

**SOCIAL SECURITY ADMINISTRATION**  
**OCCUPATIONAL INFORMATION DEVELOPMENT ADVISORY PANEL**  
**QUARTERLY MEETING**

**JANUARY 20, 2010**  
**HILTON DALLAS LINCOLN CENTER**  
**DALLAS, TEXAS**

**DR. MARY BARROS-BAILEY**  
**CHAIR**

**PANEL MEMBERS**

**Gunnar B.J. Andersson, M.D., Ph.D.**

**Mary Barros-Bailey, Ph.D. – Chair**

**Robert T. Fraser, Ph.D.**

**Shanan Gwaltney Gibson, Ph.D.**

**Thomas A. Hardy, J.D.**

**Allan Hunt, Ph.D.**

**Sylvia E. Karman, Project Director**

**Deborah E. Lechner, PT, MS**

**Abigail Panter, Ph.D.**

**David J. Schretlen, Ph.D.**

**Nancy G. Shor, J.D.**

**Mark A. Wilson, Ph.D.**

**PROCEEDINGS****(1:07 p.m.)**

**MS. TIDWELL-PETERS:** My name is Debra Tidwell-Peters, and I am the Designated Federal Officer for the Occupational Information Development Advisory Panel, and this is the first quarterly meeting of the panel for 2010. I'd like to turn the meeting over to the panel chair, Dr. Mary Barros-Bailey. Mary?

**DR. BARROS-BAILEY:** Thank you, Debra.

Welcome, everyone, to our first quarterly meeting. In the first order of business I would like to turn this over to Associate Commissioner Richard Balkus to swear in two new panel members.

(Drs. Hunt and Panter were administered the following oath.)

**MR. BALKUS:** Raise your right hand. I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, and I will well and faithfully discharge the duties of the office on which I'm about to enter, so help me God. Congratulations.

**DR. BARROS-BAILEY:** Thank you. And welcome. In the materials for today, we have the biographies of Dr. Panter and Dr. Hunt. I'm going to ask them to maybe just introduce themselves, a little

bit about their background, like we did first go-round. And Dr. Hunt?

**DR. HUNT:** I'm a labor economist by training, Ph.D. out of the University of California Berkeley. I've been at the Upjohn Institute for Employment Research for the last 31 years. I'm now senior economist at the institute, and I study mostly workers' comp systems and the disability issues that arise in those systems. And I've had a lot of experience in various places doing that and look forward to bringing that here.

**DR. BARROS-BAILEY:** Thank you.

**DR. PANTER:** Hi. I'm Abigail Panter. I'm a quantitative psychologist. I came to the University of North Carolina Chapel Hill over 20 years ago. I'm a professor in the quantitative psychology department. I teach classes in analyzing data and research methods and psychometrics. And my -- I have large projects related to educational diversity and measurement. And thank you for having me.

**DR. BARROS-BAILEY:** Welcome to the panel. And I'd like to say that they agreed to serve on the panel even after seeing our report from September. So they are indeed brave souls, and welcome.

As some of you know, or all of you know, that we have announced in past meetings Jim Woods had resigned in April, stayed on working with the Work Taxonomy Classification Subcommittee through June in terms of that committee's work that -- that our recommendations.

And then Lynnae Rutledge, who was also another panel member, had to resign because she is now the new commissioner to the Rehab Services Administration. And so there was a conflict of interest for her to remain on the panel. So, welcome.

Obviously would like to welcome Richard Balkus, Associate Commissioner at Social Security. Would also like to welcome back all the other OIDAP members for the second fiscal year of our work. I'd like to welcome all the members of the audience, the work group, the SSA staff involved in this process. And there are a number of people listening in. There are always people listening in to our public meetings, and I want to acknowledge that we know you're out there.

And for those of you on the phone who'd like to follow along and are not sure where the agenda is, you can go to our website. It's [www.ssa.gov/oidap](http://www.ssa.gov/oidap), and we'll have the agenda there. I'll try to be mindful that as we take breaks to let you know when we're coming back since you're not here face to face with us.

Before we start going through the agenda, there are a couple of things that I'd like to call your attention to. We received the letter from the Commissioner in response to our report that just came to us yesterday, and it is behind the second tab of our materials. And I would like to read that letter dated the 19th of January.

And to bring people up to speed, we had a briefing with the

Commissioner on November 30th, so he refers to that briefing in his letter.

It says, "It was a pleasure to meet with you on November 30th, 2009, to review the recommendations that the Occupational Information Development Advisory Panel submitted to us in its report on September 30th, 2009. I appreciate your efforts to be there in person.

"As discussed during that meeting, our staff has performed an extensive review of the Panel's report. We have drafted project plans incorporating the Panel's recommendations where appropriate. As we begin our research and development phase for the occupational information system, we would like the Panel's assistance in the following areas." And there are four identified.

One, "Developing sampling and data collection plans for our research and development phase";

Second, "Creating a process for recruiting job analysts, including methods for certification criteria and training";

Third, "Helping us establish associations between human functions and the requirements of work that would serve the disability evaluation process";

And fourth, "Reviewing relevant documents or reports we identify during fiscal year 2010 that may affect or inform our work on the OIS."

**"We ask that the Panel begin its investigation and deliberations regarding these topics so that it can provide us with timely recommendations throughout the research and development phase.**

**"Finally, we ask the Panel submit a formal report documenting the activities of fiscal year 2010 by November 30th, 2010.**

**"We look forward to a second year of productive exchanges of ideas and expert guidance from the Panel on the OIS project that is vital to our disability programs and to the American public. Please extend my appreciation to the entire Panel for its continued service and dedication."**

**So we just received that, and I wanted to provide that to you.**

**Before we start further into today's agenda, I did want to acknowledge someone or the loss of someone. Many of you are familiar or may be familiar with a person named Gale Gibson who had been involved in the issue of occupational information and disability for many, many years. Gale actually introduced us to a lot of each other over the years. And Gale passed away in the last few days, and so I just want to publicly acknowledge him. Yesterday I saw a T-shirt that reminded me of him. It was a saying by JFK. Says, a man may die, nations may rise and fall, but an idea lives on forever. And he certainly fed this idea. So I want to acknowledge him.**

**What are we going to be doing today and over the next couple of days? So let's take a look at this idea and where it's going. Today we are**

going to be hearing from user groups, the people who are going to be using this OIS kind of on the ground. We delivered a report. It's time to get some information back from people in terms of their understanding of the report and feedback within that. So we have a variety of user groups that are going to be giving us feedback.

We also are going to have an opportunity for public comment, both today and tomorrow morning. Tomorrow morning we will be hearing the results of the user needs analyses. We've been hearing those results over time. They have fed our deliberations and some of the decisions that were made in terms of the report that was delivered in September. It's the final in terms of that information that was collected. We'll also have the opportunity to have kind of a interaction with the representatives that are presenting to us this afternoon as a panel-on-panel, kind of ability to talk back and forth between the user groups that are presenting it and the panel.

And I call this stage that we're on and particularly this meeting almost like a townhall concept, an ability to really get some feedback and after we presented our report in terms of advice and recommendations, what happens next in terms of research and development, and so the development of a work plan within the project with SSA and the implications in terms of our work for the panel. And so tomorrow we'll have the work plan draft presented, and also Sylvia will be



presenting us with her project director's report. We will be going into Friday with reports by the User Needs and Relations Subcommittee and also the Research Subcommittee and finally end the day late Friday morning with administrative business.

So for the first few minutes what I'd like to do -- let me see if I get this right. Okay. Great -- is kind of have an orientation to "We are here." You know, the map, the roadmap we keep on talking about. This is kind of the star on the roadmap, you are here. You know, we can kind of look at what got us here and kind of a curve in the road, where do we need to go from here. And so -- so what are we going to cover over the next few minutes? Three main points.

Very briefly, looking at the first year of activities, what I call the transition phase, which is going from the very first phase, which is what we were asked to do, transitioning into the research and development phase. And then the panel structure, what's going to look different or functionally different in terms of the panel as we go into the R&D phase for the development of the OIS, SSA's disability adjudication process.

So, first year activities. Seems almost hard to believe that we've been at this for almost a year, but we have been at this for almost a year. And so this is what, our fifth face-to-face meeting as a panel in less than a year.

So what happened at that initial meeting on the last day is

that most of the subcommittees were developed that provided reports that were appendices to the report that we saw in September. The other subcommittee, the fifth subcommittee that was developed after the inaugural meeting, was the -- what was originally called the Transferable Skills Analysis Subcommittee, then became the work Experience Analysis Subcommittee. So what we were asked to do in that very initial phase was to provide SSA with advice and recommendations specific to data elements for the content model and then also classification of the OIS. So that was Phase 1.

What happened when we were launching into this process is we approved operating guidelines in April so that through the operating guidelines those allowed for something called a Executive Subcommittee which is composed of the chairs of each of the subcommittees. So it became the intragroup communication vehicle for the panel.

Just to emphasize, subcommittees recommend to the panel, the panel recommends to SSA, and SSA makes the decision in terms of where to go. And then obviously a lot of activity happened that led us to the report that we delivered on September 30th.

So what were some of the things within that report as we are starting to get feedback that I want to make sure and emphasize in that report, the voted-upon recommendations by the panel are listed in the first about 60 pages of the report, which is the report. They're not in the

appendices. And to make sure that individuals really understand that distinction, the appendices were written by the subcommittees and were finalized on September 1st. The panel did not deliberate on those recommendations as a full panel until about two weeks later. And then it was those voted-upon recommendations that were integrated into the overall report. So if somebody just goes to a subcommittee report, they're not looking at the recommendations for the panel. They're looking at the recommendations of that subcommittee to the panel. And so those are the differences.

It shows the overall process of this kind of panel in that we cannot deliberate as a panel but in a venue such as this where it's an open venue and it's recorded. So the individual subcommittees could not make those final decisions if it did not go through deliberation. And so if anybody is looking at the report, just be very conscious of those differences.

And the other thing that is quite a bit different about our panel than what people are generally used to in terms of the panel, a lot of times a panel gets brought together on a particular issue and then the panel issues a report. The report is up there and the panel goes away. For us, the report was just the start of the process. It is not the end of the process. It is a way to start stimulating further research in terms of the areas considered. And so some of the subcommittee reports addressed that. That's addressed in the overall report that obviously there's going to be further refinement.

**This part of the feedback period is part of that refinement that we are engaging in.**

**So, after we issued the report, we started activities in terms of the transition to the stage we're heading into now, research and development. So activities almost immediately after delivering the report, we started making sure that we responded to recommendations or to requests to present. We presented on the 15th of October to NOSSCR, which was also the date that the report went up electronically. We also presented to IARP, International Association of Rehab Professionals, on the 28th and 30th of October. They also had requested that we do a webinar that happened yesterday. So responding to user groups, trying to also solicit feedback through that process.**

**There was also a review of the subcommittee structure. And at the end of the September meeting, there was an acknowledgment as we were deliberating that in terms of the research and development phase that maybe a different kind of structure was what we needed. And so what were some of the areas that were considered in looking at the structure? The goals were to make it functional for the needs of the overall project but also integrating the different skill sets of the members of the panel, what I call lean and flexible. That means something that is a bit dynamic that is able to respond quickly to immediate, timely, and episodic research and communication needs of the panel, and that they maintain the person- and**

the work-side subject matter expertise that are critical to this process. So those were the goals.

So this is what we have now. We have the Research Subcommittee, the User Needs and Relations Subcommittee. Expert subject matter, experts in terms of the work taxonomy, physical demands, mental/cognitive and work experience analysis are on both of the subcommittees in terms of the Research, User Needs and Relations Subcommittee. So we have the ability to deal with this -- the subject in both the communication, information coming in, information going out to the users, to the stakeholders, to the research and academic community, and also within the Research Subcommittee.

In terms of the -- what I call the function-based subcommittees, our User Needs and Relations, Nancy Shor is our chair for that. Research is Sylvia Karman for that subcommittee. What I call the Consultative Person-Side, Work-Side, and Linkage Subcommittees are the subcommittees that we're used to seeing for the first almost year. Same individuals chair those subcommittees. The concept being there that when something comes in that is specific in terms of need for subject matter experts to address, feedback from physical demands, that that subcommittee can engage in providing that information and providing that expertise to the panel or to any of the other subcommittees from which it emanates. And so it makes it more of a flexible process.

We also recognize that there are short-term consultative groups. We've already seen roundtables as part of the initial process. We had two roundtables, one for transferable skills analysis in May. In June we had one for mental/cognitive. There will probably be needs for ad hoc subcommittees, focus groups and online communities.

And then there's the administrative arm. I chair the Executive Subcommittee. And then the overall governance would be myself as chair, Sylvia Karman as the project director, and Debra Tidwell-Peters as the Designated Federal Officer. So that's the structure that we went into in terms of the reorganization.

In November we briefed the Commissioner. I just read the letter where he mentioned that briefing. We also began a formal feedback period in terms of our Federal Register notice for our November -- or excuse me, December 3rd meeting. We also formally asked people to give us feedback. And to start that process, in December we had the teleconference on the 3rd. We started looking at different areas in terms of the panel providing SSA with some assistance investigating inferences in the SSA disability process. I think we'll have some more conversation about that over the next couple days.

Individual panel members were involved in the OIS project development activities, such as Dave helped in terms of some of the instrument design for the voc/med study, and then User Needs and

**Relations started putting together information in terms of facts, in terms of contacting meeting attendees, and we'll be hearing about that again over the next couple of days.**

**Then it takes us to where we are now. We have two new panel members that we welcome heartily to help us with our work. We are here trying to receive as much feedback as we can from user organizations. We have additional time set aside for public comment, and what I really want to say is although we have a formal comment period that in our paperwork indicates that it's February 15th, we welcome any feedback at any time throughout this process.**

**So looking forward between now and March as we transition fully into the R&D stage. User feedback on recommendations to SSA, the draft of the work plan review and deliberation. Those are the things that we're dealing with at this meeting. February activities would be the close of the formal feedback period, refinement of the work plan of anything that comes out of the deliberations about that tomorrow or over the next couple days. And then the March meeting, some feedback in terms of what we -- or a report in terms of what we got in terms of the feedback, work plan implementation, and also a recognition that we are getting into a phase that is way more technical than many of our --**

**Is this coming through? It changed? Is it still not coming through? I'm afraid people on the phone can't hear me. Does that work?**

Okay. Microphone is back on. I don't know what's going on, but --

So the recognition that we are a panel made up of practitioners and researchers and academics coming from a variety of different occupations and that as we are asked to provide advice and recommendations to SSA on a matter that is actually pretty technical -- for a practitioner, I call it pretty technical -- that having a common understanding of some concepts would help us as a panel, so in terms of a formal professional development aspect of that that we hope to launch in March.

So at this point, any questions about where we've been immediately, where we're heading? What I'd like to do in terms of before we start the stakeholder presentations, first I would like to thank all of the user group presenters who are going to be with us this afternoon. I think I've said it before, and I'm going to say it again, this is a process that I believe it stands beyond the 12 of us at the panel but really extends to everybody who is involved in this process that we are trying to include your voice within this.

Again, the initial report was a preliminary cut of data elements for the content model that we need to consider. We still have a long way to go. This is the start of the process, not the end of the process. Your input and your engagement should not be thought of as just this presentation. As you're going through, anything we do, we welcome your



feedback at any point.

And as one of the things that I always try to do in terms of being involved with the group is if you have any ideas for solutions to any areas that you raise as concerns, we would be very happy to hear those. And so I would like to encourage you in your feedback to also provide us with ideas for solutions.

Is this on? For some reason it keeps on coming on and off, and I'm not sure why it's doing that. Okay.

What I'd like to do -- that was too loud. Is it working? Okay. Am I too close to it, too far away from it? Okay. Thank you.

The first person that I'd like to invite to present for us is Susan -- is this off again? I think I'll stand over here. Okay. I'd like to -- Susan, you're already there. Thank you. Welcome Susan Smith who is the president of the National Association of Disability Examiners. Susan has worked at the Ohio DDS for 25 years, beginning in the mailroom in 1982, moving to the position of administrative assistant, and then after taking a couple of years off to complete her bachelor's degree at the Ohio Wesleyan University, she returned to the DDS as a disability claims adjudicator. In the years since, she has steadily advanced to the level of Disability Claims Adjudicator 3. In our notebooks there is a complete bio of Ms. Smith. And I would like to turn the presentation over to you at this time.

MS. SMITH: Thank you very much. Okay. I know

people, first of all, they're looking at this Susan X. X is not my middle initial. When the Outlook system for SSA came about, there was about 15 Susan Smiths, and I asked for Princess and they gave me X. My middle name is Ann.

Good afternoon. The National Association of Disability Examiners, NADE, is appreciative of this opportunity to comment on the proposed recommendations prepared by OIDAP, and we appreciate this second opportunity to appear before this group to express our comments. You may recall from our presentation last fall that NADE is a professional organization whose purpose is to promote the art and science of disability evaluation.

**DR. BARROS-BAILEY:** I don't want to interrupt you, but I think we need to take about a five-minute break to figure out what's going on with the mikes because we all really want to hear what you have to say.

**MS. SMITH:** It's on now. Is it just me?

**MS. TIDWELL-PETERS:** We're going to take a five-minute break.

**DR. BARROS-BAILEY:** Just to double-check all the mikes. Sorry.

(Recess from 1:40 to 1:43)

**DR. BARROS-BAILEY:** Let's go ahead.

**MS. SMITH: Okay. Can you hear me?**

**DR. BARROS-BAILEY: Okay.**

**MS. SMITH: How's that? Okay. Let me see. Where was I? I don't like to start all over.**

**DR. BARROS-BAILEY: If you can start all over, that would be great.**

**MS. SMITH: I wasn't that far in. I'll just keep an eye and make sure the red light's on.**

**National Association of Disability Examiners is appreciative of this opportunity to comment on the proposed recommendations prepared by the panel, and we appreciate this second opportunity to appear before this group to express our comments.**

**You may recall from our presentation last fall that NADE is a professional association whose purpose is to promote the art and science of disability evaluation. The majority of our members work in the DDS. That's the state Disability Determination Service agencies where they adjudicate claims for Social Security and/or Supplemental Security Income, SSI, disability benefits. Our members constitute the front lines of disability evaluation. In addition to our members in the DDSs, we also have members in SSA's central and regional offices, attorneys, non-attorney claimant representatives, physicians, claimant advocates, et cetera. This diversity among our membership combined with our extensive program knowledge**

**and hands-on experience enables NADE to offer a unique perspective we feel is reflective of a pragmatic realism.**

**NADE members are deeply concerned about the integrity and efficiency of the Social Security and SSI disability programs. Simply stated, we believe those who are entitled to disability under the law should receive them; those who are not, should not. We believe decisions on disability claims should be reached in a timely, efficient, equitable manner. The majority of disability claims are adjudicated at Steps 4 and 5 of the sequential evaluation process. In this regard, consideration of vocational issues does constitute a major component of disability adjudication and does account for much of the integrity and processing time related issues within the program. It is important, therefore, that the recommendations of this panel take into consideration the need to ensure program integrity while facilitating processing time.**

**NADE is appreciative that many of the issues that we raised last fall have been addressed in this list of recommendations, and we commend this panel for its diligence in pursuing these recommendations. Overall, the impact of these recommendations, if formally adopted, will prescribe the environment under which a majority of the disability decisions will be made and they will dictate the manner by which these claims are processed, including the timeliness, the efficiency, and the fairness of the process.**

**The vocational guidelines serve as directional arrows, pointing the disability adjudicator in the proper direction with regard to determining whether a claim should be denied because of the claimant's ability to return to past relevant work or return to other work, or whether the claim should be allowed because the claimant is unable to return to their past work or other work. It is important, therefore, that these guidelines have clarity of purpose and language.**

**Our comments on the panel's recommendations include -- and I'm not going to go through each specific recommendation. We'd be here forever. So I'm just kind of going to glob. The Person Side Recommendation No. 1, we approve the list of physical demands in "a," breaking out the physical limitations, the bending, carrying, and climbing. The idea of having the rotation, the twisting is a phenomenal idea. That's one of the things we really do think is one of the better things. They all are. The Recommendations No. 1b and c, NADE approves of the concepts listed which propose that research be conducted to establish the physical demands of work, to study the specificity and measures of sensory demands, and to obtain proper measurement of these functional levels as well as to identify variations of physical demands within an occupation.**

**NADE concurs with the panel's observation regarding the transition of the American workforce from an industrial age workforce to an information age workforce. This, of course, has impacted on the**

exertional, the non-exertional, and the neurocognitive demands of the average worker. It is important that SSA's vocational guidelines encompass these changes, and we believe the panel's recommendations achieve this purpose. We applaud the panel for its efforts to push SSA into revisions of the Mental Residual Functional Capacity Assessment and concur that advances in research and technology provide the opportunity to do so.

Recommendation No. 2, a through d, NADE approves this list of psychological abilities. The only thing we wondered is why there was no Subsection c. It went a, b, and then it went to d. And I don't know if that was just a typo, but we happened to notice that, so --

Job-Side Recommendation No. 1, we approve of the entire composite of work listed under this recommendation as offering in-depth analysis of various jobs and the measured demands of these jobs as compared to traditional expectations.

NADE especially concurs with the panel's recommendation, contained in the list of "Other OIS-Related Panel Recommendations" on page 49 of the panel's report, that the DOT should be replaced and not simply updated. We support the 12 specific technical and data requirements the panel has identified as being necessary for any new job classification system. We believe these 12 requirements should be emphasized as absolutely essential to any fair and reasonable job classification system.

**Other recommendations contained in this section, including the focus on the need to clarify whether the occupation requires communication in English, literacy, sit-stand options or other alternative postures, et cetera, are fully supported by NADE.**

**NADE also supports the other recommendations contained therein in these pages as they relate to extra data element research, SSA OIS development, et cetera, but we do have some minor reservations regarding the panel's recommendation that SSA collect information, albeit for research and program evaluation purposes only, about the claimant's healthcare enrollment, mode of transportation, race and ethnicity, and, in relation to the type of job, whether health insurance is offered.**

**We believe asking for this information could lead to questions regarding privacy concerns for the claimant and additional questions about whether such information would be used in the adjudication of the claim. It is probable that claimant advocates and legal representatives will express opposition to the collection of such data. Since this specific data would be nonessential to the adjudication of the claim, the panel should abandon this portion of the recommendation contained on page 52. And a couple we feel that should have been removed would be the health insurance enrollment, the mode of transportation, the race and ethnicity, and the health insurance offered.**

**We have a few comments here. You had mentioned about the**

appendices being in the subcommittee, so I don't know if you were interested in hearing about the comments on the appendices.

**DR. BARROS-BAILEY: Yes.**

**MS. SMITH: Okay. Thank you. The SSA User Needs Analysis identified in Appendix F, Sub-Appendix C, pages C-1 through C-29, is an exhaustive list and we commend the panel for its identification of these crucial work-related elements as essential to a fair and equitable determination. We do support that the identification of these elements and the course of adjudication of disability claims will need to be facilitated to avoid lengthy delays in the processing of the claim.**

**We also support the panel's General Concerns and Suggestions listed in Appendix F, Sub-Appendix C, pages C-30 through C-36. In addition, NADE supports the panel's recommendations regarding the need for SSA to revise the SSA-3369. We completely agree with the panel's recommendations that the national ADL form is too complicated. And we support the panel's recommendations listed on this page and the following page for improvements to obtaining this specific information insofar as these recommendations are offered with the expectation that they will contribute to heightened accuracy in the adjudicative process.**

**Unfortunately, many of these recommendations, either because of their implementation costs or because of the additional processing time that would be required to obtain this information, are not**



**practical. For example, the recommendation that the DDS hold a face-to-face interview with the claimants, NADE would like an opportunity to collaborate with the panel or revising this list of recommendations so that they can reflect the practical side of disability adjudication as well as the "perfect model" side of disability adjudication.**

**Other concepts identified in other User Needs Analyses, including those highlighted under the Consultative Examination section, Residual Functional Capacity Assessment, et cetera, contained in this portion of the panel's report do have merit and NADE supports further investigation of these concepts to determine their applicability and practicality.**

**In summary, NADE commends the panel for its exhaustive effort in the preparation of its September 2009 report. We appreciate the panel having invited discussion with major stakeholders in its previous meetings and the panel's obvious efforts to address the issues that were raised in these previous discussions. We particularly appreciate the efforts of the panel to address the issues raised by our members who will, no doubt, be the ones who will shoulder the adjudicative burden of utilizing the final product produced after SSA acts upon the panel's recommendations.**

**We concur with the statement contained on page 53 of the panel's report that, "The most meaningful development of any OIS requires consideration of the voices of the users and other stakeholders, and**

provides opportunities for dialogue from and among the users, and the research, scientific, and academic communities, to help with the design and testing of tools applied effectively at the hands of the users."

The final product produced as a result of this panel's recommendations must necessarily be written in work terms meaningful to the disability examiners. Also the DOT work history and the DDS Residual Functional Capacity form should work in concert together. In the recent past, as the DOT becomes ever more outdated and its usefulness as an adjudicative tool becomes ever more cumbersome, the relationship between this antiquated tool and the disability adjudicator trying to render a fair decision for the claimants has often been described as a band playing three pieces of music performed in three different tempos by musicians playing on broken instruments and led by a deaf conductor. It is our fervent hope that now that we have a new conductor, i.e., this panel, that the band will be given new instruments and the music played will be in tempo and pleasant to the ear. Thank you.

**DR. BARROS-BAILEY:** Thank you, Susan. I would like to open up any questions from the panel to Susan. Susan, it looked like you were reading from a prepared statement, and I don't seem to have a copy of that.

**MS. SMITH:** Yes. The report that's in there was from last year, and this wasn't ready when they needed it. So I can send a

copy to everybody because it's a very good report, so --

**DR. BARROS-BAILEY:** That would be fantastic.

Thank you.

**MS. SMITH:** Thank you.

**DR. BARROS-BAILEY:** Okay. Thank you.

Okay. Our next presenter is Mr. Art Kaufman from the National Association of Disability Representatives. And after earning his bachelor's degree from New England College in education and special education, Mr. Kaufman began his professional career working as an aide in a community shelter workshop for adults with developmental disabilities. He performed various duties and held several positions within that agency, including job placement and vocational assessment. At the same time, he continued with his graduate education, earning his master's in education at the University of New Hampshire.

He was hired as the first post pilot program case manager in New Hampshire and in answer to a lawsuit attempting to close the state's only institution for developmentally impaired children and adults. As a case manager and case manager supervisor, he performed all aspects of the community outreach for this population, including job and housing placement.

We know Art because we've seen him before this panel before. He was part of the case simulation that we had in April. He is very

involved with NADR, and I will pass on the presentation to him. He has a more extensive bio that is in our notebooks. Welcome, Art.

**MR. KAUFMAN:** Thank you. I'm going to put two microphones on just in case. If it ruins the sound system, I'm sorry.

Thank you very much for allowing NADR to once again take part in presenting our opinions relative to the findings of the panel so far.

The National Association of Disability Representatives -- wow, it's really loud now -- is primarily non-attorney representatives helping individuals to get Social Security disability and SSI benefits. We do have probably about 20 to 25 percent attorneys in our organization as well. So we thank you for allowing us to present. I do want to -- both of them are gone now. I do want to make a note that on page 678 of the booklet there's a conference list, and NADR's is not listed. I don't know why. It's April 25th in Chicago. So please feel free to look on our website, [www.nadr.org](http://www.nadr.org).

Most of the work that we do revolves around case theory. As a representative, when I'm building my case --

**DR. ANDERSSON:** I would just speak.

**MR. KAUFMAN:** I'll try. Is there someplace else? It's working now. Most of our work is to determine a case theory, what is it that we believe disallows an individual from holding down a job and from competing in the workforce on a regular and sustained basis. And that is

probably 90 to 95 percent of the work that I do. If it's a medical problem, that's usually picked up at the -- at steps -- at Step 3 of the sequential evaluation process. But once we get to Step 4 and Step 5, primarily we end up seeing individuals who can't hold down a job.

With my background as a vocational rehabilitation consultant, I believe that -- and I was pretty good at it and I still am -- I believe that I probably could get jobs for virtually every single individual that I come in contact with. So the issue is not getting a job, it's holding a job. It's sustaining a job. It's making sure that the jobs that are being put forth and the demands that are being looked at on both the person side and the job side will provide for continued employment above SGA, at or above SGA. And it doesn't appear that in many of the things that I looked at within the panel's recommendations that we're really looking at sustaining work.

There's numerous mentions of performing work, of doing a job. Now, I'm capable of doing a job as a professional center in football. Okay. I could be a center. I know all of the things that are necessary to do to be a center, and I could do that job, once. After that, I probably would be on disability. But I think that that's what we have to look at is can you sustain the employment or can you just be a center one time. Can you show up for work on a regular, scheduled basis and perform the job, the tasks that are assigned to you on a regular, scheduled basis and be able to do that

**job.**

**Unfortunately, I've lived through lots of things through SSA in my more than 20 years as a representative. I've lived through World Class Service, the Hearing Process Initiative, Process Unification, the Right Check to the Right Person at the Right Time. And coming from New England right now, I'm involved in DSI. Hopefully that's almost over as well.**

**I think the thing that's most important that this committee, that this panel must keep in mind is that we don't need more slogans, we don't need more experiments, and we don't need incomplete attempts to make the necessary changes. We need things that will work for the long haul.**

**I work with individuals whose lives literally depend on the benefits that they are receiving. The process is abominable as far as time is concerned because these people typically are not working. If they were working and earning money, they wouldn't be able to apply for Social Security. So it's now taking a year and a half to two years to get individuals benefits.**

**Now, I know that everybody on the panel probably recognizes that fact, but when you walk into someone's living room -- and in my business, to cut down on overhead, we don't have an office. I go to their homes. When you walk into the living room and you see the problems that**

these individuals are having, it's heartbreaking. If we put this off and it's another experiment or it's another incomplete attempt to make changes, the people that are going to be hurt the most are not the people sitting on this panel or the stakeholders in this room. It's the clients that we're there to serve and that we're there to assist.

So, please, as you're making your recommendations, make them real, make them pragmatic, and make them as soon as possible. The speed that this is done will allow less negative findings and more positive findings at an earlier time in the process. It'll be the right decision at the earliest possible time, and that's what we need. And we need it as soon as possible.

In looking at the 700-plus-page report, and I've read virtually every page -- not every page but virtually every one -- it's a wonderful thing. But at this point in time I think that it's more experimental than it is realistic, and I think then what we need to do first is make it as real as we can as quickly as we can for all of the clients that we're serving. Begin with that in mind. Let's do the 80/20 rule. Let's hit 80 percent of the people with -- as quickly as we can, because we can probably do that very, very quickly with only 20 percent of the work.

General Recommendation No. 2, the panel concurs with SSA that the agency needs to create a new occupational information system to replace the Dictionary of Occupational Titles. It appears to us, NADR, that

the panel has arrived at the conclusion that the DOT must be replaced by a new OIS. Now, we as stakeholders are probably only going to be able to frame the methodology that will implement this process. We believe the DOT is a solid foundation, foundation. That doesn't mean that we keep the DOT. It doesn't mean, though, that we should discard the DOT. What we should do is to expedite the process, work within the DOT, establish -- find the real jobs and what the significant components of those jobs are to keep a person sustaining substantial, gainful activity. I think that's easily done, readily done with the help of the cadre of vocational experts that are available throughout the country right this minute.

At this time probably there's 30 to 150 vocational experts testifying at hearings as we speak. Those individuals are telling the judges and the representatives what jobs these individuals could perform. Well, let's find out from those vocational experts the top 100, the top 150 of unskilled sedentary work or unskilled light work and then focus our 80 percent at that time to get the job done so that these people aren't waiting around and having the incorrect decisions made.

We agree that supplementation and modifications must occur. We agree with an eventual phase-out of the DOT. We don't dispute that. What we do hope is that it occurs and we use the process to begin building, use the process of the DOT that we have and then begin building upon that but do it as quickly as possible.



**NADR is concerned that creating a new occupational information system to be developed and maintained by SSA would be labor-intensive, time-consuming, and costly, and would further stretch the resources that are already or woefully insufficient. We encourage OIDAP to fully explore ways to update and build on existing tools such as the DOT before committing to a whole new process.**

**SSA should not commit -- and this is for the Social Security Administration itself -- should not commit important adjudicative resources in order to not slow down the backlog reduction. Right now the backlog is abominable, and we shouldn't be using resources to slow it down. If the resources of this committee can improve the speed at which proper adjudication and proper decisions are made quickly, then the backlog will improve. But if for some reason we take six months, a year, two years, three years and then do an all-out rollout like was done with DSI in New England and everybody has to then learn the process and the process is new and difficult to understand and difficult to implement and will take time to do the person-side evaluations and the job-side evaluations, the people that are sitting there without a paycheck are the ones that are going to suffer.**

**And so we encourage this panel to look at a rollout component gradually and do the heavy lifting first. What is it that everyone can agree on that somebody is not going to be able to hold down a job? Is it when you have your fourth back surgery or your third back surgery and**

**you're still complaining of pain and you've got failed back syndrome?**

**Would that be an automatic slam dunk that person's not going to be able to hold down a job? And we can relook at that in a year or 18 months and have a continuing disability review at that time.**

**So I think what needs to be done absolutely, and NADR believes that this needs to be done, is to have it work effectively, efficiently and, most importantly, quickly, to help the individuals that are attempting to get benefits right now.**

**The other thing that I have concern about, we have concern about -- and when I'm saying I, I was the chair of the committee, so -- we love the n=1. That is a wonderful way to look at this thing. But I think the problem is that in today's adjudication process n=1 to the 10th or 20th power, and that's the problem. Because when you've got the n=1 client, you also have the treating physician and you might have no treating physicians or you might have 10 or 12 physicians with surgeons and neurosurgeons and neuropsychologists, et cetera. You'd have two disability examiners at DDS, two DDS physicians who will rate them physically, two DDS physicians that will rate them mentally, at the initial and recon levels. Then you've got your representative, you've got your ALJ, you've got your vocational experts. All of those individuals are going to be having a say in these cases. And unless and until there's a clear understanding of what is required to sustain work is put out there, we're going to continue with the**

antiquated process that we're working with right now on a daily basis.

As I said earlier, the issue is not the issue of performing work. And there's a couple of things I didn't write down where they were, but number 4, minimal levels of requirements needed to perform the work. And then, once again, later on, the creation of the new OIS is needed to replace the DOT. And letter E, minimum levels requirements needed to perform work. It is to sustain work. I can perform the work of a center. I can't sustain it. I have clients that can perform the work of a ticket taker in a parking garage. They can't sustain it.

And the issue is, that we all have to look at, is what are the bare bone minimums of holding down a job. And I think as soon as we can -- as soon as we're able to discern that and codify that and put that into the taxonomies that you're looking at and creating, we can get 80 percent of these things done almost immediately. And so we would like to try to move these things along as quickly as possible.

Social Security Ruling 0502 talks about the unsuccessful work attempt, and that's not listed in the book that I could find. Once again, the issue is sustaining work. An unsuccessful work attempt, three months or less, is automatically an unsuccessful work attempt if there's a period of disability before and a period of recovery afterwards and a retrying. I think that these are the things that we should be focusing on because most of my clients can perform work but do it at an unsuccessful work level.

We agree that it should -- that there should be a reflection of national existence and incidents at work, the taxonomies and the -- everything should reflect work requirements. It absolutely should be legally defensible to us, to a Daubert standard, so that it's replicable, so that there's validity, so that it's peer reviewed as far as the jobs and the numbers, both person side and work side, and meets specific technical and data requirements.

But who's going to train the physicians, or aren't we going to be using physicians? When we ask those physicians to make those determinations, are they going to say, well, we need a functional capacities evaluation? And, if so, when are those FCEs, the people that are doing those FCEs going to be trained and to what degree are they going to be trained and are they going to be trained to look at things on a longitudinal basis or for the snapshot while that individual is sitting in that room lifting and carrying and pushing and pulling? The issue is sustainability, not work performance.

So we would like you to start with limitations and investigate limitations that would effectively preclude all work. And if we start there and say if a person is not capable of doing thus and such, then they should immediately be found disabled, not just from a medical perspective where we have listings, but if a person shows clear-cut problems holding down a job because of the pain they have, because of the headaches they suffer,

because of the disorientation that they have, those are the types of things that will immediately at the initial level be able to be adjudicated so that it doesn't get to the hearings level, and that would expedite the process for all of the clients that are in it.

We agree with the 18-month pilot study to review jobs, but rather than those most frequently held by at least 95 percent of disability claimants -- and this is out of the book. It said at least 95 percent of disability claimants. Doesn't matter what the disability claimants were doing. It matters what are the VEs saying that they can and can't do. So we believe the job studies should be the top 50 or a hundred cited at hearings by VEs or within the DDS evaluation.

If we look and we say these are the people that are meeting the claimants face to face, hearing the testimony, the judges are the ones that are adjudicating these cases, at that point in time it is those jobs, not the jobs that the person's been doing, but those jobs that will preclude work and show that an individual's incapable of holding it down.

And then, finally, and you're doing a great job of this, getting user buy-in. The DSI debacle did not do that, and we as stakeholders need to be involved in the process. And NADR applauds you for following through and doing that on a regular and sustained basis, so we thank you very much.

**DR. BARROS-BAILEY:** Thank you, Art. I'd like to

open up questions from the panel.

**MS. KARMAN:** Are you going to provide us with a copy of what you --

**MR. KAUFMAN:** I did bullet points, so -- NADR has developed a stance on this, and we're revising it, so it will absolutely be involved. And I will be putting these bullet points in there.

**MS. KARMAN:** Thank you.

**DR. BARROS-BAILEY:** You're talking about the July statement?

**MR. KAUFMAN:** No, no. We're working on another one. I've got it in third draft right now, so --

**DR. BARROS-BAILEY:** Great. We would welcome that. Tom?

**MR. HARDY:** Thank you, Mr. Kaufman. I just have a comment and a quick question. As you know, I represent claimants, so I go out and I go into homes, and I know exactly what you're saying. And today at lunch we were talking about the need to move as quickly as we can to move this out and have a tool that works. So, we know.

**MR. KAUFMAN:** Great.

**MR. HARDY:** The question I have for you, you mentioned several times sustainment of employment, not necessarily ability to do something once but to sustain it over a long period of time.

**MR. KAUFMAN:** Yes.

**MR. HARDY:** We're working on an OIS system.

**How would you envision seeing sustainability built into an OIS system?**

**MR. KAUFMAN:** As I said, I think that what we need to do is look at the things that are job killers immediately and say if a person has four back surgeries, continues to complain about pain, it's obvious that that individual probably is not going to be able to sustain employment. Now, if they attempt to work and they fail, those are things that -- and we always encourage our clients to try to go back to work, because if they work for three months or less and then have to take time off because they've crashed and burned, then that's a good indicator that that individual would not be able to hold down a job.

I think if we look at the things that are clearest to the representatives, clearest to the vocational experts, they have to lie down two or three times a day on scheduled times, and it's pretty well documented that based upon the limitations that they have that that would probably be required. You don't need to -- I don't think you need to have an M.D. clearly state the person has to lay down two or three times a day on scheduled times.

So I think if we look at the things that are most obvious very quickly and look at the theories of the case, the person has trouble holding down work. And I think that most good representatives understand from

the outset what it is that the theory of the case is going to be and how to develop it. I think if we work on a parallel line, if the panel does, and says, well, what are job killers, what are the things that we automatically know? Person's not going to be able to hold down work. Now, when you get to the three-month period, three to six month -- well, six months or more is work, so we know that a person can hold down a job for six months, it's work. Social Security agrees with that.

So then the only issue is what's the three-to-six-month level, what's the one where it might be a job killer, it might not be a job killer? I think that we can look at over time because that's not going to be the thing that's going to move the cases along most quickly, most efficiently. It's the ones that we automatically know are job killers. Does that answer your question?

**MR. HARDY:** Thank you.

**DR. BARROS-BAILEY:** Other questions?

**DR. FRASER:** Yeah. Mr. Kaufman, you know, that estimate of 50 to a hundred jobs that might be our most salient concern, was that your kind of a group perspective or your own opinion?

**MR. KAUFMAN:** I think that was my opinion primarily, but as a voc expert, past voc expert for Social Security, you got your list in front of you. And most of the time you got 50 to a hundred jobs on there. So I think most of the vocational experts could readily provide a



list within -- it could be faxed to this panel, I would expect. If the administration said we want your list, it could probably be here within six weeks you could have a list of all of the jobs that they're citing.

**DR. FRASER:** Thank you very much.

**DR. BARROS-BAILEY:** Thank you, Art. I think Lynne is going to be covering some of the research that IARP has been doing that's similar to that suggestion. Any other questions? Thank you, Art.

**MR. KAUFMAN:** Thank you.

**DR. BARROS-BAILEY:** Appreciate it. Okay. Our next presentation is going to be by Tom Sutton. He is with the National Organization of Social Security Claimant Representatives, NOSSCR. Mr. Sutton is a partner with Leventhal, Sutton & Gornstein in Pennsylvania. He is a past president and former member of the board of directors of NOSSCR. He has represented thousands of individual claimants and served as cocounsel in the United States Supreme Court in *Sullivan versus Zebley*, a nationwide class action on behalf of over 400,000 disabled children. Mr. Sutton has successfully litigated hundreds of cases in federal courts, and some of those cases are listed in the bio.

He has lectured extensively on disability law throughout the U.S. and has served as a faculty member for numerous consulting bar institutes and seminars. He is a graduate of Haverford College and the

University of Pennsylvania Law School. Welcome, Mr. Sutton.

**MR. SUTTON:** Thank you, Dr. Barros-Bailey. Do we have any mike?

**DR. BARROS-BAILEY:** There's a button.

**MR. SUTTON:** Thank you, Dr. Barros-Bailey. And hopefully microphone will continue to work.

I appreciate the invitation to appear before the panel today. I am speaking on behalf of NOSSCR, as already mentioned. NOSSCR is a professional association of attorneys and other advocates representing individuals seeking Social Security and SSI benefits in both administrative proceedings and in the federal courts. We have over 3,900 members in the private and public sectors. We're committed to the highest quality equal representation for our claimant, for our clients.

Among our many activities, we sponsor two national conferences each year. We were pleased to have Dr. Barros-Bailey and Ms. Karman address our most recent national conference in San Francisco in October.

There's one important principal to guide us as we consider the consideration on the recommendations and the panel's report. Each claimant is entitled to a full and fair individualized adjudication of his or her claim, and due process requires no less. One component of this adjudication is accurate and current information about the requirements of

**jobs. There is widespread agreement that the Dictionary of Occupational Titles is out of date and at some places obsolete. There is widespread agreement that this is a situation that warrants prompt attention, so we all know the situation must be addressed. What we do not have is widespread agreement about how best to address the situation. And I'm not going to read my comments completely, but I'm going to highlight the things that I would like to emphasize for the panel's consideration today.**

**First of all, we're intrigued by the recent report by an advisory panel to the NRC, National Research Council, of the National Academies of Science, "A Database for a Changing Economy: Review of the Occupational Information Network, O\*NET." The NRC panel concluded that a considerably modified and expanded O\*NET may be capable of informing the disability determination process. There are also some potential economies of scale to be derived from the development of a single occupational information system to be used by both agencies which may allow cost sharing of resources in such functions as data collection and system maintenance.**

**We know that time is of the essence in this enterprise, and in a recent unpublished decision the 6th Circuit Court of Appeals remanded a claim to Social Security, quote, for consideration of whether the DOT listings, specifically the document preparer and security camera monitor descriptions, were reliable in light of the economy as it existed at the time of**

the hearing before the ALJ.

I would note that the court in **Cunningham** -- and this is an unpublished decision by the 6th Circuit, but it's out there for you to read. This is what the court said. "The VE based his testimony on job descriptions contained in the DOT, a document published by the Department of Labor that was more than a decade old when the ALJ heard **Cunningham's** claim. While the Social Security Commissioner does take administrative notice of this document, common sense dictates that when such descriptions appear obsolete, a more recent source of information should be consulted. The two relevant descriptions here, the two jobs we talked about, strike us as potentially vulnerable for this reason."

The court then quotes in detail the DOT descriptions of the two jobs and then makes the following statement. "In light of the fact that more current job descriptions were available at the time of the hearing, the Department of Labor replaced the DOT with the O\*NET, a database that is continually updated based on data collection efforts began in 2001, and that the two descriptions relied on by the VE are not found in O\*NET, we conclude that the VE's dependence on the DOT listings alone does not warrant a presumption of reliability. As such, we remand to the Commissioner for consideration of whether the DOT listings were reliable in light of the economy as it existed at the time of the hearing."

So that's the **Cunningham** case. And there's another recent

case which I'm sure the panel is aware of and may have discussed. This is the case of Jones versus Mountaire Corporation LTD Plan, Prudential Insurance Company of America. And, once again, this is a case where the claimant for LTD had emphysema, among other things, and said he could not return to his previous work. And the dispute centered on whether he was a, quote, sales representative animal feed products under the DOT 272.357-010, which is described as a light job, or whether he was in fact what he contended, 49005A sales representative, agricultural, under the O\*NET, which stated that Jones' work context involves frequent exposure to pollutants, gases, dust, and extremes in temperatures, which as it happens in this case it did.

And I'm very familiar with the problem with overaggregation of the occupational units. I know that's a problem. But in this particular case the claimant had a point, and the court agreed with the claimant and asked the district court to go back. The district court had actually ruled that the claimant was right, said the O\*NET should be followed. The circuit court agreed with Prudential, the carrier, that it had not been given an opportunity to brief this issue and argue it explicitly before the court and sent it back to the lower court for further consideration. But the circuit court did not disagree with the district court's conclusion that the O\*NET provided more valid and more recent information in that context.

So these cases that we're seeing don't just say the DOT's out

of date. They say the O\*NET is what you should look at. We understand the O\*NET as currently constituted is not suitable for SSA's disability determinations, and indeed SSA has so instructed adjudicators as far back as 1999. But surely it is reasonable to consider whether O\*NET could be modified so that it would be suitable. This approach would be faster and cheaper than starting from scratch in a project that will be duplicative of ongoing activities at the National Center for O\*NET Development.

In addition, and equally important, the involvement of the Department of Labor would help to address the widespread perception that SSA wants to create its own occupational information system in order to control the outcome of claimants' disability determinations. For these reasons, we support the recommendation of the NRC's advisory panel report. SSA and DOL should create an interagency task force to study the viability of potential modifications of O\*NET to accommodate the needs of SSA with regard to disability determination.

Before implementing these or similar modifications, however, we recommend that the task force conduct, one, an in-depth needs analysis of the occupational information required by the current disability determination process. Seems to me this panel has been engaged in that process for the last year. And, two, an interagency cost-benefit and cost sharing analysis of the additional resources that would be needed to make O\*NET suitable to the disability determination process. We fully support

this recommendation of the National Research Council that SSA initiate a working group with the Department of Labor in an effort to explore the avenues suggested by the NRC; that is, an expansion and augmentation of O\*NET to meet the needs of the Social Security Administration.

The second general area I would like to address is mental impairments. The predominant theme that emerges from a review of this panel's report and recommendations is one of overreaching. And I would say that advisedly because in some cases it seems to be a curious mix of enormous ambition and pointing towards shortcuts that are inappropriate, and it's a bad mix. And I will talk more specifically about that. Nowhere is this more evident than in the Mental/Cognitive Subcommittee section of the report. Not only does the panel want to create a brand-new occupational database classifying the mental and cognitive demands of jobs, but it also wants to develop new psychological tests which SSA can use to determine whether claimants can meet those demands.

Specifically, SSA is urged, quote, to develop proprietary measures rather than rely on previously published psychological tests and conduct the necessary research to validate measures that are adopted, end quote. Panel reserves great latitude in deciding what these tests will measure, but its report repeatedly -- and I emphasize repeatedly -- notes the virtues of testing for g, defined in the report as, quote, a single summary measure of residual cognitive capacity, end quote, that is, quote, easily

understood, reliably measured, and strongly predictive of work outcomes, end quote, and described as, quote, the most robust predictor of occupational attainment which corresponds more closely to job complexity than any other ability, end quote.

Panel proposes to revamp the categories of functioning contained in the current Mental Residual Functional Capacity Assessment employed by SSA, elevating neurocognitive functioning as the most important of the new categories, comprising six out of the 15 specific abilities falling under the rubric of Mental Residual Functional Capacity, and specifically rejecting consideration of other factors including judgment, ability to modulate mood, to regulate emotion, and stress tolerance.

Finally, the report proposes a research project in which SSA will test 7,500 to 15,000 workers in the most common 150 to 200 occupations in order to determine, quote, differences in job complexity defined by arranging the mean scores of job incumbents on some measure of g by occupational group. SSA would be able to specify where any given disability applicant's measured abilities fall in the distribution of abilities required by each occupation, end quote. The report describes this procedure as analogous to determining how much weight each occupation requires the worker to lift. And it makes that quite explicit. It's a very similar construct.

In response to these proposals, I want to make several



observations. First, it seems unnecessarily expensive and overly ambitious to undertake the research and development needed to create a new, more new proprietary psychological test instruments for these purposes.

Second, while the panel discusses other possibilities, the fact that it repeatedly returns to the idea of testing for g suggests that its agenda is to create a one-size-fits-all test instrument that can be used to categorize all the mental/cognitive demands of jobs.

Third, and perhaps most strikingly, there's an overwhelming emphasis in the panel's approach on psychological testing, deficit measurement, to the detriment, if not exclusion, of the statutory command to consider signs, symptoms, and laboratory findings, pattern analysis, in the panel's approach. Indeed, it is notable that there are no psychiatrists on this panel, there were no psychiatrists on the Mental Cognitive Subcommittee, and there are no psychiatrists even involved in the roundtable that was convened to consider the Mental RFC Assessment. Perhaps because of the absence of psychiatric input, the panel's proposal overweighs the measurement of cognitive deficits.

And I note that it states a conclusion that those deficits have been underweighted heretofore in all the years Social Security has been adjudicating mental impairments. Seems to me what we've done is gone with the pendulum swinging completely in the other direction.

Measuring cognitive deficits with a test or tests appears, at

least to this layperson who's represented thousands of disability claimants and many with mental illness over the years, to be utterly inadequate to capture the severity of psychiatric impairment such as bipolar disorder, schizophrenia, PTSD, panic disorder with agoraphobia, schizo-affective disorder. We could go on and on.

Finally, the unspoken but to me logical conclusion of this enterprise would appear to be a new form of the grids, the Medical-Vocational Guidelines, which would not be limited as it is now to exertional demands of work but which would also incorporate the newly measured mental/cognitive demands of work. The asserted, repeatedly asserted imperative in the panel's report to, quote, reduce the level of adjudicative and clinical judgment, end quote, needed to adjudicate cases suggests such a goal which may have superficial appeal as a matter of administrative convenience but is antithetical to fair and reasonable outcomes for claimants.

Let me stop for a minute and just say, reading the report of the subcommittee, it appears, although it's never expressly stated -- it is expressly stated that the intention is to test 7,500 to 15,000 workers in a set of occupations. It's 150 or 200. I'm not quite clear which. Whatever it is, it leaves out a lot more DOT occupations than the O\*NET does, 2,302, as Dr. Harvey points out. What is never stated explicitly is that once that's done, that it seems to me you would have to then somehow test the person

who's applying for disability benefits to determine what their g score is, because otherwise what's the point of having that measure of those individual jobs? Why is the panel not saying so explicitly? I can't quite figure it out. Is it because you know that telling people that a 12-minute Wonderlic -- which I know attorneys have the highest mean scores, but I don't believe in it anyway -- is the way to go? Are we going to do a 12-minute test for every claimant? Are we going to do a six-hour neuropsych battery on every claimant? Something in between? I can't quite figure it out. But it's an enormous thing that you're talking about here.

And at the mental level, it is not at all understandable to me as an advocate why the imperative to either update the DOT, disaggregate and change the O\*NET so you can use it, or invent something from scratch, whatever you decide to do, why that then implies that you have to completely redo the Mental Residual Functional Capacity. I do not understand why that is required. One does not follow from the other. And I believe it's a mission creep that's happened here.

So we have major problems with this. We are left with grave concerns about the effects of these proposals on claimants and their statutory right to a fair and individualized adjudication of their claims under the statutory definition of disability. We are unclear as to the panel's view of the interplay between any of these new test scores and the current

disability determination process mandated by statute regulations and case law which evaluates such factors as the weight to be accorded the supported opinion of a treating physician, that is, clinical judgment by someone who's treating the applicant for benefits, lay witness testimony, the credibility of which is decided by the agency, and credibility findings about the applicant him or herself as to pain, stress, fatigue, and so forth caused in some cases by the impairment, in some cases by the medication prescribed to treat the impairment.

Any new process for adjudicating mental impairments which is in derogation of these legally mandated factors should be rejected, and the panel's approach in this area appears to be fundamentally flawed.

Mary, I don't want to go over time, so tell me when my thirty minutes is up. Okay?

**DR. BARROS-BAILEY:** You're okay.

**MR. SUTTON:** Thanks. Third, evaluation of symptoms. This is unique to each individual claimant, cannot be quantified, and requires an individualized assessment. Again, clinical judgment. I know and it's stated in the report that inference is the key and you want to reduce the leap, but there are certain things you just can't do. Regulations in SSA policy provide detailed guidance regarding the evaluation of subjective symptoms including pain. Factors which must be included in the disability determination include pain, fatigue, reaching

limitations, manipulative functions, sensory loss, dizziness, which is often a side effect of medications, impairment of bodily functions requiring frequent rest room breaks, balance limitations due to dizziness or physical impairments, environmental limitations, and of course mental demands.

As stated previously, it appears to us that the panel's approach devalues and in some cases disregards these elements of disability adjudication. Any methodology which fails to account for these factors is inappropriate for SSA's adjudicatory purposes.

Fourth, skills. The definition of "skill" in SSA's regulation and SSR 82-41 should be retained. I'm not going to take the panel's time to read the definition of skill. I think you all know what it is. As required by law, SSA must look at the individual's past relevant work history, determine the skill level of that work, and if that work is semiskilled or skilled, whether the skills can be used in other work. A revised occupational system must recognize the existence of unskilled work.

Agency policy directives make it clear that a generalized categorization, assuming that the individual has acquired certain skills, is inappropriate and that the adjudicator must make an individualized assessment of the claimant, including consideration of exertional and nonexertional limitations, past work, whether any skills were acquired in semiskilled or skilled past work, and whether the claimant's limitations allow acquired skills to be used in other jobs. And we have very specific

regulations about transferability of skills in the law and in the case law interpreting it.

The panel's approach appears to assume that there is no such thing as unskilled work, so that any claimant with work experience can be assumed to have some set of skills that may be transferable to other work. Such assumptions are contrary to the real-world experience of our clients and are directly at odds with the law which governs SSA adjudications.

Specifically, we have Medical-Vocational Guidelines, as mentioned previously, to deal with exertional impairments only. And under those guidelines, for example, a person's 57 years old who has done strenuous work all his life, using his back and not his brain, who has been injured, who is now limited to sedentary or light exertion and who does not have transferable skills because of the nature of the work that he or she's always done is deemed disabled under the regulations, even though in theory that person could do entry-level sit-down sedentary work. That's a social policy. That's a decision that has been made that has been followed now for over 30 years.

If all of a sudden we're going to say there is or question the existence of unskilled work, what happens to that presumption? It's gone. To coin a phrase, "Yes, Virginia, there is unskilled work."

Accommodations. Current SSA policy does not consider "reasonable accommodation" in determining whether an individual can

perform a specific job, and we believe that this policy is appropriate and should continue. The United States Supreme Court has recognized that the ADA and the Social Security disability program are not inconsistent with each other but were designed for different purposes and can coexist.

In *Cleveland versus Policy Management Systems Corp.* in 1999, the court noted that the Social Security Act provides benefits to individuals under a disability as defined in the Act while the ADA, quote, seeks to eliminate unwarranted discrimination against disabled individuals. The court noted, quote, "There are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side," and thus held that it would not apply a negative presumption that an individual who applies or receives SSDI cannot pursue an ADA claim.

Specifically relevant to the panel's work, the court noted how the ADA defines a "qualified individual" to include a disabled person who can perform essential functions of a specific job "with reasonable accommodations," a factor which is not part of Social Security's statutory definition of disability. Thus, an ADA claim that a plaintiff can perform a specific job with reasonable accommodation, quote, may well prove consistent with an SSDI claim that the plaintiff could not perform her own job or other jobs without it, end quote. That's the Supreme Court of the United States.

As surveys of incumbent workers are conducted, it will be

very important to distinguish between work options that are very widespread and work options that are developed between one employee and one employer. With regard to the latter, we are all aware of instances where many employees have been given special treatment or, quote, accommodations by employers for any number of reasons; for example, long-term employee status, familial relationships, particularly benevolent employers and so forth. It would be wrong to include those examples of accommodations in specific job situations as options available to all workers, and any survey of incumbents should not sweep those in with everything else. Work options should, at a minimum, meet the significant number of jobs in the national economy test contained in the statute.

To conclude, we believe that any changes in the disability determination process must ensure that individuals who meet the statutory definition of disability are found eligible for benefits. That definition of disability is set by Congress in the Social Security Act and implemented by SSA through regulations. In many ways, implementation of the panel's report and recommendations as currently constituted would effectively change the definition of "disability" contained in current law. For this reason, we urge the panel to reconsider its proposals in light of their impact on individuals who currently meet the disability standard in the Social Security Act, a standard which has not been changed by Congress and which this panel's recommendations should not change the outcomes of



claims unless Congress changes the definition of "disability."

Thank you for the opportunity to provide these comments to the panel on behalf of NOSSCR, and I would be happy to answer any questions that you have.

**DR. BARROS-BAILEY:** Do any of the panel members have questions for Mr. Sutton? Dave?

**DR. SCHRETLEN:** Yes. Thank you. As chair of the Mental/Cognitive Subcommittee, I find your comments particularly salient. And I've heard some of these from other panel members along the way, some of the concerns that you expressed, but I appreciate the clarity with which you've expressed them.

One thing I have -- I have a question. It's actually two questions. And one of the questions, and the first, is that we have heard repeatedly that approximately 35 percent of SSDI and SSI beneficiaries are disabled by virtue primarily of mental disorders and mental retardation, one or the other, or both, so that mental/cognitive impairments are germane to the large -- is sort of a plurality of disability, is germane to a plurality of disability beneficiaries.

And we heard repeatedly that the current system, DOT, provides very inadequate coverage of the mental and cognitive demands of work. And so my question is, from NOSSCR's perspective, do you think that that is wise for a new OIS to include a more detailed assessment of the

mental sort of cognitive demands of work? And, if so, would you think -- do you think that it would be wise to stick with the current MRFC Assessment for matching the characteristics of disability applicants to those job demands, or do you think that there may be a need to revise the way we assess mental/cognitive residual functional capacity, just not the way it was recommended in this report?

**MR. SUTTON:** Dr. Schretlen, I appreciate the questions, and they're very good ones. I would have to say the answers are maybe and maybe. I can't be more specific than that. With respect to the Mental Residual Functional Capacity that I've talked about specifically, it appears, just to someone who reads the subcommittee report, that you convened a roundtable, you invited a number of people, maybe you invited more people than actually showed up, I don't know, but effectively you sort of talked to everybody about what they thought, you surveyed them. There's some reference to other organizations being surveyed, but you don't say whom. Maybe the American Psychiatric Association was one. I'd be curious to know. But the way this was gone about seems to me to have many shortcomings.

One of the participants in the panel I actually reached out to, Dr. Pamela Warren at the University of Illinois, and she told me that she has submitted detailed comments on the panel's recommendation, which I would just urge the panel to make public. I think those should be on the

website for the public to be able to read. One of the things that she pointed out was, you've got biases introduced by the fact that these are highly respected people, as I know you are in your field, Dr. Schretlen. These are highly respected people you invite to a roundtable. They come in and talk about research. There's some research that they were the PI on. There's other research that they weren't but they know of. And that seems to be what you're going by is the point that she makes. There needs to be a more exhaustive review of what's out there, and particularly from a clinical, not just a research perspective.

Again, I'm harping on psychiatrists because in my world, representing mentally disabled claimants, people receive treatment primarily in community mental health centers, primarily from psychiatrists, and hopefully at least master's level social worker therapists, not usually psychologists. Those are the people in the trenches day to day trying to help people function, trying to help people make it in their jobs, in their home, in their communities.

Clinical judgment from those folks who are seeing the claimants on a regular basis is, for my money, much, much more important than any kind of measure I could imagine you could devise after reviewing all the literature in the universe and spending I don't know how much money to develop a new test. It's not going to seem to me to come out to much that's going to be better predictive of success or failure in competitive

employment than the clinical judgment of those psychiatrists and those therapists who are treating the patients, the treating clinicians. I think that's particularly true.

So going back to the mental impairments. Mental retardation is its own animal. We know that. And it seems to me that this report is not even addressing that. It's kind of a hold harmless for MR, and I'm fine with that. I think that's true. What does that leave in terms of the universe of mental impairments recognized by regulation? There's Section 12.02, Organic Mental Disorders, and everything else is basically a psychiatric problem, personality disorders, affective disorders, anxiety disorders. You know. You know what's there.

Cognitive measures seem to me to be a very indirect and inadequately conceived way of getting at job readiness, and particularly sustainability, to quote Mr. Kaufman, for people with chronic mental illness. I just don't see it as a fruitful way to go. So, most of my criticism is really directed at that aspect, the person side is the way the panel puts it, and particularly around mental/cognitive functioning.

Now, you asked the predecessor question, should we have an OIS that gives us more information about the mental demands of work and the cognitive demands of work than the DOT does. Perhaps. Perhaps that can be done through reconfiguring the O\*NET to disaggregate the occupational units, use what's already been done for the last ten years, beef

it up, get it together with the Department of Labor, and have a database that everybody uses. Okay? That's what other experts who have looked at this thing. It seems to be very redundant and very expensive. And, again, there is a problem. Lawyers talk about foxes guarding the henhouse. This is the agency that's using this to decide whether somebody's disabled or not that is taking control of the process of designing its own occupational information system where for all the years that one has existed it's been lodged in another agency, the Federal Government, that does not have that interest. It's a problem. It's a structural problem. And that is just not taken account of in the panel's work here.

So I would be -- I'm a little bit agnostic about the first question, whether the OIS has to include this. I think it's a very relevant consideration. But certainly in terms of the person side of this, I think this is off the track. I think I made that pretty clear.

**DR. BARROS-BAILEY:** Mark?

**DR. WILSON:** Very much appreciate your comments, and it's important that we hear from people like you about your concerns about our recommendations. And I want to make clear that the NAS study, which I, on behalf of the panel, observed the process, has not been released at this point. The steps that they go through to evaluate a report aren't complete. So it's unlikely that substantial recommendations are going to be changed, but at this point we won't know for about another

month. But I just wanted to reassure you that I personally, not as a member of the panel, but as an individual, was very interested in some of what they had to say and actually went to the National Academy and spoke with them trying to make sure I understood the underlying scientific rationale for some of their thoughts.

And I take it from your -- were you able to review the study as it currently exists?

**MR. SUTTON:** Preliminary report, yes, I was.

**DR. WILSON:** Were you -- I'd be interested in your reactions to some of the comments that the report had to say about the construct validity and the reliability of the current O\*NET system, the recommendation that a scientific panel needs to look at this and review the data. And, in particular, one of my concerns, which I'd be very interested to hear, what if this panel comes -- is formed and comes to the conclusion that O\*NET, its current procedures, its current constructs would not be able to survive a Daubert challenge?

**MR. SUTTON:** Well, Daubert, you know, is the specter that hangs over all of this, as you understand, legally. So whatever is adopted is going to have to meet the Daubert challenge. I would point -- I would tell you that neither of the cases that I quoted, neither the Jones case nor the Cunningham case, mentioned Daubert, okay? But the courts have sort of a sixth sense about what makes -- what makes sense, and they're

looking at something that's way out of date and hasn't been updated in way too long and they're just saying we don't think this passes the smell test. So that's a lot of what's going on. But it is instructive that both courts went to the O\*NET to look for alternative views on what is involved in those occupations.

I know, and I've stated, and we as an organization understand that the O\*NET as currently constituted just can't be used, and we understand why. When you're talking about reliability, I am not a psychometrician. I have reviewed some of the literature and I've read in particular Dr. Harvey's, some of his things. I mean, there's no way I could have read them all. That would take me a year. But I know that it's very controversial that the reliability, interrater reliability, all these issues revolve around it.

But it seems to me it's worth looking at whether it's possible to reconfigure the O\*NET to make it work. And if that's not the case, the next question I would have is, the assumption from the beginning for the panel that we're replacing, not revising or updating the DOT, is one that should be re-examined. If not the O\*NET, the question then becomes, if you already have an existing taxonomy, it's this expansive, you can get rid of some of the jobs, you can update the research, you can work from a baseline that everyone in my field -- that is, disability adjudication, and I'm talking about lawyers, judges, and vocational experts -- is very familiar

with.

Doesn't it make more sense to build on an existing superstructure? If you need more inputs, if you need mental/cognitive demands at work, something more than skilled, semiskilled, unskilled, for example, maybe that can be engrafted onto the DOT categories as we know them. Certainly those categories are the basis for Dr. Harvey's criticism of the O\*NET in being completely overly aggregated.

So I guess I'm just not convinced from having read what the panel has done so far in a year that starting from scratch is what needs to be done. I don't think starting from scratch is in the interest of my clients who are clients for disability benefits. And I want to add to something that Mr. Kaufman said, and this is just an aside. As he pointed out, we tell claimants to try to return to work, and if they can't and they don't make it for X amount of time, that just shows, pretty much, to most adjudicators they really can't do it.

But the other fact is, we encourage our claimants to return to work because we want them to be able to work. And if they become able to work through treatment, through medication, through better therapy, through going to therapy twice a week instead of once a month and they go out and earn money, they're going to be in a better financial position. They're going to be in a better psychic position. They're going to have more self-esteem. It's better all the way around. So we encourage all of our



claimants to return to work even as we're advocating that they are currently and have been for some period of time in the past disabled. It's just how we do business.

And this is true of all professional representatives, attorneys and non-attorneys, I believe. We want people to be able to work. The fact is, we're seeing people who can't. And we think that that is, again, it sort of shouts from the pages of the medical records and the work histories that we see case after case after case. That's why we do what we do. So there is a -- there is a human dimension to what we're doing and what the panel is doing. And I just want to say I appreciate how much time. I just can't imagine how much time everybody here has put in on this panel. And I don't mean to diminish it in any way, but I do think there are some major problems here and that things are off the track. And that's what I wanted to convey to the panel today.

**DR. BARROS-BAILEY:** Okay. Thank you. I just have a couple comments. This question about why not the DOT was something that we had coming back from user organizations back in July when we asked that question. There was a specific aspect of the report where we addressed that. We also indicated in that section that some of what we're going to be doing looks like the DOT. And so some of your comments, you know, in terms of the data elements, I didn't see anything in terms of your specific feedback that would defer in terms of what we

recommended specific for the OIS in terms of data elements being problematic.

There was also, as we started off this session, understanding that the subcommittees recommend to the panel and the panel recommends to SSA. I think there were some things that we're all aware of in terms of how we use certain terms. And I think you were saying panel when you meant subcommittee.

MR. SUTTON: So let me say, that's exactly right, and I did not really distinguish between the two. And I have to say, in reading the entire document, I read it as a whole. And so to the extent I have addressed subcommittee recommendations that weren't necessarily part of the entire panel's recommendations, take it as given. And so I accept that criticism.

As far as the data elements, I have not focused specifically on those. I'm not -- I'm neither endorsing nor rejecting those. I will say that it is a little curious to me -- and this is where I talked about this odd mixture of I think shortcuts and overweening ambition in the approach. If you're going to look at only 150 jobs or 200 jobs, okay, that's 65 percent of the jobs that claimants have done in the past, so that's good enough. How different is that than the O\*NET leaving 2,300 jobs by the wayside? It has a problem. There's a problem there. There's inference in the research and development end of things, not even getting to adjudication yet.

So I just -- I would say that what I have focused on in my comments -- and we were given 30 minutes. I appreciate that's a lot of time for the panel, and I'm now over time, I'm sure, but I alluded in my comments to the points that I thought were most important, and that's what I think our membership cares most about. So to the extent I didn't address other things, it's -- it is what it is. I'm not commenting either way. But what I focused on are things that I think need to be addressed first and foremost and what the panel and its subcommittees have put out there.

**DR. BARROS-BAILEY:** Thank you. I appreciate your time. We are at 3:00. Let us go ahead and take a 15-minute break and come back and continue on. I appreciate it.

**(Recess from 3:00 to 3:18)**

**DR. BARROS-BAILEY:** We are about to go into the public comment period. And besides the presentations that we have received so far from the user organizations, we would like to listen to the public as well. So these are people signed up either as individuals or as members of organizations to provide public comment. Anybody is eligible for sign-up for public comment, either in person or telephonically. We will have some of the public comment presenters this afternoon available to us but telephonically.

And for individuals who are providing public comment to the panel, there's a five-minute presentation. For those representing

organizations, there are ten minutes. And I would like to introduce the first person to provide public comment, and that is Michael Garza. Dr. Michael Garza is with Brookhaven College in the Social Science Department here in Dallas, Texas.

So, Dr. Garza, you'll have ten minutes. Thank you.

**DR. GARZA:** Well, I'm pleased -- are these on? Can you hear me?

**DR. BARROS-BAILEY:** There should be a button on the mike. There you go.

**DR. GARZA:** Okay. Now, again, I'm pleased and proud to be here and a little embarrassed also because I'll be talking about -- a lot about myself in particular, so -- and I have much more material than I have time for, so I'm going to read most of this and try to get through to the questions if you should have any.

I have a doctor's degree in psychology from Texas A&M. I've been a professor for 35 years. I'm a tennis enthusiast, playing tennis since I was 8 years old, rising respectively to 9 and 10 in doubles and singles in the United States. I'm a pianist, and I've served in the military.

Some interesting things about me having an attention deficit disorder problem and hyperactivity also in school was that in the 4th grade I was held back, as many students experience because there's somewhat of a delay there. I had to graduate from high school late. I flunked out of

college three times. It took me nine years to graduate with a bachelor's degree. Because of ADHD, I was not able to function in school. I had always thought there was something wrong with me. Probably why I went into psychology. I was labeled lazy, a daydreamer, not able to stay on task, distracted, distractable, impulsive, which resulted in low self-esteem, poor performance, frustration, and I felt like an outsider when I was growing up.

I grew up in the lower Rio Grand Valley, which is right on the border of Mexico. As past founder of the North Texas chapter of CHADD and past coordinator of the North Texas chapter of CHADD, I've witnessed children and adults with ADHD and how their disability and impairment have impacted them in many of their lives, including not being able to hold down a job, poor social skills, relationship issues, a multitude of co-occurring conditions which are covered under Social Security disability benefits.

Executive functioning is the same as having a conductor in the orchestra, metaphorically, in the frontal lobe of an ADHD person's brain. This cerebral CEO is in charge of working memory, expression, organization, and analyzing. And please see page 1 on your handout.

Executive functioning. Key areas of the brain act as the control center for an array of executive functions which control skills such as working memory, expressing oneself in a written or spoken language, organizing time and space, starting and finishing projects, controlling

emotions, using internal self-talk to control one's actions, analyzing and solving complex problems, and planning ahead for the future, foresight.

The impact of ADHD functions on emotions and behavior, see page 2, is following basic instructions, speaking out impulsively, socializing excessively, managing emotions, anger, frustration, delaying gratification, evaluating consequences, modifying behavior to fit the situation, learning from experience, applying skills at the right time, and decision-making skills.

Recent studies from the Center of Disease Control and Prevention and Mayo Clinic. See page 3 of your handout. 7.8 percent of children have ADD. As many as two-thirds of children have one occurring disability also with it. As many as 50 percent have a co-occurring learning disability. And ADHD is underdiagnosed. Diagnosed with ADHD in childhood percentages that continue into adulthood, see page 4. 80 percent into adulthood, 67 percent -- I mean 80 percent into adolescence, excuse me, 67 percent into adulthood.

As an educator, I have witnessed our community college students experience difficulties in their learning, retention, focus, and ability to stay on task. Whatever educators should know, ADHD is underdiagnosed. A complete neurobiological disorder, three types of ADHD as suggested by the DSM-IV now. People with ADHD are not all alike. There is a 30 percent developmental delay, which is about three

years. Coexisting conditions, 69 percent; executive function deficit, 30 percent to a hundred; ADHD runs in families, 50 to 54 percent; treatment works 75 to 92 percent of the time; and lifelong challenges are 75 to 80 percent of the time.

Students with ADHD are at risk, for example, at school. 90 percent will struggle academically. 25 to 50 percent have learning disabilities. 29 percent will fail a grade. 35 percent drop out of high school. 46 percent are suspended. 11 percent are expelled. 95 percent do not graduate from college. 46 percent of prisoners tested in one study exceed the cutoff scores of 46 on the Wender Utah rating scale for ADHD. Predictor of substance use and juvenile justice issues, it is there for sure.

It is important to recognize that ADHD is made worse 70 percent of the time by people with co-occurring disorders. A segment of the population can't find a job. ADHD operates on a continuum, depending on how their disability impacts their ability to find a job.

Some things about -- some more things about me. I never read a book to the end. In graduate school, because I couldn't sustain my attention, I read bits and pieces. When I first started taking medication and read a whole article completely, I couldn't hold back the tears. I wondered what I would have been like if I would have found this in school earlier. I feel very fortunate that my disability led me to a profession in teaching that is diverse, entertaining, and rewarding. I have been married five times, so

typically of an ADD problem. I suppose we just get bored. I don't know. Tennis is what has allowed me to make it as far as I have. If I wouldn't have had a father that was an avid tennis player, I would have had zero self-esteem.

If you have attention deficit, it is hard to keep a job and take directions. Without the ability to maintain attention, you really can't perform other job tasks. What worked for me won't work for another person with a more severe attention deficit impairment. It is very hard to maintain nearly any semblance of productivity in the workplace. There are less job options for those needing to sustain attention. We have more computers today in the workplace. Our society has become more technical, and the aspect of being able to focus and pay attention is more demanding.

I'm open for questions. That's my six minutes.

**DR. BARROS-BAILEY:** Are there any questions from the panel?

**MS. KARMAN:** Hi, Dr. Garza. Thank you very much for coming to speak with us.

**DR. GARZA:** Thank you very much for having this. This is an esteemed panel, and so I'm really proud to be here. Thank you.

**MS. KARMAN:** Did you have any suggestions for us that we may want to consider as we move forward in any of the areas that you may have, you know, found of interest in our recommendations?



**DR. GARZA:** So often in the system, Social Security system, it seems like ADHD is not very well recognized as an impairment. And a lot of people, older people that are, you know, that are -- should be in the workforce are struggling because of their ADHD, because of their attention deficit disorder and their inability to pay attention, to maintain a job, to keep a job. And so I think that's one of the main things, in my humble opinion, that you ought to look at, you know. I mean, it's very difficult for a person that's severely affected by ADHD. And, I mean, if I wouldn't have persevered or if I wouldn't have been a competitor like I was in tennis, I would have never made it, never.

**DR. BARROS-BAILEY:** Dr. Garza, I just have a very kind of practical question. One of the subcommittees that we have is User Needs and Relations in terms of our attempt to reach out about the work that we're doing. And I'm just very curious how you found out about our work and came to the panel in terms of public comment. It would help us to be able to reach out to other individuals if we understood the effectiveness or process whereby people are hearing about our work.

**DR. GARZA:** Sure. There is a great organization called CHADD, Children and Adults with Attention Deficit Disorder. We have a great website, [chadd.org](http://chadd.org), with a ton of information. When I first started taking -- I mean, I always had a problem with attention and holding attention and distractibility, and so I had an internist that would not give

me any medication or wouldn't refer me to a psychiatrist. And I said, well, I work with a lot of psychiatrists. I'll find one myself. And he says, no, no, I will. And I said, besides, I think it would help my tennis. And it did. And I got much better.

Now, how did I find out? I found out because of CHADD and because of my -- my connection with CHADD. It's a great organization. We've got 12,000 people. Got a staff of 36 in Washington. We're doing a lot to help ADD, and I hope y'all will too.

**DR. BARROS-BAILEY:** Thank you, Dr. Garza. Any other questions from any panel member? Thank you for your time for coming to provide public comment.

**DR. GARZA:** Thank you. Thank y'all.

**DR. BARROS-BAILEY:** The next person that will be providing public comment is Timothy Harlan who will be available telephonically. He is with NAMI Missouri, vice president. He's also with Harlan, Harlan & Still in Columbia, Missouri.

And so, Mr. Harlan, you will have ten minutes. Thank you.

**MR. HARLAN:** Thank you, Ms. Chairman, members of the committee. I appreciate your acceptance to my request to testify today. I testify on behalf of the National Alliance on Mental Illness, NAMI, in Missouri, of which I'm formerly the president, currently the vice president. NAMI is the largest grassroots mental health organization in

America with over 1,100 affiliates, and my specific training is in regard to family support groups, also assisting with training both for law enforcement and legislative advocates, and I've been a lawyer for 35 years.

The report of the Mental/Cognitive Subcommittee raises several interesting issues, and I think it is always appropriate that Social Security is interested in a new method to provide a more streamlined method of adjudicating claims, particularly in view of the actual and the projected increase in claims. The trick is always to weigh that against the statutory requirement that each claimant receive a full and fair evaluation and the requirements of due process.

My first concern is in regard to the Wonderlic personality test. I've been interested to review the history of the test, which I see it as an intelligence test that has some scientific correlation with the WAIS-III. The subcommittee report research was interesting because it has been I think accepted as a predictor of success in the workplace. I was frankly even more interested in the success showing it to be a solid predictor in regard to chronic illness and accident.

I think the question is whether it can assess the wide variety of mental impairment. And I would note in regard to the test it has been challenged in court many, many times because of racial bias. The subcommittee's report, in fact, refers to that, the last paragraph of page C-20, which acknowledges that issue in regard to certain subsets of

claimant. The report notes that there would be research necessary to deal with that issue.

My concern would be, it would be both extensive and expensive to conduct that research, and I'm not sure what we'd have when we would get through. It is also unclear as to who would administer the test. A 12-minute test with whom the psychologist and the neuropsychologist that I talked to were not familiar with, administered by a non-mental health professional, I think, to be honest, would cause concerns for the court.

And, lastly, I know just that a lot of the research is done either with populations who are in the workforce or college students. The pool of disability applicants is much different than simply the pool of job applicants. I'm not sure as to how many of you are directly familiar with Social Security claimants who suffer from severe mental disorders, but I have represented claimants for 31 years. And when I hear their stories across the table, they're no longer a statistic or nameless faces.

In reviewing my notes in the last few weeks, I would like to cite a few examples and see how they would fit into this test. My client with PTSD from Vietnam who was sitting crying in my waiting room because I had scheduled an interview to update his case and he was afraid. Another client with PTSD from Vietnam who falls to the ground when acorns pop and leaves burn in the fall. A client with PTSD from Iraq who says to me

after his initial claim was denied, "I've thought about strangling you." My client with schizophrenia who hears the voice of her murdered cousin and constantly feels people touching her. My client who was raped by one uncle at 7 while another uncle watched. My client who was married at age 18, then chained to the bed for up to three days at a time by her husband and tells me "I can't pick up a knife without thinking of killing myself."

My client who was sexually abused by his cousin as a young child and as an adult is sure that his family wants him killed. My client whose mother died when she was 4 and she was placed in foster care and she tells me softly, "I spent my childhood hiding under the bed or in the closet so I wouldn't be beaten by my foster parents." Client yesterday who was shot point-blank in the face, neck, and chest, and when I asked him about being able to focus watching television, his response was, "I have my own movie playing in my head. It plays all the time. I'm being shot." That's from an injury in 2005.

And as our first speaker spoke, I thought about my client at a hearing which ended at 1:00 this afternoon who has terrible attention deficit disorder who's about 35. And during the hearing the judge asked him, "What do you do during the day?" His only response was, "Judge, I move around and I pace and I have a million thoughts in my head."

I could go on and on with this list because these are my clients. My concern is that these are people who don't fit into a 12-minute

test. They have very serious psychiatric problems. They deserve to have their claims adjudicated in a scientifically appropriate manner, and they deserve due process.

I think a very positive part of the subcommittee report is the discussion at pages C-11 and 12 in regard to Form 4734. I don't know that it clearly is reflected in the report, but this is based on current Social Security regulations, which are found at DI 25020.010, Mental Limitation, which is part of the POMS regulation. A review of those actual regulations is of some help, for instance, with the Comment No. 6 at page C-11 with the question appropriately of what does "extended" mean. The actual regulation contains the word "extended period, two-hour segment." That small addition makes that question very understandable. Someone has to be able to focus for a two-hour segment, the time between breaks, to do any kind of job.

Our office has used these particular regulations to inquire in writing of both treating and examining sources for two years. We've found it very clearly of assistance to assess the claimant's impairments with both the vocational expert and the administrative law judge. You occasionally run into a provider who writes "fair" or "poor" for every question, which is not defined in the form. But for the most part psychologists and psychiatrists have found that answering these questions that are already in the regulations has been a very efficient manner, if not time-consuming. It

is protective of the right of the claimant to have their claim adjudicated properly.

I would just leave you two thoughts. I think the Wonderlic is too narrow for the broad range of psychiatric illnesses. I don't think there's any wrong with the test, but it's simply asking a lot for such a narrow test to be used on a broad basis with these kind of impairments. And I think that being a predictor of success at a particular job, the NFL being in this case the most famous, is much different than trying to quantify the extent of an impairment. I think you do already have a very good method using the DI 25020 regulation. I think that can be tweaked and expanded, and I would recommend further review of that particular regulation. And I would be delighted to answer any questions from the committee.

**DR. BARROS-BAILEY:** Thank you, Mr. Harlan.

Are there any questions by the panel members? Thank you for calling in and for your time. We appreciate your public comment to the panel.

**MR. HARLAN:** I appreciate the opportunity. Thank you.

**DR. BARROS-BAILEY:** Thank you.

Our next person to provide public comment is Mr. Timothy Cuddigan of the NAMI Nebraska president and attorney-at-law. He is in Omaha, Nebraska.

Mr. Cuddigan -- I hope I'm saying that right -- are you on?

**UNIDENTIFIED FEMALE SPEAKER:** Timothy Cuddigan is not on the line at this time.

**DR. BARROS-BAILEY:** Okay. We also have public comment by Mr. Marty Ford -- sorry, Ms. Marty Ford of the ARC and United Cerebral Palsy Disability Policy Collaboration in Washington D.C. who is also providing public comment by telephone.

Ms. Ford, are you on?

**UNIDENTIFIED FEMALE SPEAKER:** Marty Ford is not on the line at this time.

**DR. BARROS-BAILEY:** Okay. Dr. Bostrom, Samantha Bostrom is here in person, I understand. Is that correct?

**UNIDENTIFIED MALE SPEAKER:** She's on her way back.

**DR. BARROS-BAILEY:** She's on her way back. Okay. She probably thought she had time. That's correct. We are running -- okay. So, how's the weather in Dallas? We've been inside all day.

Okay. They have two more presentations this afternoon, so maybe -- I don't know if maybe we can move to the next presentation and maybe if Dr. Bostrom -- is that Dr. Bostrom? There's a question from the panel member if there's a way to call Tim or the two individuals who were supposed to call in. Can we confirm in terms of Tim Cuddigan and Marty



**Ford? Do we have telephone numbers for them?**

**UNIDENTIFIED FEMALE SPEAKER: We do have Timothy Cuddigan on the line now.**

**DR. BARROS-BAILEY: Okay. Good afternoon.**

**MR. CUDDIGAN: Good afternoon.**

**DR. BARROS-BAILEY: Okay. Thank you for calling in. We appreciate it. And I had introduced you, but I'll reintroduce you again. Mr. Tim Cuddigan is with the NAMI Nebraska president and also an attorney-at-law in Omaha, Nebraska.**

**Tim, we're going to have public comment for about ten minutes, and then after that, the panel, if any of the panel members have questions, they'll ask questions. So, go ahead. Thank you.**

**MR. CUDDIGAN: Thank you. Good afternoon. My name is Tim Cuddigan. I'm an attorney in Omaha, Nebraska. I'm speaking on behalf of the National Alliance of Mental Illness, NAMI, and the Nebraska state organization for the National Alliance on Mental Illness. I'm the president of the NAMI Nebraska state organization.**

**The National Alliance on Mental Illness is a grassroots organization dedicated to improving the lives of individuals and families affected by mental illness. NAMI was founded in 1979 and helps individuals and families through awareness, support, education, and advocacy. NAMI has more than 210,000 members, and it's the nation's**

leading grassroots organization solely dedicated to improving the quality of life for individuals living with mental illness and their families.

This afternoon I want to speak to you about the recommendations of the Mental/Cognition Subcommittee to revise the Mental Residual Functional Capacity Assessment. In my comments this afternoon, I'd like to make three points. Fundamental to the disability adjudication process is the principle that every claimant has the right to an individualized assessment of their ability to work, taking into consideration their physical and mental limitations based on their age, education, and past work experience. Every claimant is entitled to full and fair individual evaluation. This evaluation should include important sources of information regarding the claimant's mental performance such as the opinions of their treating medical providers, whether it be a psychiatrist, psychologist, or a nurse-practitioner.

In addition, important sources of information for claimants with mental illness is the testimony of lay witnesses who provide information about the claimant's day-to-day life and the performance of their past jobs. The severity of many illnesses wax and wane over time, and therefore more than a snapshot of intelligence and testing on one day is necessary.

The second point that I'd like to make is that my recommendation that any recommendation to add general cognitive ability

testing under the section of neurocognitive functioning in the Mental RFC Assessment should not elevate general cognitive ability testing as the sole determining factor of disability. A 12-minute test of general cognitive ability is not the standard for disability adjudication. It has limits, has limits in its use in older individuals and in women and minorities.

The committee recommends the assessment of general cognitive ability, which it states it can reliably measure with -- expressed as g with a single number. While it makes that recommendation, it notes, a major disadvantage of relying solely on g might mask more specific cognitive impairments that could preclude the ability to work. The use of such a simple test as the Wonderlic test to determine disability raises a number of questions. Do the tests show bias against minorities, aged populations, or women? Have the tests been performed on populations or test groups or individuals with mental illness such as bipolar, schizophrenia, or anxiety? What would the effect of a claimant not being able to complete the test be, whether it's due to their illness of anxiety, concentration, whether it's due to their illness, whether it's due to anxiety, whether it's due to concentration problems or just giving up? Would they be found disabled, or would they be labeled as malingering?

The final point that I want to make is my concern about the committee's recommendation to create as a standard the test scores of successful job applicants to use as a comparison measure with claimant

scores.

But before I get into that, I'd like to go back and talk about for a second a claimant that I represented that I found the whole issue of psychological testing to be not very helpful in determining the outcome of her case. I represented a 50-year-old lady who suffered a closed head injury when she fell down some stairs. She was hospitalized for four days and then sent home. Her treating neurosurgeon said that she was unable to work and should not be left alone. When she applied for Social Security, she was sent for a consultive examination with a neurologist. His diagnosis was posttraumatic encephalopathy. He said that she was unable to work, and he recommended a neuropsychological evaluation.

The same day Social Security sent her to a psychologist who found that she had no medically determinable impairment. This psychologist performed a Wechsler Memory Scale test and determined that she was able to perform simple -- follow simple instructions and did not need -- and could perform those under ordinary supervision.

DDS, faced with the conflicting testimony of a neurologist who said that the claimant was unable to work and a neurosurgeon who said the claimant was unable to work and a psychologist who said that the claimant had no medically determinable impairment, decided to send the claimant out for another psychological evaluation. Even though the neurologist had recommended a neuropsychological evaluation, the practice

in Nebraska, and I don't know how it is in the rest of the country, is that DDS will not pay for a neuropsychological evaluation because they're too costly. So they sent her out for another test, and this was a WAIS test or a intelligence test. The scores came back and, once again, the psychologist said that the lady was able to perform simple instructions under ordinary supervision.

Faced with the refusal of Social Security to conduct neuropsychological evaluations, I decided that I was going to, out of my own pocket, pay for a workshop evaluation. So my claimant traveled to another city to have a workshop evaluation, a half-day session, where she was observed performing timed tasks. Thereafter, the evaluator reported that the claimant was not up to national standards in terms of the time -- the performance of the tasks and the being able to follow instructions. Just to make sure that everything was completed, I asked her neurosurgeon to have a Purdue Pegboard Test performed. That's a test that's performed by occupational therapists that measures hand speed. In this case the claimant's hand speed was in the first percentile.

So what do I take from this experience and apply it to today's topic? This lady had a head injury. Her treating neurosurgeon said she was unable to work on multiple occasions. She underwent two psychological evaluations, both of which concluded that she was able to work, but it was only through the persistence of getting a workshop

evaluation and a simple test of hand speed that we were able to obtain disability for her.

My sense is that while it's nice to have neuropsychological testing, the reality is, is that the Social Security Administration doesn't normally want to pay for it. So --

**DR. BARROS-BAILEY:** Mr. Cuddigan, I just -- I'm sorry to interrupt. Each speaker gets ten minutes, and your ten minutes are up. Can I ask you to maybe in about 30 seconds conclude your public comment? I'd appreciate it. Thank you.

**MR. CUDDIGAN:** Right. Certainly. I'm sorry. The final comment I want to make is about the committee's recommendation to create a standard for successful job workers and use that as the comparison to measure claimant scores. Without repeating my concerns about general intelligence as a measure of ability, there are two problems with setting the standard. There are two problems.

One is the setting of the standard by SSA in the first place seems to be arbitrary. The second problem is the express intent to include all the workers in the universe of successful workers that are working with accommodations. This inclusion will lower the standard for a successful worker. Social Security has a long-standing policy that accommodations by an employer are not considered a vocational division. Thank you.

**DR. BARROS-BAILEY:** Thank you. I will ask the

panel if there are any questions. I thank you for your time for calling in.

**MR. CUDDIGAN:** All right. Thank you.

**DR. BARROS-BAILEY:** Thank you. Good afternoon.

**MR. CUDDIGAN:** Good afternoon.

**DR. BARROS-BAILEY:** We have Marty Ford on the line, I understand. Can I get a confirmation of that?

**MS. FORD:** Yes, I'm on the line.

**DR. BARROS-BAILEY:** Wonderful. Thank you.

Ms. Ford is with ARC and United Cerebral Palsy Disability Policy Collaboration in Washington D.C. Welcome. Thank you for calling in, and you will have ten minutes.

**MS. FORD:** Thank you. The ARC of the United States and United Cerebral Palsy are both organizations that work with people with significant disabilities, and part of our work at the local and state level does include assisting people in finding jobs, preparing for work, et cetera. So I want to put the comments that I make in the context that we do believe that it is possible for people, even with very significant disabilities, to work. But it depends on the kinds of support that they have, the kind of training that they have, and the ongoing services that many may need. So within that context, I'd like to make some comments about what I see as the panel's work.

First of all, we pretty generally think the framework that exists now works. While it's clear that the DOT needs to be updated, it should not be entirely set aside for what appears to be an approach toward looking at changing the process of disability determination rather than a replacement or refinement or an update of the DOT. And I believe that that may be -- you know, looking at the process of disability determination rather than dealing with the DOT issue I believe is really outside the scope of the panel's charge.

From reading the materials, I cannot say that I'm an expert on everything that's been written. There's a massive amount of information here, but my overall impression is that the panel is moving toward a direction that is not necessary and could be creating more problems than need to be created than the more limited task that it is charged with.

Basically people who meet the definition, the statutory definition of disability, are entitled to the benefits in the program. And every claimant, as the speaker before me said, has the right for individualized assessment of their ability to perform substantial gainful work based on his or her physical limitations and their age, education, and work experience.

In addition, Social Security must consider the combination of impairment. So looking strictly at one aspect of the individual and not looking at the whole individual also will not work. As I said, it requires an



individualized assessment, and I am concerned about what I'm reading in terms of the, quote, g factor where it appears that the panel is potentially moving in the direction of looking at work trades rather than what are the actual requirements of jobs that exist in the national economy. That is what the statute is looking for, and that is what Social Security should be looking for, are there jobs in the national economy that this person can do.

It seems to me to be flipping the issue to first be looking at something like the Mental RFC and deciding to change that before you've done an assessment of what are the jobs in the national economy and what are the work requirements that people need to be able to meet in order to be found able to do work in the national economy.

I'm coming from the field that serves people with intellectual disabilities and other developmental disabilities. You know, I'm well aware of the knowledge base required, the years of training, and what it takes to thoroughly assess someone, for instance, for a diagnosis of mental retardation, of intellectual disability. I can't make that jibe with the notion of a 12-minute cognitive exam to decide whether or not they are able to work. I'm just not seeing how that could function. And, as I said, I think that might be outside the scope of what the panel is charged to do because it's not looking at the factors of actual jobs that exist and whether or not the individual in front of you can actually do those or perform those jobs.

The process currently requires an evaluation of medical

evidence from treating sources. The regulations and policy determine whether and when you give controlling weight to different medical evidence. It looks at the evaluation of subjective symptoms. None of that can be eliminated lightly from the process. The entire process has been, you know, in existence for decades. It's been evolving. It has not been static. The law has changed. The regulations have changed, policies have changed. You know, it is a continually evolving approach to determining disability, and SSA takes its role seriously in needing first to update the medical listing. Those are all a part of this assessment. I'm not sure how you get to the point of looking at potentially a 12-minute exam and determining that somebody is able or not able to work.

Stress is an issue that needs to be considered. I recall reading at some point that stress may not be so important, but I do believe it is very important to people who are dealing with significant impairment, and that needs to be -- there needs to be room in the process to take account of all of the things that impact an individual person. There is some discussion about the issue of reasonable accommodations through the use of assistive technology, and I don't believe that that's actually appropriate for the adjudication process in Social Security because there is no guarantee that any individual has access to assistive technology or to medical treatment that might limit the impact of an impairment.

In reading some of the materials in the Mental/Cognitive

Subcommittee's work, I noticed that there were some comments that came in from the roundtable on the Mental RFC, and I just urge caution before accepting some of the sweeping generalizations that were made. And I'll give you two examples.

Example No. 12 regarding a person's ability to work with coworkers and supervisors versus working with the general public. I think in fact there are many people who are able to work with known coworkers and advisors, people they have become accustomed to, and yet at the same time not be able to work with the general public. So I do not see the two things as necessarily equal.

Another example was the issue of whether an individual has a lack of awareness of normal hazards, and the comment was that obviously that type of person would not be able to work. Well, given, the constituency that my organization serve and many other disability organizations serve, I would challenge that as a sweeping generalization. I think many of those individuals would be and should be qualified for Social Security benefits but that I would just be very careful about making any decisions based on sweeping generalizations like that. Yes, an individual might not be able to understand normal hazards, but that can be -- but the individual can be supported at work.

I also think that based on what I'm reading in the material that I think there's a need to have a roundtable with representatives of

claimants who see claimants on a regular basis. I only heard testimony that just ended just before mine, and I think that those individuals, those representatives and those attorneys who work with claimants every day can give you a very strong sense of the value of things like the Mental RFC process.

Without this kind of information, I think you're working in a vacuum. I don't think that it can just come from people who see the individual for the analysis or assessment of their impairment and not have the full picture of individuals in their work and home setting and recognize barriers they are up against. So I urge that the panel consider looking at some additional roundtables to bring other perspectives to this process.

And just check my notes. I believe I've covered comments I wanted to make. Again, ensuring that the individuals are afforded that right to an individualized assessment of their ability to perform the activity or work. And again, I think that I shouldn't even need to remind the panel of this, because I think even getting into that is beyond the scope of the panel's charge.

I think the issue of replacing the DOT is important. There was a recommendation from a subgroup of the National Research Council for the National Academy of Science that SSA and DOL, Department of Labor, should work together to study the viability of modifying the O\*NET to accommodate the needs of SSA, and I urge this panel also to look further

into that.

**DR. BARROS-BAILEY:** Marty, I am sorry to interrupt. Your ten minutes are up. I would ask you to maybe spend about 30 seconds if you have anything further to kind of close your comments. Thank you.

**MS. FORD:** Sure. My final comment is just be careful of terminology. I know that not everything in this -- in this subcommittee or panel document is coming directly from the panel, but I would urge you to be very cautious. I see lots of language talking about normal people versus impaired or abnormal people, healthy people versus people with disabilities, and I would suggest that there are very, very many healthy people with disabilities. You're going to run into lots of problems if you don't deal with the language that is being used and the implications of that language about individual people. Thank you.

**DR. BARROS-BAILEY:** Thank you. I will open it up to the panel to see if any of the panel members have questions of Marty. Tom, do you have a question? Okay. Thank you for being available and calling in to present public comment to the panel.

**MS. FORD:** Thank you very much.

**DR. BARROS-BAILEY:** Thank you. Good afternoon.

We have one more person who has signed up for public

comment. That is Dr. Samantha Bostrom who is here in person. Is Samantha here? I don't think she's back from -- okay. Let's go ahead and go to the American Board of Vocational Experts in terms of another user organization.

Presenting for ABVE is Mr. Ron Smolarski from Beacon Rehab Services. You will find his presentation materials in the binder. And Ron is a member of numerous organizations including the National Association of Forensic Economics, the National Rehab Association, the National Association of Disability Evaluating Professionals, the American Rehab Economic Association, and the Independent Case Management Association. He's a diplomat with the American Board of Medical Psychotherapists, the American Board of Vocational Experts, and the Canadian Association of Rehabilitation Professionals as well as the International -- member of the National -- International Association of Rehabilitation Professionals.

Mr. Smolarski, welcome, and --

**MR. SMOLARSKI:** Hi, Mary.

**DR. BARROS-BAILEY:** Hi. How are you?

**MR. SMOLARSKI:** And hello, everyone else.

Actually the one I sent in you guys don't have, but that's fine. It doesn't really matter.

But first and foremost, the American Board of Vocational

**Experts applies occupational information involving the advisory panel's work using information provided by way of the executive summary, December 2008 Occupational Information Development Advisory Panel content model and classification recommendations. ABVE has the following recommendations.**

**ABVE is of the opinion that some of the scales of measurement found in the 1991 Dictionary of Occupational Titles remain relevant and can be validated by empirical study, especially using observation. The old DOT was validated by analysts seeing jobs, and this methodology and observation remains and continues to be useful today.**

**In keeping with the Occupational Information Development Advisory Panel's executive summary, ABVE is of the opinion these traits can be observed, measured, and recorded using existing categories. Some category examples include -- I'll just say the main 24 worker traits that -- well, maybe I should record these. Sound, very hot, extremely bright, contaminants, cramped workspace, whole body vibration, radiation, disease, infections, high places, hazardous conditions, hazardous equipment, hazardous situations, sitting, standing, climbing ladders, scaffolding, walking or running, kneeling, crouching or crawling, keeping or regaining balance, using hands or objects, tools, controls, bending or twisting the body, making repetitive motions, and working indoors and outdoors.**

**ABVE perceives the key to collecting useful data is through systematic and structured processes with data collected by trained analysts. In the past SSA issued identification to vocational experts to conduct labor market surveys that granted permission for a qualified VE to view various jobs and conduct ratings. This might be a good practice to reinstate.**

**ABVE believes that if some researchers can update frequencies, it can use -- the OIADP can use existing scales and collect the data for electronic submission.**

**In the past, SSA has used definitions for transferability of work skills as follows. Transferable work skills are those work skills that once learned on one job can be used to perform other jobs. Jobs fall into three categories of skill acquisition, unskilled, semiskilled, and skilled. No work skills are transferable if a person has performed only unskilled work. Worker traits are not work skills. The transferability of work skills is most probable and meaningful among jobs that use the same or lesser degree of skill, same or similar tools and machines, and same or similar raw materials, products, processes, and/or services.**

**Field and Field, 2004, cite the most commonly accepted definitions, comes from the Social Security Regulation Section 404.1563 and 416.963 and work of Tim Field, Roger Field -- I'm sorry, Roger Weed, which is Field and Field, 2004; Field and Taylor, 1988; Field, Harris and Sink, 1980; Weed and Field, 2000, 1990; Weed, 2002. The most commonly**



**applied methodology comes from Dr. McCroskey, McCroskey, et al., 2002; McCroskey, 1979; McCroskey, Wattenbarger, Field and Sink, 1977, and is known as Vocational Diagnosis and Residual Employability, VDRE. The analysis of transferable work skills is known as Transferable Skills Analysis.**

**The new system needs to take into consideration this fundamental concept of transferability. Frequency scales must lead to an affirmative statement about transferability of work skills across the occupational continuum. With regard to functional levels, we suggest keeping the basic U.S. Department of Labor work definitions for functional levels of work; sedentary, light, medium, heavy, and very heavy. These concepts are well entrenched across disability systems and have worked for many years. These concepts have been endorsed by many state workers' compensation statutes, the Federal Office of Workers' Compensation, and SSA.**

**ABVE recommends that the methodology be clearly stated with appropriate reference citations provided. Furthermore, ABVE suggests that OIDAP publish each step in the development of the person-side scales. In fact, ABVE has a peer-reviewed journal that could be of some help, the Journal of Forensic Vocational Analysis, and would welcome research findings and studies to publish.**

**Noteworthy, the U.S. Department of Labor has struggled with**

these concepts since the first DOT was published in 1939. If you start over from scratch, you lose the experience and wealth of data developed over six decades. ABOVE is of the opinion that the key to a useful and practical Occupational Information System is ongoing job analysis by trained observers, analysts using a verifiable and replicable methodology.

Historically, the pattern for the DOT development has been one of going from 122 model worker trait groups of jobs in 1965, 3rd DOT, with 122 grouped model worker trait job demand profiles defined in terms of 51 job analysis variables to 12,099 specific occupations in 1977, 4th edition DOT, with 12,099 -- I'm sorry, 12,099 model worker trait job demand profiles defined in terms of 51 job analysis variables to 1,122 O\*NET means data worker trait groups in 1998, 1st ed. O\*NET, with 1,122 means data worker trait job demand profiles defined in terms of 480 more specifically redefined and reskilled job analysis variables.

As you can see from the patterns above, since its inception the DOT has been played in and out like an accordion. It went from 122 group model job analysis profiles in 1965 to 12,099 specific model job analysis profiles in 1977 to 1,122 O\*NET means data worker trait group job analysis profiles in 1998. In other words, the 1977 DOT was 100 times more specific in terms of worker trait job demand profiles than the 1965 DOT, and the 1998 O\*NET was ten times less specific in terms of worker trait job demand profiles but far more specific in terms of job analysis variables, 480 versus

51 than the 1977 DOT.

Those are some of the main points. However, during this conference I heard a few things and there was a couple points I'd like to address. So, one was brought up on how a functional capacity should be assessed. I think that was the question that was with -- there was a fellow back here. It dealt with how should -- how should the evaluations be done, I think, in terms of function. Anyway, my concern is that many functional capacity evaluations are medically normed, and they're important for doctors in terms of therapy because they need to know if the therapy that they're writing a script for is indeed necessary, if they should increase the therapy, decrease the therapy, change the therapy.

I feel that more of a vocationally-normed functional capacity evaluation that's geared more for what employers want. They really don't care about range of motion or degrees of function. What they care about is can the person work at a sustained rate and can they work competitively. They want to know if Joe can come in and flip pizzas, ten of them, make ten of them in an hour, can he come in six days a week from 4:00 to 2:00 in the morning. That's all he cares about. If he has to do it with his knuckles, he doesn't care. That's one.

And the other is -- there was an attorney brought up a point about the Daubert. There is a system right now that has been brought up under Daubert. It's computerized. The DOT definitely needs some

improvement. It needs to be updated. Jobs need to be updated. But there is a system out there that passes the Daubert. I personally have been through it, and I've used the judges that passed it. So there is that.

I read in some of the documentation that was provided us that there is no scientific evidence as to access to employment. There is. There have been many studies done on access to employment using the DOT. Now, those are archaic now. It's still a means, a way of evaluating a worker as to what they can still do now or not.

The main point, what ABVE is concerned about, is not just throwing the baby with the bathwater out but really updating the DOT that exists now but getting some new job analysis out there and finding out what those particular worker traits are that have changed and to make it more up-to-date and bring it up to the 2010 year. That's it.

**DR. BARROS-BAILEY:** Okay. Are there any questions by any of the panel members? Mark?

**DR. WILSON:** You mentioned the system -- I very much appreciate your comments, and I wanted to thank you for taking the time to come here. And you mentioned the whole issue of Daubert challenges and that you were aware of a system that had met these, but you didn't mention what that was. So if you could make that clear, I'd --

**MR. SMOLARSKI:** That's the McCroskey system. It's been written up in our journal quite a few times in terms of reliability,

standard error of estimate. These are some of the qualifiers that are used in Daubert. That's what judges are looking for.

**DR. BARROS-BAILEY:** Tom?

**MR. HARDY:** I just have a couple quick questions. I just want to make sure I understand. The ABVE is of the opinion that we should keep all the DOT standards of measurement that we have now and not make any changes. Is that correct?

**MR. SMOLARSKI:** No, not exactly. Updating it. I mean, for instance, a lot of those traits that are out there right now, I listed them, those traits are traits that are very -- they're measurable. I mean, for instance, the O\*NET, they had a lot of nice traits but they were not measurable. They were very just something you're sitting back, smoking on your pipe and saying, well, this sounds good. It is. It's good, but it's very subjective and what you might think of a person and I might think differently. But the traits that are listed in the present DOT, they are -- they are more objective, and of course there are a few more that you could add to make it more effective. There's no -- there's no doubt about that.

But I wouldn't say start all over with all new measurements and starting with A through Z or as a way of determining what competency the person has. The competencies that are out there for those traits are very effective. What's more important, more than anything else, is updating all the jobs that are out there. You know, the jobs that don't exist,

fine, chuck them out. The ones that are still -- the ones that are there, usually it's a combination of three and four different DOT numbers because people are doing more because of computerization and automation. It allows one person to take care of things.

I know, for instance, an engineer for a General Motors car can be in Detroit and he can be -- all the plants in the world from Brazil to China, he can -- all he's got to do is tell me the problem, boom, okay, just take that component out, move it out. They need one engineer. They don't need the same kind of engineer in each one of those plants. So things like that have changed tremendously in terms of, you know, what a job involves. And that's why updated job analysis is needed. What the ABVE has indicated is that in the past the VEs used to actually go out and do job analysis. They've got to resurrect it and do it again. And that's what -- that's really the key. I mean, there is the -- nothing, nothing fancy.

**MR. HARDY:** I don't know if you've listened to all of our deliberations. I sometimes vehemently disagree with some things that the panel's talked about. That's no secret. But I do truly believe we need to take a look at some of the skills within the DOT. And you've mentioned something like the exertional level, sedentary, light, medium, heavy. The ABVE feels that we should just keep those and not try to expand them or break them out? Is that their position?

**MR. SMOLARSKI:** Yeah, they should keep those. I

mean, you can tweak -- definitely tweaking them. I'm not saying don't tweak them, because we have a lot more data when it comes to physical capacities than we had back in the -- in 1965 or whenever things were updated with some real robust data. Tweaking, not throwing it out is what we're saying, tweaking it.

**MR. HARDY:** Would you be comfortable with expanding, as it were?

**MR. SMOLARSKI:** Well, I don't know, whatever you -- what do you mean by expanding? It depends. I mean, as long as this doesn't become so scientific that you've got to have a Ph.D. to do it, because you're not going to have enough people to do all the assessments.

**MR. HARDY:** Okay. And the last question I had, going back to the McCroskey, can you at some point when you get back to your office give me a cite I can look at where we know that it was -- it passed a Daubert standard in a court?

**MR. SMOLARSKI:** Well, yeah, you can look me up probably on the Internet. My name is Ron Smolarski, and you'll find that I was -- I passed the Daubert using it, using the system. But I'm not the only one though, but I -- yeah, if you give me your card, I'll be happy to give you an e-mail.

**MR. HARDY:** Great. Thank you.

**MR. SMOLARSKI:** Or my e-mail is

ron@beaconrehab.com. It's b-e-a-c-o-n-r-e-h-a-b. And just send me an e-mail and I'll -- I think there's a gal I know in North Carolina. She kind of keeps tabs on all that.

**MR. HARDY:** Thank you.

**MR. SMOLARSKI:** Okay.

**DR. BARROS-BAILEY:** Are there any other questions? Okay. Thank you. Thanks, Ron.

**MR. SMOLARSKI:** Thank you.

**DR. BARROS-BAILEY:** And I understand that Dr. Bostrom is here. Yes. Okay. Welcome.

**DR. BOSTROM:** Thank you.

**DR. BARROS-BAILEY:** Thank you for coming and presenting.

**DR. BOSTROM:** Thanks. Well, I got skipped over, so obviously I was a few minutes late, but I really wanted to do that so you'd get a feel of what ADHD is like and how impairing it can really be in a job situation.

My name is Samantha Bostrom. I'm a physician near Salt Lake City, Utah, and I treat individuals with ADHD of all ages. I am here to represent the CHADD organization, which is the organization for children with hyperactivity, adults with -- and adolescents with hyperactivity, attention deficit disorder.



**I'm also here to represent the 5 million individuals with ADHD and adults and the 250,000 that are severely impaired and unemployable. On behalf of CHADD, we'd like to thank you for the hard work that you've done over the past year and a half to make recommendations to the Social Security Administration.**

**CHADD supports your recommendation for a new OIS to replace the DOT system. CHADD supports the emphasis on the neurocognitive functioning, specifically attention role in substantial employment. Also your recommendation to look at sustained employment over time and not just the ability to obtain employment is very, very helpful for this disorder and its consideration.**

**ADHD has been recognized in children as a disability but not in adults. It's quite a hidden disorder without overt signs or symptoms such as cerebral palsy or mental retardation, yet it is just as impairing as these others in the workforce.**

**In 2001 we really had our first adult research data proving that adults do continue through childhood, continue into adulthood to carry symptoms of ADHD and to show impairment. Without playing doctor today, I can tell you that each of you have intact frontal lobes. If you didn't, you would not have been able to make it here on time, and you would not -- we would not be having this meeting at the moment. Last night you used skills in your frontal lobe to remember the date and the time of this**

meeting. You set your alarm and you made sure you didn't set it for p.m. You made sure it was set for a.m. You then planned to prep to leave the home and leave enough time as well as organize yourself to get dressed in an orderly manner. You remembered the items that you needed to bring today so that you don't have to take your neighbor's pencil or pen. You drove here safely, no accidents or injuries, no missed exits or missed street signs, and you were on time with a safe arrival. All of these require frontal lobe functions.

Right now you're shutting out distractions to sustain attention to my every word, and that requires a lot of frontal lobe ability for sure. You're able to pull memory banks through your memory bank to prior testimonies on ADHD and integrate them together, even with different time slots, and you're able to pull those into conclusions about this disorder, ADHD. And no one has blurted out thoughts that may be popping into your head right now like, "What is your point" and "Hurry up and make it."

No one has hit anyone else here in the room, at least that I'm aware of, and you seem to all be getting along with your emotional regulation. You're sitting without disrupting the meeting or fidgeting. I don't see any table shaking going on, and I don't see anybody reaching over to talk to their neighbor. We take the ability to do these organizational attentional job tasks for granted, just like we take our ability to hear or to

see as being something quite easy for us.

I'd like you to meet a patient, a child by the name of Dustin, who unfortunately it will be impossible for him to be here today. When he was a child, he was a very happy child, very hyper. His father named him "In Excess." That was his nickname. He at age 7 became diagnosed with ADHD and oppositional defiant disorder. ODD is 40 percent of the population with ADHD as a comorbidity. He did not have any friends because individuals with ADHD have trouble with social cues and learning social skills. He was unable to participate in sports because it's very difficult to catch a baseball when you're staring up at the airplanes in the sky or playing in the dirt below.

He was sent to a special behavioral school and he was in a self-contained classroom where he only interacted with other children outside the classroom for art and lunch. He -- into his teenage years his self-esteem continued to lower and he was -- had social skills that were worsening with no friends. He tended to like isolated activities that did not involve group play such as hunting or camping. He did graduate from the special behavioral school, and his father enrolled him in a community college of which he was kicked out of within four weeks. He then tried technical school and left after two weeks because he was too overwhelmed with the job opportunities.

He's a very kind man and he would do anything, go to the end

of the world for the ones that he loved. But he had to live with his father and he had lost over 15 jobs before the age of 27. He had gotten into legal trouble for minor crimes such as traffic tickets and minor accidents from cars, which we know is increased in the individuals with ADHD. And because he was unable to respond to the probation requirements such as showing up on time for the probationary hearings, doing the assignments, remembering the date of the hearings, they sent him to prison for 11 months and he was there with criminals that committed much more severe crimes.

At age 27 he was in a severe car accident because he was distracted by a cell phone laying next to him on the seat, and his body was burned 70 percent. He is not an isolated case but one of the 250,000 with severe impairment who are likely to suffer a similar dismal outcome because of the ADHD severe impairments.

250,000 individuals have severe enough ADHD that they are unemployable. We see that there were two of the largest longitudinal studies that were done on adults with ADHD showed that individuals with ADHD were fired at a rate of 42 percent versus their general population at 14 percent. When an individual is fired over and over again, it's very hard to get a job. And it becomes unattainable from these multiple job losses, lack of letters of recommendation, and lack of health insurance to even seek treatment.

**Once they're unemployable, they're set apart from society and start to downward spiral, a dysfunctionality and antisocial behavior. Dustin failed to get support to be self-sufficient. He had to live with his father. He had low self-esteem. He was not a productive adult with mature independence. He was pushed outside of society, unemployable, and started a downward cycle that led to his premature death.**

**We need to give our sustained attention with our frontal lobes to the severity of this disability and those 5 percent that are most severely impaired and compassion for the potentially devastating effects that this disorder can have. We need to support these individuals to prevent outcomes like Dustin's. Thank you.**

**DR. BARROS-BAILEY: Thank you. Are there any questions by any of the panel members? Tom?**

**MR. HARDY: Thank you for your comments. Have you -- is this your work product, the Children and Adults with Attention Deficit Hyperactivity Disorder Statement?**

**DR. BOSTROM: Yes, yes.**

**MR. HARDY: Okay.**

**DR. BOSTROM: It is the organizational statement.**

**MR. HARDY: Okay. I was reading this, and on page 3 in the second to last paragraph you specifically recommend adding a layer on the person side between Levels 3 and 4. How would you see that**

working? I'm just kind of curious about that. Thank you.

**DR. BOSTROM:** Well, with the idea that attention should be set apart from possibly the neurocognitive grouping and achieve primary importance on its own because it really is involved in every single daily activity that we have to take on, and it is that important. It controls our ability to live and function in this world.

**MR. HARDY:** Thank you.

**DR. BARROS-BAILEY:** Are there any other questions? I do have a question. You're the second person from CHADD to provide public comment this afternoon, so I'm again interested in knowing as we outreach to different organizations how CHADD came upon our work. I'd be really interested in understanding how effective any of the outreach we're giving. How did you find out about our work?

**DR. BOSTROM:** We have individuals within the organization that actually kind of keep their eyes and their ears open for individuals who are working in areas that may benefit adults with ADHD. And so Cindy Smith is our lead person, and she is someone you might want to contact. She has been diligent in preparing this statement for you today and in trying to really get this for individuals with ADHD.

Disability, like I said, has been given to children with ADHD, has been recognized as a very impairing disorder, but not in adults. And adults, because it's hidden and for years wasn't recognized into adulthood,

most individuals in adulthood were recognized for having anxiety and depression. They weren't recognized for their underlying ADHD. Now we have a lot more data and research that is telling us better ways of how to diagnose adults with ADHD and how to recognize that first before treating with a medication for anxiety and depression which works on an entirely different neurotransmitter than ADHD.

**DR. BARROS-BAILEY:** Thank you. Any other questions?

**DR. SCHRETLEN:** I have a question. Based on both your familiarity with the literature and your clinical experience, roughly what proportion of adults with ADHD do you think are so severely impaired that they're unable to work, just roughly?

**DR. BOSTROM:** Well, that's the figure I gave you, the 5 percent, the 250,000 out of 5 million who have it, if you look at the research, and it really is on a bell curve. I'm not sure if you're familiar with bell curve. We look at average numbers. But if you really look at the ends of the bell curve, the individuals who are two standard deviation, two degrees of deviation more severe than the individuals on average, you end up with a number 250,000 estimated.

And to be honest with you, it is more than that, because ADHD in adults is underdiagnosed currently. The DSM, it currently uses child criteria to diagnose adults, and adults perform very differently. Most

adults aren't getting up and running around the room right now. They may be sitting there feeling like I've got to find a way to get to the bathroom because I've got to get out of here. So it really presents differently in adults. And so we're currently, the new DSM is working on more accurate diagnosis, which would then allow us to have more accurate numbers of adults with ADHD currently.

**DR. SCHRETLEN:** Thank you. So clearly it's not the diagnosis of ADHD, it's not having the disease or the illness of ADHD, but rather the severity of symptoms that is really determining of whether someone is able to work or not.

**DR. BOSTROM:** Very good point. ADHD has great outcomes in a proportion of the population, actually probably a majority of the population of individuals with ADHD, due to medications that really are effective for the area of the brain that we're trying to target, this frontal area. And it's very rewarding to treat those individuals because it's life changing. However, there are individuals who don't respond to medication, who have side effects from medication, and who no combination have been able to help those individuals.

**DR. SCHRETLEN:** Thank you.

**DR. BOSTROM:** It's for that population that I'm really advocating for today.

**DR. BARROS-BAILEY:** Thank you. Thank you for



**your time and coming and presenting to us your public comment. We do appreciate it.**

**We have one more presentation this afternoon. We have Lynne Tracy with the International Association of Rehabilitation Professionals. Lynne has presented to us before in terms of public comment. As a matter of fact, in the tab for IARP, there was a public comment or a summary of what Lynne and Angie presented to us in September in addition to what had been presented previously in July.**

**So Lynne has been providing vocational and career counseling services since 1980. She holds a bachelor's degree in psychology from UCLA and a master's in marriage and family counseling from Azusa Pacific University. She is also licensed as a marriage and family therapist and holds various certifications of vocational counseling and disability management including a CRC, CDMS, CPDM, and diplomat status with the American Board of Vocational Experts. And there is a much longer bio in the folder, the three-ring folder we have. And welcome, Lynne.**

**MS. TRACY: Thank you. And thank you, Panel, for having me back again. We're very happy that -- IARP is very happy to be involved in this process.**

**I have a long list of bullet points. I'm going to try and make them. I know in L.A. we ran out of time, so I'm really going to work very hard to stay on target.**

My committee, the liaison committee to the OIDAP for IARP, has been very active going through the 700 pages, very seriously looking at things that we concur with but things that we wanted to comment on. We will write something up by February 15th. As we promised you, Angela Heitzman and I in Los Angeles, we have gone about a data collection process to look at past relevant work from claimants' files. We began that process October 15. That collection, Social Security vocational experts throughout the country have been collecting information from those files. I'm happy to tell you we have 6,649 data points. It's a lot of data. And we are continuing to collect until February 15, and then we will pull it all together and get you some more details.

What I can tell you, we're having some data crunching problems, so Angie was not able to get us all everything, but what we did come up with, the top six occupations were cashier/checker, 241 of them; cashier II, 150; fast food worker, 149; kitchen helper, 103; nurse assistant, 92; waitress/waiter, informal, 91. These are all service jobs. And, you know, I think what we're going to see when we look at all of this data is we're going to see a lot of unskilled and semiskilled jobs.

As you're looking at what you're going to study, this is one of the things that you're debating is looking at this top hundred jobs or whatever number you come up with that seem to pop up in past relevant work for claimants. I just want to caution you that there's an awful lot of

other occupations that at some point do need to get assessed, even if this is just the starting place, and we know that that's where you're coming from.

We also asked on the accuracy of the file could a vocational expert properly classify the job based on what was in that file correctly and when could they and when could they not. These are preliminary numbers, but approximately 35 percent of the time the file did not give enough detail. So that's about one-third of what we look at in those hearings is not enough. So just to kind of give you where we are as of collection January 15th.

Okay. So going to the seven recommendations, we concur with the recommendations. Do have a question regarding Recommendation 3 when you say once a large database representative of all work in the national economy is available, Social Security should examine various job classification methods based on the common metric. We're a little confused. And you can probably straighten us out, but it seems that it's backwards, that we should be doing the framework first. So we could use a clarification on that.

We recommend reaching out to more stakeholder groups and having more input from organizations such as APA, Human Factors Society, ACOEM, SHRM, occupational medicine docs. And you may very well have reached out to them, and it just may be that we haven't seen them pop up because for I don't know why. But just so you know, we'd like to really see that. We'd like to see more research of what instruments are out

there, and I'll get more into that.

We do feel that there should be better communication with the Department of Labor. We would love to see that. We're also quite aware of the history and that there have been attempts to do that. But, nonetheless, just as a note, it would be nice if that could happen. And I don't know that you or Social Security can make that happen, but it would be nice, and we've heard it today.

Regarding -- and I'm going to go through these in sections. Regarding taxonomy, we agree with the basic assumptions in light of our need to address n=1 and the opinions reflect the level at which individuals perform work in the economy. We agree with the principal and scientific process of evaluating existing work taxonomies, but we're concerned with face validity of the resulting categories. So we would like that to be somewhat looked at and addressed.

In Table 2 on the taxonomy section -- familiar with Table 2, I believe -- we're questioning whether -- what was in the scientific process used to pick and choose which elements from the eight scales recommended for use as dimensions of the work taxonomy. So I think we're wanting to understand better the process at which -- how the eight scales were chosen, why these particular areas were looked at. For example, in that taxonomy for cognitive, there is take information, order, interview as one subset. We suggest that those would be separated out because interviewing is a higher

skill than taking an order. So some of that we think needs more looksy.

We also want to know how you're going to translate and categorize jobs by this taxonomy because it has to be functional. Regarding the physical, we're very happy with it and we want to reiterate our comments that we made in September in our paper and our public comments. We would like to see use of simple functionally related scales. We would like to see us getting away from impairment-based types of definitions and scales if possible. And we definitely want to see that uncoupling of strength factors that we've talked about so many times.

As was in our paper and, you know, things like mold exposure, things like that, we really have some problems with. We have problems with, as we talked about in September, use of assistive devices because these are very much employer specific and just can't be -- there's no way in a job analysis you're going to be able to say that a particular job can be done. It'll be depending on whether the employer decides to allow it or not. The same will be true of sit-stand, although it was on our wish list and we're the ones that asked for it and we would really love to have it, in practical terms how we're going to get that, we don't see that that's probably possible. But -- so that's why we think that in truth those probably need to be pulled out of the physical demand section.

Regarding mental and cognitive, as said before, we suggest more user group interaction, vocational rehabilitationists and practitioners.

The academicians, academics have a lot to provide to us, but we think there needs to be also more interaction with people that are out there practicing together because there's strength on both sides of that equation. And so that would be something we would like to see.

You know, rehabilitationists have completed thousands and thousands of job analyses with people that have disabilities, which is different than I/O psychologists who tend to work with employers and such. So I think we need -- I would like to see more of a mix.

We're very concerned, as you've heard several times today, with the developing of proprietary measures with the time and the cost to validate them. So we would like to see that there be more research to find measures that currently exist.

In terms of the 15 dimensions, we are very happy with them. We would like to see judgment added in. I know it was one you considered and you pulled it and there were reasons for it, but we would like to see judgment and decision making included. For example, security guard, nanny. They're lower skilled jobs. They're SVPs of 3. But besides observation for both of them, one of the -- one of the factors, one of the skills for both of them is the ability to make judgments in an emergency, to make decisions what actions to take. And so we see this as a component that really needs to be in there. We need 16.

We very strongly feel that aptitudes need to be retained.

**There was a lot of, you know, discussion in the mental/cognitive about the subset of aptitudes, and so I want to kind of address that in much more detail because we feel that this is a very, very important component that should not be left out.**

**A skill is defined as a learned capacity based on one's knowledge, prior practice, aptitude, training, education, et cetera, to perform given psychomotor activity or function. That is coming from page E-25. And so aptitude is in there. But then we see in other places that aptitude is being left out of the -- of the mix. The concept that a transferable skill assessment can somehow be performed without consideration of aptitudes ignores all standard vocational practice. It would not withstand a Daubert test.**

**While aptitudes are not defined in the Dictionary of Occupational Titles, aptitudes are defined in the Revised Handbook for Analyzing Jobs, the publication utilized and containing the methodology and benchmarks for use in the development of the DOT. On page 91 of the 1991 Revised Handbook, aptitudes are defined as the capacities or specific abilities which an individual must have in order to learn to perform a given work activity. The government identified 11 aptitudes which were then used to perform job analyses. Decades of research established the validity of the General Aptitude Test Battery or what's been referred to as the GATB. In measures measuring the aptitudes of individuals in relation to**

**the occupations identified in the Dictionary of Occupational Titles, if the Social Security Administration has been ignoring aptitudes in any type of transferable skills analysis or chooses to do so in the future, such could make such a practice a prime target for Daubert.**

**Disability reviewers and vocational experts utilize the Dictionary of Occupational Titles as well as selected characteristics of occupations defined in the dictionary. It is noted that the selected characteristics of only the DOT code, title, key physical demands, environmental conditions, math, language, and SVP levels are noted. Aptitudes, for undetermined reasons, were not listed in the selected characteristics, but such does not mean that aptitudes don't exist and should be ignored.**

**In Classification of Jobs, a publication by a Dr. Timothy Field widely utilized by vocational experts, specific aptitudes in each of the 11 areas described above -- I'm reading from a paper, sorry -- are listed in addition to information listed in the selected characteristics.**

**We recognize that some have indicated that Social Security need not consider such things as an individual's interests or aptitudes. However, in relation to transferable skills assessment, there is inadequate foundation for the government to reject that an individual could perform other work without consideration of the aptitudes actually demonstrated from prior work. So, for these reasons, we feel that this is very important**



that we must retain that.

We would also like to see consistency of scales, lower at zero going up to 5 or whatever, but there's -- we've had some reverses in scales. We'd like to see that they're consistent.

Self-management is one of the scales that has been talked about being used, and we see serious problems with that. I think we mentioned it in September that this is something that employers determine what's necessary, and all of them are going to tell you that hygiene and grooming and symptom control are required for employment. So to include that in a job analysis, we're not sure that that's really going to get you anywhere, but it's going to say yes to that. That's just a minimum standard by employers, so we think that that probably should be taken out.

Regarding the Work Experience Subcommittee, we really encourage retaining the definition of transferable skills analysis. We would like to see one definition of what a skill is. There are multiple. And we want that clarified, and we would like SVP deconstructed. We are very happy to see you focusing still on the individual, the n of 1. There is a phrase regarding psychomotor activities. We think that really needs to be clearly defined, that it -- that it doesn't mean that walking, which is a learned psychomotor activity, therefore is a skill. We don't see it that way.

As has been talked about before, and I don't want to drive it too much farther, we see very significant problems with reliance on g with

the Wonderlic. We're not sure how g is going to relate back to jobs. And, you know, jobs are much more multidimensional than that one factor. And so, you know, again, there have been many comments regarding reliance on g, so we also concur with what has been said. We would like to see you keep the similar or same language. Going too far afield from what the professionals who are working or using, you know, doesn't make a lot of sense. If we can at all stay within the same rubric, it would be a better thing to do.

Also regarding g, it is very controversial. Even Wikipedia says it's controversial. So whatever that's worth. We really want to avoid the SOC codes and any of the data with that. I mean, we use it, we crosswalk to it, but we've got to always remember that SOC codes, the data's very, very aggregated. Problem with the O\*NET, very aggregated.

We agree with not including stress because it's really very subjective, very difficult to measure. It just -- it doesn't make a lot of sense to be in there.

Regarding unskilled work, we understand this doesn't make certain sections happy that we feel that all work has some skill, even at the lowest level, but that is our position. That is IARP's position. And what that means is that the policy for Social Security would have to follow along if -- if the definitions changed that there is no unskilled work. But it remains our opinion that all work has some skill to it at the very basic level.

**But, again, we have to go back and define skill, don't we?**

**There also has been some confusion out there that we would like to clear up. There has been some misunderstanding that the Revised Handbook for Analyzing Jobs and in its totality of how it recommends performing a job analysis is the way that this is done out in industry, it's the way we've done it in our profession. This is not the case. We actually surveyed some of our membership, and people are just not doing that. So I want to clear that up. If there's some misunderstanding that the, you know, the Revised Handbook is just the absolute bible of how the steps are done, it's -- it's time -- time-consuming and cumbersome and it's just not how in industry across the board vocational people are doing it. So I wanted to let you know about that.**

**And I think I might have gotten through most of it. We will be writing it up. There will be a lot more, I'm sure, but I got through the high points.**

**DR. BARROS-BAILEY: Thank you. Shanan, you have a question for Lynne?**

**DR. GIBSON: First, thank you for coming back again. It's always nice to see a happy face we recognize.**

**MS. TRACY: Thank you.**

**DR. GIBSON: You had several really good points, which I appreciate. You articulated them well and gave us good direction**

to go back and answer. There's probably several that we could speak to here, but I just wanted to actually respond to one of them which came out of the efforts of the current User Needs Committee this morning and our efforts to reach out to those organizations that you mentioned such as APA, SHRM, et cetera.

There has been a consolidated effort of us first trying to contact those individuals who have been calling in and listening and working with them. We've also identified those organizations that we personally work with, and we've contacted them where appropriate. And the next step that we were about to embark on is to actually -- we've got this really long list of all these potentially interested organizations, and we're going to contact them either in person or electronically through e-mail with a hopefully briefer fact sheet which summarizes the recommendations in the entire report and solicit their feedback. So there's definitely ongoing efforts for that.

**MS. TRACY:** Thank you.

**DR. BARROS-BAILEY:** Gunnar?

**DR. ANDERSSON:** I just had a question regarding the research you were doing on all these six, seven occupational titles. How many of those are women?

**MS. TRACY:** We didn't collect that. Basically what we did after your last meeting in September, we've prepared a form and we

basically have every vocational expert in a hearing when they review the file write down what did the -- what was the job title the claimant put in the work history, how did they categorize it exertionally. Then what is the DOT code, what is the DOT title for that job, how does the DOT exertionally classify it, how does the VE exertionally classify it, and then was there enough data in the file. So those were the questions we asked. We did not look at gender at all.

I will say, the other thing that's problematic about what's in those files, a lot of times the claimant writes down "Taco Bell." I mean, this is what we got repeatedly. So, you know, that comes into that 35 percent of the time. But we didn't look at gender.

**DR. ANDERSSON:** It would be interesting to have some information about gender, age, those kinds of things.

**MS. TRACY:** Right. What we were trying to do is we were piggybacking on the data that was collected by Social Security and looking at the highest incidence of jobs that pop up from past relevant work. And that solely was the purpose, to try and provide Social Security with some more data points.

**DR. ANDERSSON:** Incidentally, I saw in the paper today that Mr. Bell died day before yesterday.

**DR. BARROS-BAILEY:** Mark, did you have a question?

**DR. WILSON:** Yes, I did. Again, very much appreciate the work that you've done reviewing the report and coming here to share your thoughts with us. And I wanted to make sure that I understood some of your comments, especially with regard to terminology whereas, as you were pointing out, different subfields use terminology which sounds very similar in different ways, things of that sort.

And so two issues. The first one is, you mentioned with regard to the work taxonomy, and I think you were referring to the final initial taxonomy, and you used the term face validity or face validity issues, something like that. And anything more you could say there to help me understand exactly what the concerns were or how we could be responsive to that? And then after you've dealt with that, I'll get to this.

**MS. TRACY:** Yes. And again, thankfully to my committee, each person took on the push. And this was Ann Nulitz, who you've met with.

**DR. WILSON:** Yes.

**MS. TRACY:** And what Ann basically said is in terms of face validity, that there's -- disparate results are not surprising as the taxonomies upon which it is based differ. However, it is hard to envision a researchable taxonomy with any basis for titles when dimensions vary from title. For example, stock keeping, bookkeeping to the activity of -- activities related to balance, hand function, requiring tactile senses; then to function,

example is visual input from devices to materials to mobility.

So her question was, you know, how are you going to do a pilot study to redefine these dimensions so that they are functional for the vocational expert. And I think that's where we get to this face validity.

**DR. WILSON:** Yeah, I think I understand now, and I think that's been a problem all along is that most practitioners don't think of the taxonomic level. They think in terms of very specific taxons, the kinds of things you're talking about. And the role of these is simply to stimulate the kinds of things that you're talking about, the much more specific and concrete kinds of functional capabilities.

And the second issue, you had some questions about methodology, you know, how we got to that point. And I wanted to make sure that you understood and that everyone does, Dr. Gibson, myself, and Jim Woods looked at all these various taxonomies, each independently, sort of rationally started sorting. And so it's no sort of scientific analysis here. It's simply three subject matter experts looking at these different attempts at what we consider to be serious scientific studies of the underlying dimensionalities at work and trying to compare and contrast them.

The actual taxonomy that Social Security would probably end up taking notice of would be the one that would result from a substantial study that included the kinds of items that through the social networking process hopefully your members will have actively participated in

suggesting here are the kinds of very specific taxons and things of that sort that we think that you need to address. And then once we have that data on all jobs, we could do the kind of serious factor analytic work that we could defend and say, you know, we think these are the underlying work dimensions that are driving these things. Just wanted to make that point.

**MS. TRACY:** Thank you. We appreciate kind of understanding that.

**DR. SCHRETLEN:** I have just a really quick one. I am so impressed that you were able to pull so much data together in such short order. It seems like it could be a very, very valuable resource to this panel. And I have one small request, and that is -- and you may already be planning on doing this -- when you present your comments to us in writing or the details, the findings of that study of past relevant work, could you include a cumulative frequency table so that we have a listing of all the individual occupations that were reported by anybody in a cumulative frequency distribution, beginning with, you know, most frequent to least frequent? Because it would -- it would just be very informative for us to see how many occupations comprise 90 or 95 or some proportion of all applicants.

**MS. TRACY:** Yes, we can do that, yeah.

**DR. PANTER:** Also if you could include some information about that one-third that did not provide enough detail, it



would be very useful too, just what type of detail is missing, where. I don't know if you have it quantified, but it would be useful to know.

**MS. TRACY:** Yeah, I'll see what we can do with what we have. But like I said, it's like Taco Bell. There's a whole range of things that don't get in there. And sometimes -- it's actually just under 30 percent it was wrong in the file, and then there's another 5.5 percent that has -- it was N/A, the answer was N/A. And the reason for that is it was an occupation that wasn't in the file at all that came up during the testimony, because that happens an awful lot as well. So I'll see what we can do to show. Yeah.

**DR. BARROS-BAILEY:** So, Lynne, that was one of the questions that somebody had, whether the research that IARP did considered information that the VE may hear at the hearing when the ALJ or the representative questions the claimant. So if information you collected also contained --

**MS. TRACY:** I'm sorry. Ask me that one again.

**DR. BARROS-BAILEY:** So the question was, did the IARP survey consider any information that the VE may hear at the hearing when the ALJ or representative questions the claimant.

**MS. TRACY:** Yes. And so if what was in the file -- let me answer it, and then I'll qualify it. If what was in the file was different than what was testified to and therefore on site it had to be recategorized,

then it was considered no, it was not a match between the file and what the occupation was.

Now, let me first qualify this. Understand that you've got VEs throughout the country. There's been no training how to fill out this form. You know, I've had the weirdest questions come back to me and people not knowing what to answer, people weren't filling it out, you know. So, you know, it's not scientifically done. We're just trying to gather stuff and get some ideas on it. But just so you know.

So I can tell you what I do when I fill out my form. I can tell you what I told people to do. Whether they're doing it or not, you know, I can't a hundred percent tell you. But we've been trying to get them to do those kinds of things. That would be exactly what would result in a no, it was not a match between the file.

**DR. BARROS-BAILEY:** Tom, you had a question?

**MR. HARDY:** Very quick. You had said that the Revised Handbook is not really being used as the format anymore for going out and doing job analysis. Is there any sense of what is being used? Is there any kind of standard out there? Is it more people have just drifted out and they're doing what they do?

**MS. TRACY:** I think it's all over the place. I think the Handbook is still the underlying structure. I think that it just -- if you did it in toto, it would be so lengthy. I think there have been shorter cuts,

you know, in workers' comp depending on your state, there have been forms created, and there -- you know, so it depends on the venue, it depends on the, you know --

**MR. HARDY:** Purpose.

**MS. TRACY:** The purpose, yes, exactly. So our only point is that there not be an assumption that everyone out there is doing it. In fact, we didn't find anybody that was using the Handbook all the way through as it is written. And that's what we wanted you to be clear about.

**DR. BARROS-BAILEY:** And, Lynne, in terms of the research that IARP or that data that's been captured, were you also capturing the jobs that are cited that claimants can still perform?

**MS. TRACY:** No. We were --

**DR. BARROS-BAILEY:** So in terms of the VEs, what their opinions are -- okay.

**MS. TRACY:** No, we did not capture that. We only captured what those -- as was on the heels of the data that you had pulled out, yeah.

**DR. BARROS-BAILEY:** Okay. Were there any other questions? Nancy, did you have a question?

**MS. SHOR:** I did, but it's been answered.

**DR. BARROS-BAILEY:** Okay. And there was some questions that you asked of the panel in terms of your presentation, and I

think also I heard implied with other presenters some questions as well. Tomorrow during the panel -- panel-on-panel session, I think that will give an opportunity as well for us to address some of those questions. So I look forward to that event. That'll be great. Thank you, Lynne.

**MS. TRACY:** Thank you. Thank you again, everyone.

**DR. BARROS-BAILEY:** Okay. We have, before we adjourn, all of us who have been sworn in have had the privilege of getting something framed that we hold near and dear, and at this time we would welcome Commissioner Balkus to come and present the certificates to the two new panel members. Associate Commissioner Balkus?

**MR. BALKUS:** I appreciate the opportunity to be here this afternoon and hear the input provided to the panel. There are two brief points that I want to make. And you have to remember, the panel is one part of this process, a very important part of the process. And you'll hear, if you stay with us the next couple of days, you'll hear how we've begun to transform some of the panel's recommendations here in terms of our work plan, going ahead for the remainder of this year and next year with this project.

But there are a couple of points that I wanted to make. First of all, we have had ongoing dialogue with the Department of Labor, ETA, on this project. Most recently we had the opportunity to meet with the

Department of Labor on the NAS report, on the NAS recommendations. So that's part of what else is happening here. It's not with the panel. It's with my office, and it's with our overall charge here in terms of developing an OIS product.

The other thing that I think -- and I'm looking at Sylvia who's a panel member, but she also works directly for me on this project, is the importance of us getting out there a working paper that we've -- that's been in process, but it's lessons learned from the DOT, lessons learned from O\*NET.

So I think you can get a better understanding in terms of what we'd hope to take forward here in terms of the DOT, what we hope to take forward here in terms of the O\*NET in moving this project forward. And we're also looking at the NAS, even though we're covered in Chapter 8 in the prepublication report from NAS, but there's, I think as Mark pointed out, there are a lot of other recommendations in that report directed at O\*NET that we need to think about as we move forward with our project.

So this all ties together, and I just wanted to make a point here that we do work with the Department of Labor. In fact, I'm going to be there tomorrow in a listening session here in Dallas that's sponsored by the Department of Labor.

But now on to the presentation of the certificates. We didn't give them to you initially because we wanted to make sure that you were

going to stay with us. You lasted through the afternoon, so now we're giving them to you. We'll give you the certificates. Abigail?

**DR. PANTER:** Thank you. Nice, nice.

**MR. BALKUS:** We'll find a way to get them home for you. You don't have to worry about that.

**DR. PANTER:** That's great. Thank you.

**MR. BALKUS:** Allan. Again, congratulations.

**DR. HUNT:** Thank you.

**DR. BARROS-BAILEY:** Thank you. Not hearing any further business for today, I would entertain a motion to adjourn the meeting.

**DR. GIBSON:** So moved.

**DR. BARROS-BAILEY:** We have a motion by Dr. Gibson. Do we have a second?

**DR. HUNT:** Second.

**DR. BARROS-BAILEY:** Okay, by Dr. Hunt. Hearing no opposition, we are adjourned for the afternoon and back tomorrow morning at 8:30 in the morning. See everybody then. Have a good evening.

**(Proceedings adjourned at 5:22 p.m.)**

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**CERTIFICATE OF CERTIFIED SHORTHAND REPORTER**

**I, KAREN L. SHELTON, before whom the foregoing proceedings were taken, do hereby certify that the foregoing proceedings were taken by me in stenotypy and thereafter reduced to typewriting under my direction;**

**I further certify that this transcript of proceedings is a true and correct transcript of my stenotype notes taken therein to the best of my ability and knowledge.**

**Certified to by me this the 28th day of January, 2010.**

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**KAREN L. SHELTON, CSR/RDR/CRR  
Texas CSR No. 7050  
Expires 12/31/10  
Capital Reporting Company  
1821 Jefferson Place, NW  
Third Floor  
Washington, DC 20036  
(202) 857-3376**