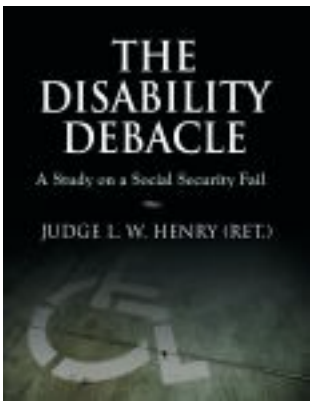
THE DISABILITY DEBACLE

A Study on a Social Security Fail

JUDGE L. W. HENRY (RET.)



A wry and irreverent analysis of Social Security disability.

The Disability Debacle

by

Judge L.W. Henry (Ret)

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By Judge L. W. Henry (Ret.)

Foreword is Forewarned – PLEASE READ

Please don't buy this book unless you have a basic understanding of Social Security disability. If not, I would recommend Nolo's Guide to Social Security Disability, by Dr. David A. Martin III (6th ed., March 2012). Without a basis in Social Security disability law, parts of this book will be incomprehensible.

The book evolved from a trial diary. It is the background and mindset of an attorney/adjudicator bracing himself to defend against a Federal Agency [SSA], after the Agency head chose to subvert its Rules and Regulations, as well as portions of the Social Security Act. It is not fiction.

Who might find this interesting? Disability advocates can glean information on inside workings of SSA and possible appeal strategies. Social scientists could study intra-agency warfare when an Agency subverts the law. The Federal judiciary might be quite interested in pressure that may [and in my case, did] impact on a claimant's due process. Politicians [or rather their staffers, as most politicians have limited time to read] should be interested, because the sole remedy for SSA flouting may be in their hands.

A case decided January 23, 2015, AALJ [Association of Administrative Law Judges] v. Colvin, No 14-1953 (7th Cir. 2015) held that Federal Courts had no subject matter jurisdiction over changes in Administrative Law Judge [ALJ] working conditions, including quotas. In doing so, it utilized a strained analogy I will address infra. However, one thing I do find intriguing. There is a somewhat oblique reference to the Doctrine of Unintended Consequences [referencing the increase in favorable ALJ decisions due to SSA's get it out the door impetus]. However, now there are still production goals and favorable decisions are drastically down. [Binder and Binder is in bankruptcy!]. So, I halfway expect increased remands from the Federal Courts until SSA either changes its all-inclusive evidentiary requirements or allows its Judges time to fully consider the record and develop it, if needed. How's that for an unintended consequence?

Hereafter, supporting documents will be in regular typeface while my comments will be in italics. To distinguish between parenthetic material in the original and my subsequent comments, original parenthetics will stay the same. Comments that I feel compelled to add will be in square brackets.

Unfortunately, the time period at issue continues to the present, although the book primarily addresses the tenure of SSA Commissioner Michael Astrue until the author's retirement in November 2010 [it is a trial diary after all]. The tenor of the book will range from the near distraught to the perverse. Parts are deeply personal. Government bureaucrats do not fare well. For example, what is the difference between a porcupine and a busload of government bureaucrats? A porcupine has the pricks on the outside.

Dedication

To former Senator Tom Coburn, who unknowingly jumpstarted this book; to my wife Helen, who has [so far] refrained from mariticide; and to my remaining friends in the Social Security Administration. You know who you are and it is best that SSA doesn't.

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1. Introduction - Some ABCs

A. June 10, 2014-Going Back to the Future

I retired as an Administrative Law Judge from the Social Security Administration in 2010 because I could no longer hold my nose. This was solely because then SSA Commissioner Michael Astrue actively [*and with feigned sorrow*] *crapped all over the job, by subverting the underlying Rules and Regulations. So, I was surprised and gratified to hear this June 10, 2014 testimony from Senator Tom Coburn, appearing before a House subcommittee:*

"Michael Astrue was approved to be the head of Social Security. The message Congress gave him is get rid of the backlog. Guess what? He did. He didn't do it right but he got rid of a lot of the backlog while he was head of Social Security. Sloppy work. But he-and that became their impetus. It's not whether they are disabled or not, it's get rid of the case. And we created a demand on him. So, Congress, again, we need to look at our own house and we need to do continuing oversight, not just bullet oversight."

The focus of this hearing was first to hear Senator Coburn's insights and then to pillory several Administrative Law Judges who had favorably decided a phenomenal number of cases each year. As usual, there was preaching to the choir, grandstanding, and very little new information elicited from these Judges, or even from the acting Commissioner, Carolyn Colvin, on the following day. The most substantive information came from Senator Coburn. However, I listened carefully and discovered two important things. ***First****, politicians on both sides of the aisle appear intent on changing laws, the majority of which have been on the books for well over half a century.* ***Second****, the majority of these particular politicians do not have a complete understanding of either the law or the circumstances behind the disability debacle under Commissioner Michael Astrue.*

Most of the documents in this book are from the time period when I was preparing to defend myself before the agency that presides over the removal of Administrative Law Judges, the MSPB [Merit Systems Protection Board]. Absent my cracking wise comments, it is the trial preparation diary I intended to use to prove my case: subversion of legal requirements on ALJs. As a result, I can directly respond to the most important questions coming from this subcommittee on Social Security.

I will begin by answering the easiest questions. The harder questions require the type of presentation I would have provided the MSPB. My current comments will be italicized to avoid confusion with the supporting documents, which will be in regular typeface. Parentheses are reserved for parenthetic remarks in the original documents. I will use square brackets for my own comments, again to avoid confusion.

Senator Coburn testified he did not blame the Judges for what has become known as "the paying down of the backlog" [*paying a claim when the evidence doesn't fully support a finding of disability*]. *He blamed Congress for not having better oversight. I will conclusively demonstrate the pressures on a by-the-book Judge* [me] under *Commissioner Astrue's term of office. However, I think it appropriate to begin by noting the similarity of this government bureaucracy to the workings of a septic tank. The biggest chunks rise to the top* [*him*].

B. House Questions, My Answers

Here are some answers to questions poised during the House subcommittee hearing on Social Security Disability Integrity on June 10 and 11, 2014.

Question: isn't it true that a seriously disabled person can still work?

Representative Gosar asked this question of Acting Commissioner Colvin, and Senator Coburn referenced it during his testimony. The short answer is that seriously disabled people can and do work throughout the United States economy. However, the standard for disability is explicitly set out in the Social Security Act, and the Act is purely from Congress - rather than from an interpretation by the Social Security Administration. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. 423 (d) (1) (A). *People who can't consistently work a full day or 5 day week often do not make enough money to count as substantial gainful activity. A good example would be kidney dialysis lasting several hours, several times a week.*

A further refinement that a number of politicians have misstated [even the very knowledgeable Senator Coburn, from time to time] is also found within the Act, and not just an agency interpretation of the Act. This refinement is a game changer, and that is why it is vital to know and to understand. The catchwords are "significant numbers." Many severely disabled people might be able to sit on a stool and use one extremity to operate an elevator. On the other hand, in the southern States, I haven't seen an elevator operator for over 40 years.

Here is the specific language: an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. [*I have heard a lot of politicians stop here. That means the standard they are declaring is incomplete. The statute continues as follows*]. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region were such individual lives or in several regions of the country." 42 US Code (d) (2) (A).

Question: why should a mythical impairment, such as a limp without a back impairment, qualify for 30 years of disability?

An MDI [Medically Determinable Impairment] is required not only under the Rules and Regulations, but the Social Security Act, itself. Before I quote the pertinent language from the Act, I should address the recurring issue of a medical speculation that somehow becomes an accepted diagnosis. Time and time again [*ad*

infinitum!], I have seen a possible diagnosis repeated to a new physician, and suddenly, without more, it becomes an accepted diagnosis. This is only one of the many reasons that an ALJ should intensely scrutinize the file. Representative Lankford [now Senator Lankford] from my home state of Oklahoma was quite rightly upset about mythical impairments, because medical improvement is required [in most cases] to establish that a period of disability has ended. If the impairment never existed in the first place, it would be impossible to show medical improvement. Any ALJ who makes a medical diagnosis is not following the Rules, Regulations, or the Act itself. If an ALJ has good reason from a record to suspect the possibility of a severe physical or mental condition, then the condition should be developed either through consultative examination or expert testimony at a hearing. The problem under Commissioner Astrue was that development took time, and that was discouraged, both implicitly and explicitly, as more fully developed within the book.

The Act states that an individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical science and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged… 42 USC section 423 (d) (5) (A).

Question: why should ALJs have a lifetime term?

Administrative Law Judges do not have the same type of life term appointment as the Federal Judiciary. For example, ALJs are subject to RIFs [Reduction in Force], should there suddenly be less of a need for them. Both Representative Duncan and Representative Spier had concerns over the lifetime appointment. However, the Merit Systems Protection Board has removed Judges for outside conduct unbecoming, insubordination, and the time and attendance requirements for all administrative employees. Originally, the lifetime position was to insulate an ALJ from Agency pressures. As will be shown, Commissioner Astrue utilized innovative methods to pressure Judges into higher productivity, to the point that medical files were not examined as carefully as they should have been, and medical development was outright discouraged. Senator Coburn testified that Congress had failed in oversight. Latter portions of this book deal with the type of pressures placed on ALJs and what authority figures were notified and when.

I do not believe that a business model should be used for adjudication. I believe that adjudication is a primary government function, and one that should be governed by rules and not by men. I believe that Commissioner Astrue's term of office vividly demonstrates why this should be the case. I am reminded of the story of the Oklahoman caught speeding in Texas, circa 1920s. He went before a Justice of the Peace, who was leafing through a Sears catalog. The JP sentenced him to 2 days in jail, and a $15 fine, apparently basing it on two pairs of shoes for $15. The Oklahoman bewailed his fate, but a Deputy suggested he was lucky. A week before the JP had been sentencing out of the plumbing section, which carried a lifetime warrantee.

The Social Security Administration has fervently wanted more control of the ALJs for many, many years [*The Government Accountability Office even commented on this struggle for control. Google GAO-08-40*]. *SSA has now made major moves toward outright judicial control, including a new Position Description giving supervisory powers to the Hearing Office Chief Administrative Law Judge, which empowers that supervisor to order cases be moved along, regardless of their evidentiary content. To the extent this Position Description is followed, then there is a JP element to the adjudication. A review of MSPB decisions on removal of ALJs certainly shows frequent success for egregious cases. My objection to ending the "so-called" lifetime appointment is that it gives Agencies another arrow for their quiver, when the sole standard for an ALJ should be absolute adherence to the law, as well as the Agencies' rules and regulations.*

Question: does SSA have the power to remand cases to DDS [Disability Determination Services]?

Yes, and you ought to hear them squawk about it. It has been done from time to time. SSA has most recently taken the stance, as stated by Acting Commissioner Colvin, that remand slows things down, and that once it is before an ALJ, it is fastest to leave it there.

Question: why isn't the government represented at the hearing?

Probably the greatest reason is money. There was a pilot program 20 or so years ago that did that very thing. Funding became a problem, and the pilot ended. Funding is always a problem. Since I first became an SSA employee in 1988, I can remember a number of times when funding ended programs. I can even remember when the Post-it notes were under lock and key [*we also used WANG computers in the late eighties*].

Question: why aren't Medical Experts routinely used when DDS determinations are overturned?

In many cases, the use of an ME is just not needed. In most instances, the medical record is much more complete at the time of hearing, at least, in those cases where the claimant is represented. DDS is working off forms in the record. Conversations between DDS personnel and the claimant are rare. Quite often the claimant has forgotten to mention [*or was unaware of the importance of*] *pertinent medical information until the claimant is actually questioned about it. Even in cases where there was representation, I routinely found that extensive medical records had not been requested by anyone, and this was during the hearing!*

An ME is most often needed when there are questions about a diagnosis, or intricacies about a particular condition or conditions. For example, a DDS finding that someone can perform the full range of sedentary work can easily be [*and should be*] *discounted if the claimant is on a warfarin regimen and should avoid sharp objects or dangerous machinery because of the bleeding hazard. This tells the adjudicator that the DDS medical people* [*if DDS even used medical people*] *did not fully consider pharmaceutical imperatives. Certainly if the only question that remains is whether there are a significant number of jobs for a person who could perform sedentary work, as defined by the agency, with the exception that this person should avoid sharp objects or dangerous moving machinery - that is a question for a Vocational Expert.*

Moreover, MEs range in abilities, and for that matter, credentials. Most often, they appear to be retired physicians and the like. Before I let an ME testify in a hearing [*in Missouri*]*, I always cited the Eighth Circuit definition of medical severity because otherwise I found the experts would either use the Agency's definition, or even use a definition from their own medical practice. The Judge and the ME need to be on the same page. Failure to use the 8th Circuit definition within its jurisdiction would be error subject to remand.*

Question: why would an ALJ overturn the professional opinion of the DDS medical experts who had determined on up to two occasions that the claimant was not disabled under the Social Security Act?

DDS gives itself very high marks on its accuracy. SSA also gives high marks to DDS accuracy. The Federal Judiciary? Not so much. An extensive review of all the circuits would show some real disquiet over some of the DDS determinations. That is, because, like me, the Federal Judiciary has seen thousands of misspelled and oddly hyphenated statements that misstate the impairments or overstate capability to return to a job never mastered. The idea [*in theory*] *is that a DDS determination will set out an explanation so sufficient that the claimant will feel that the case had been appropriately considered. One of the best* [*of the worst*] *examples that I remember came from the Oklahoma City area. This was after my retirement. The DDS stated that the claimant could work despite the traumatically amputated lower limb. Undoubtedly, the claimant would have been more reassured if DDS hadn't referenced the wrong leg.*

Senator Coburn was under the impression that DDS personnel were Social Security professional employees, one of the very few things that he had wrong. Representative Gosar was under the impression that these professionals had seen the claimant "eye to eye." Chairman Issa stated that competent administrators below had said "No" on one or two occasions.

As noted in Nolo's Guide to Social Security Disability, op. cit. at page 77, it is strictly a paper [*or electronic*] *review, and usually the consultant has no contact with the claimant. The consultant is not a Social Security employee. In prototype states* [Alabama, Alaska, parts of California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York and Pennsylvania]*, there is a single decision maker at the DDS level and a mental or medical practitioner might not even be contacted. Again, after my retirement, I became aware of a retired Dallas physician, who apparently had specialized in gynecology, who overturned the opinion of a Cambridge educated Cardiologist and professor at the University of Oklahoma Medical Center, for a cardiac related claim filed in Tulsa, Oklahoma.* [*Although I do not represent this claimant, I admit that we are related. This admission is partly for the sake of honesty, but also, were the relationship not present, I would be unaware of the circumstances due to the Privacy Act*]*. I once talked to a psychologist, now deceased, who did reviews for DDS in the Springfield, Missouri area. He had left the employ of DDS, and in fact, was no longer practicing as a psychologist. He advised me that he had been handed a pile of cases at a time, and spent about 15 minutes on each case.*

I do not know how many cases the aforementioned retired Dallas physician saw in a year. I did find one fiscal year in which he was paid over $100,000, because I Google everything. I don't really remember what we paid medical experts for the hearing; I seem to recall it was either $250 or $275. If the DDS consultant was paid similarly, or given the same amount of time as the DDS psychologist I mentioned, then this physician has made a helluva lot of determinations. That is speculation on my part, but I can definitely say that there was no "eye to eye."

Question: aren't ALJs required to read the file in a disability hearing?

As a witness in the House hearing, Senator Tom Coburn stated, "the professionals within Social Security [actually *referring to DDS*] look at the whole record. The Judges rarely do. Some of the stacks are this thick [*making a gesture about 12 inches high*]… Michael Astrue was approved to be the head of Social Security. The message Congress gave him is get rid of the backlog. Guess what? He did. He didn't do it right but he got rid of a lot of the backlog while he was head of Social Security. Sloppy work, but he - and that became their impetus. It's not whether they are disabled or not, it's get rid of the case."

The Social Security Act itself states, "In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding 12 months for any case in which a determination is made that the individual is not under a disability." 42 USC section 423 (d) (5) (B). *There are plenty of regulations stating the same. However, I tend to look at the 1996 Social Security Rulings which were explicitly formulated so that DDS, SSA, and its adjudicatory branch* [*then OHA, now ODAR*] *would follow the exact same process. They have been called the Process Unification Rulings. Thus, consider the following.*

"Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the pain or other symptoms alleged has been established on the basis of medical signs and laboratory findings, allegations about the intensity and persistence of the symptoms must be considered with the objective medical abnormalities and all other evidence in the case record, in evaluating the functionally limiting effects of the impairment(s)." SSR 96-4p. "When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individual statements." SSR 96-6p. "All of the evidence in the case record, including the individual's statements, must be considered before a conclusion can be made about disability." SSR 96-7p. "The RFC assessment must be based on all of the relevant evidence in the case record, such as: Medical history, Medical signs and laboratory findings, The effects of treatment, including limitations or restrictions imposed by the mechanics of treatment (e.g. frequency of treatment, duration, disruption to routine, side effects of medication), Reports of daily activities, Lay evidence, Recorded observations, Medical source statements, Effects of symptoms, including pain that are reasonably attributable to a medically determinable impairment, Evidence from attempts to work, Need for structured living environment, and work evaluations if available." SSR 96-8p.

In point of fact, an ALJ who only reads the medical evidence is not in compliance with Social Security Regulations, Rulings, and the Act itself. For example, financial information can indicate whether the claimant worked long enough the job to know it, or if the claimant has worked after filing for disability, or even if the claimant has since collected unemployment. Statements by others, as well as by the claimant, should be read for consistency with the medical record. Moreover, as to the medical record, reading only the hospital discharge notes [*as advocated by SSA managers under Commissioner Astrue*] *may gloss over confessions to a nurse about drug or alcohol abuse, or failure to follow medical orders.*

One of the truly boneheaded things accomplished under Commissioner Astrue allowed adjudicators to skip step four of sequential evaluation if there was insufficient evidence of past work [*I will rail against this elsewhere in the book, because it is astoundingly stupid*]. *The reasons given included that* gathering work history is time-consuming, labor-intensive, leads to delays, and requires us [*kind of like the Royal "We"*] to divert our resources. 76 Fed Reg 56357 (September 13, 2011). *The first reason that this is almost criminally stupid is that work done long enough to be mastered may well provide skills that transfer to similar work, or lesser included work. The second reason is that the burden of production of evidence shifts to SSA in the fifth step of sequential evaluation, the ability to perform other work.*

Don't EVEN get me started on the time period when the Commissioner concealed the identity of the ALJ conducting the hearing until the day of hearing. Like a number of SSA managers, the Commissioner holds a law degree. This reminds me of a he said, she said joke.

The husband decided to give his 16-year-old son an occupational test. The idea was to leave the son alone for 20 minutes in a room containing a $20 bill, a copy of the Bible, and a bottle of whiskey. The idea was to see if he would leave the room with any of the objects. His wife had questions.
She said: what if he takes the money?
He said: he will be a businessman.
She said: what if he takes the Bible?
He said: he will be a man of the cloth.
She said: what if he takes the bottle?
He said: then we will have to resign ourselves to having reared a drunkard.
She said: what if it takes all three?
He buried his face in his hands and said: then he'll be a government bureaucrat with a law degree.

Question: what changed during Commissioner Astrue's term of office and why wasn't the Inspector General catching this?

Despite strictures on awards for production, SSA has always lauded high production [*save for rare instances when flouting Rules and Regulations became public knowledge*]. *Thus, to move into management required "high numbers." Transfer to a different location* [*perhaps with a beach!*] *required high numbers. Approval of a travel junket required high numbers. The changes under Commissioner Astrue included punitive measures*

toward low producers [*low being anything below what the Commissioner felt necessary to eliminate the backlog*].

Senator Tom Coburn posed what he thought was probably a rhetorical question: why wasn't the [*SSA*] *Inspector General catching this? Why, indeed? The answer lies in the trial diary I kept up through November 2010 – the bones of this book.*

But first, some necessary background information.

C. Background Reference Materials

The Regulations cited here are those concerning workers' benefits under Title II. I have chosen not to cite similar regulations pertaining to welfare benefits under Title XVI. I have also chosen not to reproduce the entirety of these Regulations out of a sense of mercy for the reader.

20 CFR 404.1512 Evidence
(a) General. In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention anything that shows you are blind or disabled…
(b) What we mean by "evidence." Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim…

20 CFR 404.1520 Evaluation of disability in general
(3) Evidence considered. We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

20 CFR 404.1520(b)
After we review all of the evidence relevant to your claim, including medical opinions, we make findings as to what the evidence shows…

20 CFR 404.1529(b)(3)
…We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating or nontreating source, and observations by our employees and other persons.

So, an ALJ should have a pretty good sense of what is in the file under the Regulations, and these remained binding on ALJs throughout Commissioner Astrue's term of office. I have previously cited to several of the Process Unification Rulings of 1996. Here is additional information.

SSR 96-7p: Evaluation of symptoms in disability claims: assessing the credibility of an individual's statements.

…When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individuals statements.

SSR 96-8p: Assessing residual functional capacity in initial claims
…The RFC assessment must be based on all of the relevant evidence in the case file…

SSR 06-3: In accordance with sections 223(d)(5) and 1614(a)(3)(H) of the Act, when we make a determination or decision of disability, we will consider all of the available evidence in the individuals case record. This includes, but is not limited to, objective medical evidence; other evidence from medical sources, including their opinions; statements by the individual and others about the impairment(s) and how it affects the individual's functioning; information from other "non-medical sources" and decisions by other governmental and nongovernmental agencies about whether an individual is disabled or blind.

Additionally, ALJs would sometimes get missives from the Chief Judge, such as the following.

Adjudication Tip #2: Social Security Ruling 06-03p reminds us that we must consider all opinion evidence in the record, including that from lay witnesses…

Some members of Congress [*primarily Republican*] *have expressed annoyance that the SSA ALJs formed a Union. Actually, there was an active Association for many years, but SSA management illustrated the need for ALJ representation by telling an ALJ in a meeting to sit down and shut up. Here are some of the pertinent provisions of the negotiated contract when Commissioner Astrue came into office.*

Article 5, Section 5, A: OHA [*now ODAR*] has decided that the time frames set forth in the "Benchmarks for 03 Report" are guidelines for management officials and will not be used as a source of any disciplinary or performance action. The Judges are encouraged by OHA to aim to meet the guidelines and cooperate with benchmark reports.

Article 5, Section 8, B: The Agency may not discipline a Judge who refuses to obey an order of an Agency official that is found to be unlawful or illegal.

If Commissioner Astrue even noticed these provisions, he only honored them in their breach. He also decided that the OPM directive against rating the ALJs' job performance under 5 CFR 930.206 (a) did not apply to reasonable goals, with reasonable goals being whatever he needed at any particular point in time. Do you find it hard to believe he meant fluctuating judicial goals premised on extraneous circumstances? Read on.

But first, I feel compelled to address a word that has no place in reference to Title II Social Security Benefits. This is an essay I wrote in 2014 after once again hearing the political mantra that Social Security is an entitlement [*which infuriates me*]. *The next time some politician refers to people having a sense of entitlement about Social Security, make sure he, she, or it is not referring to the welfare programs under Title XVI. If said*

politician IS referring to the program under which you have paid FICA for so many years, I would suggest showering that politician with copies of your pay stubs in the fruitless hope that the politician will die the death of a 1000
paper cuts. This is why I titled the essay:

Entitlement, My Aunt Fanny

Words can be magic. The first time I absolutely knew that I wanted to be a lawyer was during a divorce. I was only lending moral support and sat in the back of the courtroom. District Judge Carter (then seated in Pottawatomie County, OK) stated that the marriage was "null and void, set aside and held for naught." I knew poetry when I heard it. Later, in law school, I was to study the words of Justice Benjamin Cardozo. "Justice is not to be taken by storm. She is to be wooed by slow advances." Or, "Danger invites rescue."

I even learned of jokes concealed within case law. There is an old California case, Robinson v. Pioche, 5 Cal 460 (1855). That concerned a drunken man who fell down into a manhole. The municipality was found to be grossly negligent. The quote that remains with me 30 years later is, "A drunken man is just as entitled to a safe street as a sober man, and much more in need of it."

Once I got out of law school, I started paying attention to politics. Now, more and more, I see a type of word science we could probably call political beguilement.

Certainly there are examples from both the Democratic and Republican parties. Recently, a Texas democrat suggested dropping the word "welfare" in favor of "transitional living fund." Republicans are obviously much, much better at it.

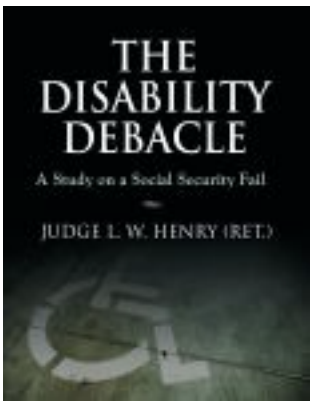
Republican wordsmith Frank Luntz is credited with a list of words politicians should never use. Google: Frank Luntz and The 14 Words Never to Use to bring up a list. Thus, the Republican Party is advised to never say "Government, "and instead say "Washington." Never say "Estate Tax," instead say "Death Tax." Never say "Tort Reform," instead say, "Lawsuit Abuse Reform."

When a politician says someone else is providing misleading information, I would prefer "He is lying." Give me straight talk. So, it really irritates me when some blowhard is calling Social Security an "Entitlement Program" in that smarmy way of saying entitlement. "He feels entitled" summons up a picture of either a spoiled brat or a lazy bum.

Now, there is a program called Supplemental Security Income that is welfare, or a "transitional living fund." That's not the issue here. Social Security itself is primarily for the Aged or Disabled. I paid into Social Security most of my adult life and several of my teen years. Sometimes, I only paid in as an employee. At times, I was an independent contractor and had to pay in as if I employed myself. That was more than 12% for Social Security alone and I definitely felt it each and every time I paid the quarterly payments.

If entitlement means having a right to something, then I certainly have a right to Social Security benefits at some point. If the implication is that I am finagling to eat off the public trough, we're going to have a problem. As a lawyer, I know that there is a written contract – the Social Security Act. I also know that I **performed** my part of the contract every time I paid my taxes. I did my duty under the **contract**. As far as I am concerned, Congress needs to uphold their end of the bargain and anyone who demeans the contract by that special way of saying "Entitlement Program" should be sentenced to several hundred hours of community service and a short course on contracts.

Now that we have dealt with the "entitlement issue", it is time to address the misfeasance, malfeasance, and outright stupidity of the Social Security Administration since roughly 2007.



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Bio for Judge L. W. [Wayne] Henry (Ret.)

Judge Wayne Henry is the Oklahoma born son of the late District Judge Lloyd H. Henry, who was widely known for two sayings, in particular: "Service - the rent you pay for the space you occupy," and, "Being a Judge is the highest honor to which a Lawyer can aspire."

Judge Wayne Henry was an associate at the prestigious Oklahoma firm of Henry and Associates. The Henry law firms have produced a number of eminent jurists and politicians, including former Governor Brad Henry, and Judge Robert Henry, formerly Chief Judge of the Federal 10th Circuit, and currently President of Oklahoma City University.

Judge Wayne Henry is a 3 time graduate of the University of Oklahoma, holding a Juris Doctorate, a Master of Arts in Human Relations, and a Bachelor of Science in Education. Judge Wayne Henry worked while attending college, with duties ranging from washing pans at a Hospital to being a Juvenile Counselor and Prison Guard.

After his father's death, Judge Wayne Henry left the family firm to go into government service. Before becoming an Administrative Law Judge for the Social Security Administration in 2001, Judge Wayne Henry served as an SSA Attorney Adviser, Sr. Attorney Adviser, Supervisory Staff Attorney, and Dallas Regional Staff Attorney, receiving a number of awards and honors.

Judge Wayne Henry served as an ALJ at the Springfield, Missouri hearing office for 9 years, signing off as L. W. Henry, Administrative Law Judge. As an ALJ, Judge Wayne Henry was solicited by SSA management to be a speaker/facilitator at the ALJ Chicago Conference of 2008. On retirement, Judge Wayne Henry was an attorney advocate before SSA until his total retirement due to the health of a family member. Since then, Judge Wayne Henry has addressed several attorney conferences and taught two CLEs (Continuing Legal Education courses). After the last CLE a participant advised that rather than teach a course on "Best Practices," the course should be named "Why ALJs are understandably irritable."