both of the two examples, the first Judge reviewed the case under a meaningful adjudication standard. The second Judge reviewed the case under SSA management's "making goal" standard.

Both cases were removed from the first Judge after she had spent time reviewing the records, ordering development, and holding a hearing. The cases were removed from the first Judge on the grounds the cases were "aged" (e.g., an SSA management time calculation that includes the amount of time SSA had the case before assigning it to a Judge) and needed to be "processed."

The second Judge issued a "pay" decision on each case a few days after the cases were reassigned to him. Each "pay" decision helped the office "make goal" for the month.

In addition, I am providing an example of SSA's management's secret, unilateral re-assignment of the same case to three Judges in my office. It demonstrates SSA management's lack of understanding and support for meaningful adjudication. (Exhibit G).

7. **SSA management's "production" mandate, and pressure for high volume and speedy disability decisions, results in high rates of error in Judges' decisions. In turn, this results in the loss of billions of dollars incorrectly expended from the Trust Fund, and in hardship for countless American citizens throughout the country**

For SSA management, "making goal" trumps the adjudicatory process, the quality of work, and the correctness in decision-making.

Instead of engaging in responsible stewardship and management of a meaningful federal adjudication program, SSA management has substituted a factory-type "production" factory production agenda. This mistaken approach has allowed SSA management to present Congress and the American public with some short-term "production" statistics. But these statistics have been achieved by causing incalculable damage to a meaningful adjudication system.

In reality, SSA management is failing in its adjudication stewardship. That failure is costing all of us American citizens millions of dollars in the issuance of poorly considered and rushed decisions granting disability benefits. It also creates terrible individual consequences because of poorly considered and rushed decisions denying disability benefits.

Judge J. E. Sullivan
U.S. Administrative Law Judge

Judge J. E. Sullivan has served as a U.S. Administrative Law Judge for the U.S. Department of Transportation in Washington, D.C. since July 2011, presiding over complex transportation regulatory litigation throughout the United States. She is an active member of the National Association of Women Judges (NAWJ), the ABA Judicial Division (NCALJ), the Federal Administrative Law Judges Conference (FALJC) and the Judicial Division of the Federal Bar Association (FBA).

Highlights of 24 Years of Judicial Service: Judge Sullivan has served as a Judge for 24 years in multiple state courts and administrative tribunals. She has also served as an arbitrator, mediator, and settlement conference facilitator.

From June 1989 through June 1999 (10 years), Judge Sullivan served regularly as a pro tem Superior Court Judge and pro tem Superior Court Commissioner on civil and criminal cases for Snohomish County Superior Court in Washington State (the court of general jurisdiction). She also served as a Snohomish County Superior Court arbitrator (1991-1999), a pro tem District Court Judge for the four Snohomish County District Courts (the courts of limited jurisdiction) (1991-1998), and as a private mediator and arbitrator (1991-1999).

From July 1999 through March 2008 (9 years), Judge Sullivan served as an Industrial Insurance Appeals Judge with the Washington State Board of Industrial Insurance Appeals (BIIA), where she presided over complex adversarial hearings on business tax assessments and insurance classifications, worker's compensation and fraud, medical provider license revocations, and crime victim compensation appeals.

From April 2008 through June 2011 (3 years), Judge Sullivan served as a U.S. Administrative Law Judge for the U.S. Social Security Administration. From April 2008 through January 2010 she presided over disability cases in a four state area (West Virginia, Maryland, Pennsylvania, and Ohio). Then from February 2010 to June 2011, Judge Sullivan served as one of eight SSA Judges on the Association of Administrative Law Judges (AALJ) national collective bargaining team.

Since July 2011, Judge Sullivan has served as a U.S. Administrative Law Judge for the U.S. Department of Transportation, presiding over complex transportation regulatory litigation.

Other Highlights: Prior to 1989, Judge Sullivan litigated both criminal and civil cases, serving both as a deputy prosecuting attorney and as a criminal defense trial attorney. In 1992 she served as a member of the Washington State Supreme Court's Gender and Justice Commission. Judge Sullivan has been a guest speaker for the NAWJ, the NAALJ, the BIIA, the University of Washington's School of Law, and for the Washington State Bar Association. She has taught law classes, and has been a guest speaker at a variety of CLE seminars, as well as for various public and private organizations.