S. HRG. 99-452

FALSE CLAIMS REFORM ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1562

A BILL TO AMEND THE FALSE CLAIMS ACT, AND TITLE 18 OF THE UNITED STATES CODE REGARDING PENALTIES FOR FALSE CLAIMS, AND FOR OTHER PURPOSES

SEPTEMBER 17, 1985

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FALSE CLAIMS REFORM ACT

TUESDAY, SEPTEMBER 17, 1985

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE
PRACTICE AND PROCEDURE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcomittee met, pursuant to notice, at 10 a.m., in room SD-628 of the Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the subcommittee) presiding.

Present: Senators Specter, East, Metzenbaum, DeConcini, and Heflin.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA, CHAIRMAN, SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

Senator GRASSLEY. I want to thank everybody for coming to this hearing. I appreciate the fine cooperation we have had from everybody who has consented to testify.

Congress has waged an eternal battle against defense contractor fraud and without a great deal of success. We all have our own favorite horror stories. Here is one I would like to quote:

> Persons have been employed to furnish shells for the use of the Army; and in several cases, it has turned out that these shells have been filled not with the proper explosive materials for use, but with sawdust.

This horror story was delivered on the floor of the U.S. Senate by Senator Jacob Howard of Michigan, on February 14, 1863:

> Just like undying truths that withstand the test of time, so too do we have undying profiteering that withstands even the mightiest rhetoric of this body and of the Justice Department.

Here is a little more of what was being said in the Senate 122 years ago regarding defense fraud against our Government:

Senator Wilson of Massachusetts said:

> Mr. President, these halls have rung with denunciation of frauds of contractors upon the Government of the United States. Investigating committees in both Houses of Congress have reported the grossest frauds upon the Government.

Then the aforementioned Senator Howard of Michigan said this:

> I believe that some frauds of a very gross character have already been practiced in the purchase and furnishing of small arms for the use of the Army. Arms have been supplied which, on examination and use, have turned out to be useless and valueless.

I continue the quote from Senator Howard of Michigan back in 1863:

It is desirable to enact some law which shall remove the stigma which rests upon the country and the Government in reference to the frauds, corruption and peculations which have disgraced our service. It is one of the crying evils of the period that our treasury has been plundered from day to day by a band of conspirators who are knotted together for the purpose of defrauding and plundering the Government.

Contractor fraud may well be the world's second oldest profession. Certainly after 122 years of experience with contract fraud in this country, the U.S. Government should have come to grips with how to solve this age-old problem.

Contract fraud was so rampant during the Civil War that it compelled lawmakers to pass practical and effective legislation that drew on our very own people at the grassroots. The 1863 law, later referred to as the Abe Lincoln law after its chief source of inspiration, called on private persons to bring Government cheaters to justice. This private right is aptly labeled "qui tam" which in the Latin phrase means "one who prosecutes a suit for the king as well as for himself."

Subsequent changes in the Lincoln law watered down its effect. Today, defense contract fraud is once again rampant as evidenced by the disclosure that nearly half of the Nation's 100 largest defense contractors are under investigation for fraud. It is enough to force Congress to pass practical and effective legislation once again. Minor fine tuning of the law will have only a minor effect. If we wish to deal effectively with rampant fraud, we must ask ourselves if the current system is institutionally capable of doing that. The evidence suggests it is not.

This hearing is going to focus on S. 1562, the False Claims Reform Act which I sponsored along with my colleagues Senator DeConcini and Senator Levin. I should also mention that the companion bill has been introduced in the House by Representative Andy Ireland. This legislation was introduced with two primary objectives: One, to provide our Government law enforcers all the tools necessary for effective policing against fraud and, second, to encourage private individuals to become actively involved in combating Government fraud. The False Claims Act is the Government's primary weapon against fraud, yet is in desperate need of reform. A review of current environment is sufficient proof that the Government needs help and, in fact, needs lots of help to adequately protect our Treasury.

The original False Claims Act is rooted in the realization that we cannot guard against Government fraud without the aid of private citizen informers. The Act allows citizens knowing of fraud to bring suit on behalf of the Government with the incentive of receiving a portion of the reward if successful. Unfortunately, when Congress amended the law in 1943 the act's incentive and utility for private citizens was removed.

We will hear testimony today from private citizen who have been benefited, and benefited the Government as well, under the language contained in S. 1652. These individuals, working for defense contractors, were directed by their very own employers to falsely bill the Treasury. When these individuals tried to expose the practices, they suddenly found themselves unemployed, without a job, out in the street.

S. 1562 also raises fines under the Civil False Claims Act from $2,000 to $10,000 per claim. The $2,000 amount has not increased since Abraham Lincoln signed the law in 1863. Additionally, this bill raises the amount of damages perpetrators must pay from double to triple. And in criminal false claims cases, the penalty will be $1 million. These increases not only heighten the financial risk for would-be cheater, but also demonstrate to them the Government is serious about stopping rampant fraud. Both treble damages and the $1 million criminal penalty have already been approved by both the House and the Senate as applied to defense-related false claims. Now, of course, S. 1562 extends these levels to all Government fraud as a matter of equity and consistency.

I would be first to say that one single piece of legislation will not and cannot be a cure-all for the Government fraud problem. However, reform is desperately needed not only in the content area of refining existing law but especially in the context area of rethinking our overall approach to fraud deterrence.

[The bill S. 1562 follows:]

II

99TH CONGRESS
1ST SESSION

S. 1562

To amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 16), 1985

Mr. GRASSLEY (for himself, Mr. DECONCINI, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3729 of title 31, United States Code, is amended by—

(1) inserting "(a)" before "A person";

(2) striking out "$2,000" and inserting in lieu thereof "$10,000";

(3) striking out "2 times the amount of damages" and inserting in lieu thereof "3 times the amount of

damages in addition to the amount of the consequential damages"; and

(4) adding at the end thereof the following:

"(c) For purposes of this section, the terms 'knowing' and 'knowingly' mean the defendant—

"(1) had actual knowledge; or

"(2) had constructive knowledge in that the defendant acted in reckless disregard of the truth;

and no proof of intent to defraud or proof of any other element of a claim for fraud at common law is required.".

SEC. 2. Section 3730(b) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking out the fourth sentence and inserting in lieu thereof "The action may be brought in the judicial district where the defendant, or in the case of multiple defendants, where any one defendant is found, resides, or transacts business, or where the violation allegedly occurred.";

(2) in paragraph (2), by striking out "if the Government—" through the end of the paragraph and inserting in lieu thereof "if the Government by the end of the 60-day period does not enter, or gives written notice to the court of intent not to enter the action.";

(3) in paragraph (3), by striking out "action is conducted only by the Government" and inserting in

lieu thereof "person bringing the action shall have a right to continue in the action as a full party on the person's own behalf"; and

(4) by striking out paragraph (4) and inserting in lieu thereof the following:

"(4) If the Government does not proceed with the action within the 60-day period after being notified, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date if the Government demonstrates to the court that it came into possession of new material evidence or information not known by the Government within the 60-day period after being notified of such action.

"(5) Unless the Government proceeds with the action within 60 days after being notified, the court shall dismiss the action brought by the person if the court finds that—

"(A) the action is based on specific evidence or specific information the Government disclosed as a basis for allegations made in a prior administrative, civil, or criminal proceeding; or

"(B) the action is based on specific information disclosed during the course of a congressional investigation or based on specific public information disseminated by any news media.

If the Government has not initiated a civil action within six months after becoming aware of such evidence or information, or within such additional time as the court allows upon a showing of good cause, the court shall not dismiss the action brought by the person. The defendant must prove the facts warranting dismissal of such case.".

SEC. 3. Section 3730(c) of title 31, United States Code, is amended to read as follows:

"(c)(1) If the Government proceeds with the action within 60 days after being notified, and the person bringing the action has disclosed relevant evidence or information the Government did not have at the time the action was brought, such person shall receive at least 15 percent but no more than 20 percent of the proceeds of the action or settlement of the claim. Any such payment shall be paid out of such proceeds. If the person bringing the action substantially contributes to the prosecution of the action, such person shall receive at least 20 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses the court finds to have been necessarily incurred, in addition to reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with the action within 60 days after being notified, the person bringing the

action or settling the claim shall receive an amount the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than 25 percent and no more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses the court finds to have been necessarily incurred, in addition to reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.".

SEC. 4. Section 3730 of title 31, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of such employment by his employer in whole or in part because of the exercise by such employee on behalf of himself or others of any option afforded by this Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Act, shall be entitled to all relief necessary to make him whole. Such relief shall include reinstatement with full seniority rights, backpay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. In addition, the employer shall be liable to

such employee for twice the amount of back pay and special damages and, if appropriate under the circumstances, the court shall award punitive damages.

"(f) In any action brought under this section, or under section 3729, or 3731, the United States shall be required to prove all essential elements of the cause of action, including damages, hy a preponderance of the evidence.

"(g) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought hy the United States pursuant to this section, or section 3729, or 3731.".

SEC. 5. (a) Paragraphs (A), (B), and (C) of Rule 6(e)(3) of the Federal Rules of Criminal Procedure are amended to read as follows:

"(A) Disclosure, otherwise prohibited by this rule, of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

"(i) any attorney for the government for use in the performance of such attorney's duty to enforce Federal criminal or civil law; and

"(ii) such government personnel (including personnel of a State or subdivision of a State) as are deemed necessary by an attorney for the government to assist such attorney in the performance of his duty to enforce Federal criminal law.

"(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize such grand jury material for any purpose other than assisting an attorney for the government in the performance of such attorney's duty to enforce Federal criminal or civil law. Such an attorney for the government shall promptly provide the district court, before which the grand jury whose material has been so disclosed was impaneled, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

"(C) Disclosure of matters occurring before the grand jury, otherwise prohibited by this rule, may also be made—

"(i) when directed to do so by a court, upon a showing of particularized need, preliminarily to or in connection with a judicial proceeding;

"(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

"(iii) when the disclosure is made by an attorney for the government to another Federal grand jury;

"(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law; or

"(v) when so directed by a court upon a showing of substantial need, to personnel of any department or agency of the United States and any committee of Congress (a) when such personnel are deemed necessary to provide assistance to an attorney for the government in the performance of such attorney's duty to enforce Federal civil law, or (b) for use in relation to any matter

within the jurisdiction of such department, agency, or congressional committee.".

(b) The first sentence of paragraph (D) of Rule 6(e)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

"(D) A petition for disclosure pursuant to clause (i) or (v) of subsection (e)(3)(C) shall be filed in the district where the grand jury convened.".

SEC. 6. (a) Section 286 of title 18, United States Code, is amended by striking out "$10,000" and inserting in lieu thereof "$1,000,000".

(b) Section 287 of title 18, United States Code, is amended by striking out "$10,000, or imprisoned not more than five years" and inserting in lieu thereof "$1,000,000, or imprisoned for not more than ten years".

SEC. 7. This Act and the amendments made by this Act shall become effective upon the date of enactment.

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Senator GRASSLEY. Now, before we go on to the panel, I would call upon my friend, Senator Howard Metzenbaum, the ranking minority member of this committee and the person who has spoken very forcefully in this area even before I came to the Senate.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

I want to thank you for doing as much as any single Member in the Congress in the past couple of years to bear down on the whole issue of waste and fraud in the Defense Department and the Government generally. I believe that this legislation—of which I am not a cosponsor at the moment but which I am publicly saying to you that I am prepared to become a cosponsor—will aid in this fight against waste and fraud.

Senator GRASSLEY. I will include your name before the day ends.

Senator METZENBAUM. I think you are providing yeoman leadership in this area. I am frank to say your efforts along this line and the concerns expressed at the judiciary meeting where you were present the other day are providing the kind of prod that the administration needs so that they may understand that those of us in Congress who have concern about this subject feel that justice should be meted out fairly and equally to all people and that we want more effective enforcement, not less.

I think that your bill is particularly good in that it provides for the right, first of all, for protection for the whistleblowers, and I think that is a particularly significant point. I think that the whistleblowers need protection by our Government and in too many instances the whistleblowers in defense industries have found themselves out on their ear and have not been able to retain their jobs. Instead of being rewarded for their efforts, they have been castigated by the employer.

Furthermore, the right of the private individual to bring an action as you provide for private lawsuits in this legislation, I think, is of great importance in every sense of the word. I think the administration ought to get behind both of those provisions.

In my opinion, nobody has taken more advantage of our Government than the defense contractors of this country. Parenthetically, these same corporations have failed to pay their fair share of the tax burden of this country. When you look at the list of those getting a free ride, you find the defense industries topping the list and, at the same time, they have padded their bills and labor charges as in the GTE case and, as in the GTE case, they have hired a consultant who has made available secret classified information having to do with electronic warfare systems, and what happens to them when they are caught? They get a slap on the wrist.

Now, the gentleman who is speaking today for the Justice Department and I had an opportunity to discuss this last evening on a TV program, and he talked about the fact that the courts are lenient. The fact is the courts are lenient in many cases because they are often presented with a plea bargain. It is the Justice Department that brings the matter before them on a plea-bargaining

basis, and the court really has very little alternative under those circumstances.

I think your legislation is strong. I think it provides for effective enforcement. I think it moves in the right direction. I would hope that the administration proposals in this area would see fit to incorporate in their proposals your proposals as well.

I would hope that other members on the other side of the aisle would see fit to join with you in cosponsorship of this legislation. I notice you have Senator Levin, Senator DeConcini, and myself. I think it is important and relevant that we need some who bear an "R" to their name as well as a "D" since we are an "R" administration. And I am hopeful that that will come about, but I certainly don't hold you responsible for that.

All in all, I commend you for what you have done in the past and indicate to you publicly that I am prepared to work with you in every way to move your legislation as promptly as possible.

Senator GRASSLEY. Thank you very much. I accept and will need very much that offer of assistance and know that you would be inclined in that direction anyway because of your pioneering in these areas and your willingness to take a stand on tough issues anyway.

I think before we go to the panel, I will wait until Senator DeConcini has finished visiting to call for an opening statement.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Thank you very much, Mr. Chairman, you are very kind.

I thank you for the invitation to join your subcommittee on the first day of hearings on S. 1562, the False Claims Act. I will ask that my full statement be put in the record, Mr. Chairman. I want to particularly point out your leadership in this area. Indeed, Senator Grassley has taken upon himself in some very difficult situations to point out some very stark examples of fraud being perpetrated upon the administration. Fraud upon the Government is wrong regardless of who is in the White House, in the Defense Department, or the Congress. I commend you for that courage, Senator Grassley, with which you pursue the issue of fraud against the Government.

I remember about 3½ years ago when we instituted the inspector general in the Department of Defense. At the time, the Secretary opposed it very, very strongly, said he didn't need any independent auditors. We overrode his opposition with bipartisan support and the inspector general has brought out some of the problems we have in that department.

It is important to me that we approach this in the manner that S. 1562 does by maintaining the tough provisions in it. What we want to do is update the False Claims Act and make it work. The sooner we pass this, the better. I am glad to be a cosponsor, Mr. Chairman, and you can count on my assistance in every way possible.

[Prepared statement follows:]

PREPARED STATEMENT OF SENATOR DECONCINI

Thank you, Mr. Chairman, for the invitation to join your subcommittee for this, the first day of hearings on S. 1562, the False Claims Reform Act. I commend your leadership in this area and look forward to working with you as this legislation is perfected and processed.

Several years ago, I became aware of the deficiencies in the False Claims Act and introduced legislation to bring the act into the twentieth century and increase the "bite" on those who make false claims against their Government. Hearings were held, a bill marked up by the full committee, and sent to the floor. It was at about this time that those interests against whose activities the bill was primarily aimed, finally utilized their clout and brought the bill to a screaming halt.

I don't believe it will be so easy to do that again. Over the past several years it seems like we have been treated to monthly scandals as we pick up the newspaper with our morning coffee. It has become ludicrous! Mr. Chairman, you have been particularly responsible for ferretting out some of the more egregious examples of fraud. The public and the Congress are aware of and darned mad about the repeated ripoffs of the Federal Treasury. This bill is going to pass in some fashion—I only hope we can keep the teeth in the bill.

The increase in penalties for filing false claims together with the modifications of the qui tam provisions make this a major piece of legislation with which to combat the growing incidences of fraud. I noted in the morning paper that the administration has also prepared a package of legislation addressed to generally the same areas as this bill. I hope to also suppert that bill and trust that the best portions of both of these bills can be processed as we work toward the common goal of repressing fraud.

Senator GRASSLEY. Let me thank you for the support you gave me last spring when I took on some of the same pioneering steps you took to solve this problem. And thank you for your continued cooperation.

Our first witness today is Mr. Jay B. Stephens, Associate Deputy Attorney General of the Department of Justice. Please proceed with a summary of your statement and, as is the practice of this committee, we will put your full statement in the record. Please introduce your associate as well.

STATEMENT OF HON. JAY B. STEPHENS, DEPUTY ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY STUART E. SCHIFFER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Mr. STEPHENS. Thank you very much, Chairman Grassley. With me this morning is Stuart Schiffer, Deputy Assistant Attorney General of the Civil Division who has had a substantial amount of experience in dealing with false claims in the civil context. It is personal privilege for me to be here this morning. I know the chairman, indicated by both Senator Metzenbaum and Senator DeConcini, has done a pioneering effort in this defense procurement. This is an effort in which we share considerably the subcommittee's concern. You personally have been a pioneer in and have personally dedicated a lot of your time and efforts to try to solve some of the problems and issues that have arisen in the area of defense procurement.

It is also a pleasure to appear before Senator Metzenbaum. As he said, we had an opportunity to discuss these issues last evening. The issues in S. 1562 are all issues we all can focus on in good faith and try to come to a solution that will benefit the Nation. That is why I know you gentlemen are interested in that and why the Senate is focusing on that. I think you can count on working with

the Department of Justice to come to some practical solutions to try to get a better handle on this problem.

It is indeed a pleasure, as I indicated, to testify in this particular area. As you know, the President announced a Management Improvement Program on July 31. In that message, he outlined his concerns about fraud and waste and abuse in the Federal Government. As a major part of that program this administration as announced by the Attorney General yesterday has developed an eight-bill program devised to deal with the problem of fraud enforcement, particularly targeted at the defense procurement area. The eight bills which make up the Department of Justice package provide what we believe are important tools, long overdue weapons, to deal with the problem of fraud and bribery in connection with Federal programs and to recover Federal tax dollars from those who abuse our tax dollars. I know that is a concern of the members of this subcommittee, the waste of tax dollars that go out. The Defense budget area is an area we have to protect; this was alluded to in the opening statement of the chairman, and it is an area we must assure we are getting the maximum defense benefit for the amount spent. That is why I think the approach taken here by the subcommittee in focusing on S. 1562 is important. We have to assure we have a defense system that is not shot through with fraud, and that is what we hope to achieve, an objective to try to insure that type of program.

As I indicated, we have an eight-part program. Two of those parts are incorporated in S. 1562; that is the False Claims Act as well as some parts in the 6E area. The other parts of our package have been referred to other committees of the Senate and House. They include a number of other revisions which we believe will streamline the process in the defense industry for dealing with fraud against the Government in general. This includes a number of separate provisions—debt collection, moving resolution of claims to the Claims Court, and giving some additional authority to defense auditors so they could go after books and records to assure that they can supervise and monitor the contracts that come out of the Defense Department; also our antifraud package would provide for an administrative process to deal with claims submitted which do not involve massive contracts of over $100,000 by streamlining the administrative process to deal with false claims that may be submitted in that context.

Before proceeding to discuss specifically S. 1562, I would like to note, as we have indicated, we are really very strongly committed to attacking fraud and waste against the Government. That is one species of white-collar crime. We clearly need the reforms in S. 1562 as outlined more comprehensively in the other provisions announced by the Attorney General yesterday. Despite the landmark legislation enacted last year, these additional provisions there give us much needed tools, by clarifying the law in the area of procurement fraud and providing additional penalties and additional tools to deal with this problem.

We believe the tools outlined here will give us additional weapons to deal with this problem. As the chairman has so aptly pointed out, perhaps this is the second oldest profession. We are trying to deal with this issue, and we think with the cooperation of this

subcommittee and with the full resources of the Department of Justice, we intend to pursue this area vigorously. We will continue to do that, and we look forward to working with the committee to develop some new tools and methods of doing that.

Let me turn specifically to S. 1562 and address some of the provisions there. I would particularly like to compare them with some of the provisions we have outlined in the administration bill which was announced yesterday by the Attorney General.

The False Claims Act currently permits the United States to recover treble damages plus $2,000 for each false or fraudulent claim submitted to the Government for payment. As the chairman indicated, this was enacted back in 1863 in response to contractor fraud during the Civil War and it really has been an indispensable tool in dealing with procurement fraud.

Since the act was last amended in 1943, we have identified a number of areas which warrant some modification. Particularly, we have had some concerns about certain judicial interpretations of the act which have caused problems with the enforcement of that particular area.

S. 1562 contains many of the changes I indicated that we have suggested also, and I hope that after studying the bill that we could work together to come up with some ideas and that the Senate will adopt many of these changes which will provide assistance to the Department.

Perhaps the most significant amendments contained in S. 1562 of the False Claims Act go to the important civil provisions of that act. Those issues are really the standard of intent that must be established and the burden of proof.

This is a civil remedy. As a civil remedy, it is designed to make the Government whole for the losses it has suffered, and the law as it now is currently provides that the Government need only prove a defendant knowingly submitted a false claim.

The problem is this standard has been misconstrued by the courts from time to time to require that the Government prove that a defendant has actual knowledge of the fraud or even to go to establishing that the defendant had specific intent to submit a false claim.

I am sure all of you are familiar with the standards in civil and criminal process, and what this is basically imposing is a criminal penalty standard in a civil process. This is one of the areas that needs to be remedied under the False Claims Act. Both your bill, Senator, and the administration bill establish the intent which punishes defendants who knowingly submit false claims; knowingly is defined as a defendant who had actual knowledge or who had constructive knowledge in that the defendant acted in reckless disregard of the truth.

We believe this standard is well crafted to permit the Government to recover in frauds where responsible officials and corporations deliberately attempt to insulate themselves from false claims being submitted by lower level subordinates. This may occur in large corporations and the United States and the Department can face insurmountable difficulties in establishing corporate officers had actual knowledge of the fraud. We believe the change would help us substantially to deal with those who deliberately try to iso-

late themselves from the conduct but who we can demonstrate acted in reckless disregard of the knowledge and standard they should have known. We believe the standard which you have articulated in your bill, Senator, is acceptable to the department. We think in your consideration of it you may want to give some consideration to possibly refining it to assure that the standard which we outline in our bill, constructive knowledge, is defined as those situations where the defendant had reason to know the claim or statement was false or fictitious; this might possibly provide a better standard in dealing with litigation on this point and also give us a little more handle in dealing with some of the efforts of certain individuals and corporations who engaged in ostrich-like conduct.

In civil claims cases, we think legislative clarification is helpful and needed. Again, some courts have used the standard of clear and convincing evidence and have gone so far as to require unequivocal evidence of fraud. That is not the normal standard in most civil cases. These are civil remedies. We are not talking about criminal remedies.

We believe, as your legislation also points out, that a preponderance of the evidence is the appropriate standard to use in a civil fraud case. We think that standard can clarify where there has been some ambiguity and would be very help to the department in defining the burden of proof we have to make in these claims.

With regard to the nature of the punishment or the remedial amounts involved, we want to point out that the statute as drafted and as interpreted is really a remedial statute. It is not a punitive statute.

With regard to the amount of forfeiture involved, whether it is double damages or treble damages, the concern the Department of Justice has had in that area is that we have run across situations where judges have—where there is a disproportionate penalty—from time to time, they interpreted this as a more or less criminal type of statute and impose a higher burden of proof as well as a higher standard of intent.

We have no significant policy differences with regard to the penalties that the subcommittee is proposing in this legislation as to treble damage and the $10,000 figure, but we would like to point out our concern that we don't move into an area where the courts start interpreting this as a criminal statute and, as you move from double damages to treble damages, it could be interpreted as more punitive. When you move from the $2,000 to $10,000 forfeiture amount, it could be interpreted as a penalty rather than simply remedial to the Government. That is just an area we ask you to focus on to assure we don't create a problem for ourselves in the court.

Needless to say, we are pleased that the subcommittee and the Senator's bill will give us added tools in this area as proposed and these tools and things will be helpful.

There are a number of other areas I would like to summarize particularly in the false claims area that we believe there is room for development. We would like to work with the subcommittee to assure those provisions in the Senator's bill that we could work with and that by providing additional information we would be of assistance to you. Perhaps there are some you have not adopted

and perhaps you have been asked to give some consideration to a little broader scope in the area.

In the forfeiture area, your bill raises that to $10,000. I have expressed the concerns on that issue. That is something we ask you to focus on.

Second, the bill of the administration permits us to take actions against members of the Armed Forces. The original bill, the original act in the 1900's excluded the military because, at that time, the military had more significant sanctions available to it than we did on the civilian side. That is not necessarily the case today, and there is no reason for not including the military in that.

Third, our bill includes a provision to recover consequential damages. On this issue, I would just like to point out I think it is important that the consequential damages ought to be doubled, or if the subcommittee goes with the treble damages, they would perhaps be trebled. Under the current common law standards, we are permitted to recover single consequential damages in most cases. If we want to add an enhancement, the consequentials like the other remedial action should at least be doubled.

Fourth, our proposal provides where there are material misrepresentations by an individual or corporate officer to avoid paying money owed the Government that that material misrepresentation be treated very much as if the company or the individual had submitted a false claim. Because, indeed, if you are making a material misrepresentation on a claim or material submitted to the Government, you are putting yourself in the same shoes as if you submitted a false claim. We believe that conduct should be covered as well as the claim itself which may be falsified.

Senator GRASSLEY. Could I ask you to focus on the parts of our bill that the administration takes objection to.

Mr. STEPHENS. Senator, as I indicated, I think most of the provisions in your bill, and I have outlined two or three where we have some concerns as to standard of practice and how they would be implemented in the courts and how the courts would interpret them that might cause some problems. But, by and large, the provisions outlined in your bill are those which we find go a long way in dealing with this problem.

There are a couple of areas that do cause some concern, and there are a couple of areas I indicated that you may not have included; things such as in the civil investigative demand which we included in our bill which would give the attorneys in the Civil Division the ability to conduct a certain level of investigation in these areas and to provide a more effective enforcement effort.

Senator GRASSLEY. Would you focus on the qui tam provisions.

Mr. STEPHENS. That is one area where the Department has some concern about the way the subcommittee's bill is drafted and the senator's bill is drafted.

As you know, the False Claim Act since its inception contain provisions which permit informants to come forward with evidence of fraud on the Government, to file suit in their own name and then to keep a share of that recovery. As you indicated in your opening statement, these provisions were adopted at a time when the Government had practically no investigative resources. Unlike today, we have substantial investigative resources through the FBI and

the inspectors general, and we would hope to add civil investigative demands.

From time to time, we have found the qui tam provisions motivate an informer or someone who has been victimized to come forward with a meritorious claim that the Department can prosecute in the name of the United States. We have not proposed any changes in the qui tam provisions of the bill.

I would like to comment on those sections of your bill in terms of how this would operate in bringing cases and the extent to which there might be some confusion injected in the litigation procession.

In particular, one of the concerns we have is the portion of the bill which provides, that even after the Department of Justice has stepped in to litigate a qui tam action on the part of the United States, the person bringing the action can still have a right to continue in the case as a full party on the person's own behalf. If both the United States and qui tam individuals are in the case as a party it creates several problems. One, it creates the problem of who controls the litigation. If you have two parties operating in court on one type of claim, it creates some concern as to how do you manage that kind of litigation. Second, it creates a concern as to whether or not potentially there could be any collusive action if suits are brought by an associate of the defendant who brings a qui tam action, he may remain in the action to try to frustrate the litigation itself.

We think the object you are trying to get at in your bill has some substantial merit because you are trying to strengthen the qui tam provisions. We suggest perhaps you give some consideration at least to another manner in doing this. In particular, one idea would be language which would permit the relator to receive copies of pleadings and the relator would be allowed to file proposed views. This is analogous to the provisions of the current statute which permits dismissal of a qui tam action only by the Attorney General, files for a written consent with the court. What this would do is give the relator an opportunity to be heard in court, to be kept fully abreast of the litigation tbat is going on during the course of the case, and to be heard before the court with regard to his or her objections and on the proposed settlement the realtor would not serve as a parallel party in each step of the litigation as you go along because we think that would tend to create some confusion in the management of litigation.

Another problem or concern we have about the qui tam provision as now drafted is that it would permit a relator to bring an action based on evidence available to the Government and to proceed on that action where the Justice Department does not choose to enter a suit. The act as currently drafted forbids that. If there is information in the hands of the Government, the relator cannot move forward on his own hook and bring a case based on that evidence.

Initially, the way the act was drafted it permitted that to occur. Congress modified that in 1943 because they were concerned about the parasitic or bounty hunter types of suits in which an individual would come along and learn there was certain information in the hands of the Justice Department or Government and file individual suits to obtain, first, the amount of personal recovery, 20 percent for their own personal benefit. Congress moved to delete that sec-

tion in 1943, and we believe at that time exercised good judgment and wisdom in doing so. It has not been a problem we believe that needs to be corrected again. We think the current situation with regard to that kind of approach is appropriate.

As I indicated, the way S. 1562 is drafted, it would permit a relator to proceed with an action based on information known to the United States.

Senator GRASSLEY. Mr. Stephens, can I ask how much more time you need?

Mr. STEPHENS. At the convenience of the subcommittee——

Senator GRASSLEY. I would ask you to wind it up. Then I will proceed with my questions.

Mr. STEPHENS [continuing]. As I indicated, there are a number of reasons which we think regarding the qui tam provisions that the department itself may have information but may decide not at that particular moment in time to bring a case. There may be an ongoing criminal case. We may want to investigate more fully in a civil case. It may jeopardize another civil suit or it may give us an opportunity to bring a better case.

Apart from the qui tam, there are a number of other areas in the grand jury that the subcommittee may wish to focus on. We think that area as drafted by the Senator's bill basically conforms with our understanding with two exceptions. One exception is when we propose in our bill to provide the grand jury material to administrative agencies in the executive branch that that provision of grand jury material will be at the request of the attorney for the Government and that there be a substantial need showing. This is to protect the secrecy of the grand jury material and the integrity of the grand jury process. We have similar concerns as we expressed in our testimony with regard to congressional access to grand jury material.

I will conclude my opening remarks at that point, Senator. I am obviously happy to answer any questions you or any other members of the subcommittee have as we try to work through these problems with you.

Senator METZENBAUM. Just one question. The chairman has priority. Are you here supporting the Grassley, DeConcini, Metzenbaum bill, and I understand there have to be some changes, but are you generally supportive of the proposal?

Mr. STEPHENS. Yes; Senator, I think it is fair to say, and in my opening remarks I thought I indicated we thought both you and Senator Grassley had really staked out some territory here. We have been trying to prosecute and move forward in the procurement fraud area. We have some problems in S. 1562 with respect to qui tam and some of the other areas. We would like to work some modification of language but, in concept, I think we are pretty much together.

Senator GRASSLEY. I would recognize Senator Specter for an opening comment before I start my questions.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

I want to commend you and Senator DeConcini and Senator Metzenbaum for your concern in this area. It is an area obviously in need of mucb thorough analysis and action, and I believe that the private action to supplement governmental activity through tbe additional qui tam proceeding is a very promising approach.

Thank you very much, Mr. Chairman.

Senator GRASSLEY. Thank you. You attend this subcommittee frequently, and I appreciate the support you lend by being here and showing your interest.

I am going to split my questioning into two. We will go to Senator Metzenbaum, Senator DeConcini, and Senator Specter, and then I will move to my second round of questions.

Before I ask my first question which might fall into a hypothetical category, I would first of all like to suggest we are working together on a bill, and you have spoken of where there are little differences between your approach and our approach. I want to say to you that I appreciate that. I guess based upon what the administration bas in their bill, I consider that a refinement of existing law, and that is perfectly legitimate.

What I am looking for in my legislation and the approach other cosponsors intend to take are to make some institutional changes more vigorous, because we feel that the situation is so bad out there that we need to make some changes.

I hope that, as you indicated in your statements, some progress is being made in going after defense procurement fraud as well as white collar crime in general. But there is something that has been pretty consistent throughout these hearings I have held in the last couple of years, and that is, whether it comes from the Department of Defense or from tbe Department of Justice, we always seem to hear mañana talk * * * things are going to get better. I think they are getting better, but I don't think we want to be lulled into a false feeling through happy talk about how our Government's resources are being used. I would like to assume tbose resources are fairly great and they are being used with utmost dispatch and efficiency.

I guess my position starts from the premise that even if they are, enormous resources, the government's resources are probably not enough. Hence, my suggestion of making it easier and to give more protection for private citizen involvement in this. That is the basic institutional change that I think should be made, plus Congress' greater involvement and access to information than before.

I would like to start my questioning with, as I suggested to you, a hypotbetical and maybe take you back to your days of law school. Mr. X is an employee of a major Government contractor. His superiors have ordered him to falsify time cards and tbereby overcharge the Government. Mr. X reports the call. The Government files a report. One year passes and the employee has not yet heard from the Government. Meanwhile, the mischarging practice continues at his company. At this point, if the employee sues tbe company under the False Claims Act, do you think the suit should be dismissed solely because the Government is already in possession of the allegations?

Mr. STEPHENS. Senator, the assumption in your hypothetical is tbat the Government has done nothing with the information that it

has received. Are you assuming they received tbe information and have not investigated?

Senator GRASSLEY. It is assuming they have not moved to the point that the private citizen probably would have moved. It is assuming that much.

Mr. STEPHENS. My response would be if that material were relayed to the Government and the Government investigated that allegation and determined there was a basis for it, perhaps there was a pending criminal matter pending; perhaps they acted within 1 year; perhaps in the initial assessment of it the Government determines indeed it is without merit; perhaps the Government is investigating or trying to collect more material to make it, indeed, a very visable kind of claim. I would suggest just because a year has passed that is not in and of itself a given right to the private litigant to come in and stand in the shoes of the Government without having these other areas or issues fully explored.

Senator GRASSLEY. You are saying the Government does always do something in these cases? That is implicit in your question or in your response?

Mr. STEPHENS. Implicit, I suppose, is if credible information is conveyed to the Government regarding a fraudulent transaction, misrepresentation, some kind of claim, I would certainly like to believe the Government would take some action whether through the inspector general of that particular agency or the FBI or perhaps as we suggested in our legislation through civil investigative demand. The Government should be given an opportunity to track down information. Not all allegations, as the Senator well knows, are meritorious, but those that are should have the resources of the Government focused on them. If they are, we should be able to bring them under qui tam, with the assistance and advice of the individual and with some recovery by that individual for bringing that information to the Government.

Senator GRASSLEY. I would like to take my hypothetical one step further.

Once the company becomes aware of Mr. X's disclosures, his performance evaluations are systematically downgraded, he is transferred to a different position. Eventually, the company informs him his services are no longer needed. Are there any remedies the courts could provide Mr. X and is there any compensation tbe Government could provided Mr. X in his efforts to save the Government money?

Mr. STEPHENS. Let me respond, and I will ask Mr. Schiffer to respond.

Finally, I would like to point out under the False Claims Act, I am not sure the false claims packet is designed to protect the employment status of an individual no matter how wronged that individual may have been by the company. It is designed to prosecute a claim of fraudulent conduct. There may be another remedy available or programs should be available. Perhaps Mr. Schiffer is aware of something there under the false claims. I don't think that is the purpose of the False Claims Act to protect employment status of persons who bring false claims to tbe Government.

Mr. SCHIFFER. This is a concern we have. I am aware of where U.S. attorneys have sought and obtained injunctive relief for individuals who have been cooperative with the Government.

Senator DECONCINI. Mr. Chairman, will you yield on that? That is solely at the discretion of the U.S. attorney. There is no right to that result.

Mr. SCHIFFER. I am not prepared to say whether he has a remedy or not.

Senator DECONCINI. What remedy would he have? Can you think of any?

Mr. SCHIFFER. It could be under one of those statutes or more likely he would need the assistance of a U.S. attorney's interference on the Government's investigation.

Senator DECONCINI. I think this act ought to take into consideration your hypothetical, because I think it is not all that much a hypothetical. It happens.

Senator METZENBAUM. It is not a hypothetical. There is a man sitting in this room. Our second witness is stymied. He is not getting help from the U.S. attorney's office or us and that is what this is all about.

Senator GRASSLEY. I thank you for contributing that point. I guess I would note that there is some uncertainty in your response which, if you did not anticipate the question, is perfectly legitimate. You said you thought there were a few cases or examples. I would like to have you submit in writing those examples or stand corrected that there are not any examples that you can give us.

Let me just say I don't believe this hypothetical case is unrealistic or that it is the worst-case scenario. Based on information we received from whistleblowers and would-be whistleblowers working for Government contractors, this hypothetical case illustrates a chain of events. We will hear from a few of these individuals in a few minutes.

One of the things I am particularly interested in hearing from them is how the current state of the law has protected private citizens who know of a fraud or participate in cheating the Government. It appears there is no incentive for reporting the violation. In fact, there is a powerful disincentive from coming forward.

Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman.

I have an article from the Baltimore Sun reporting of potential contract fraud uncovered by Pentagon auditors over the past 5 years, only 11 cases have led to prosecution according to a Defense Department document. Auditors have complained about reporting a fraud because of lack of prosecution. What good is it to increase current referrals, says Mr. Curry who is assistant inspector general. It goes on to say the administration is vigorously prosecuting contract fraud.

Now the Attorney General held a press conference yesterday and you come here today and say you are supportive. The facts don't bear up that the Defense Department has been aggressively fighting contract fraud. How do you answer that?

Mr. STEPHENS. I am not familiar with that particular article in the Baltimore Sun. The article suggests that in the last 2½ years there were 11 cases criminally prosecuted. I disagree with the

number of cases. I know there are more cases. I am not sure of the number of civil actions that have been brought, but since there are more than 11 criminal cases, I know there are more than 11 altogether.

I think it is fair to say over the last 3 years there has been forged a very healthy, good relationship in this area between prosecutors and defense auditors. Indeed, one of the provisions of our legislation is to beef up the auditors' ability to get books and records so they can audit and bring cases into the Department of Justice for prosecution. That is my sense; about this I know you may disagree with that, but this is a new area.

We have had the defense procurement fraudulent there for 3 years to serve as a catalyst to get the Defense Department to audit, to have a place where we can have cases referred, to act as a stimulus for U.S. attorneys to prosecute those kinds of cases. That relationship has improved substantially.

Senator METZENBAUM. How can you say it improved substantially. I am reading to you from a July 19, 1985 article in which the assistant inspector general is saying it is a waste of time to make further referrals and you say it has improved.

Mr. STEPHENS. Obviously, I disagree.

Senator METZENBAUM. You disagree, but here is an actual quote. Yours is an opinion. Here is a man from the Defense Department saying he can't get results from the Justice Department.

Mr. STEPHENS. It is his opinion in the newspaper article.

What I am suggesting is the cooperation has improved substantially. That is not to say there is not room for some further improvement or room for some increased cooperation, but I think it is fair to say if you go through the cases——

Senator METZENBAUM. Why don't you do this. Senator DeConcini suggests you give us your specifics. He says 11 cases of defense contract prosecutions.

Mr. STEPHENS [continuing]. We will be happy to submit for the record the number of cases that have been undertaken for investigation by the Department on the criminal side and civil side.

Senator METZENBAUM. I am asking for prosecutions.

Senator GRASSLEY. Let me interrupt here. We will have a hearing coming up on October 1 on Defense Department oversight.

Mr. STEPHENS. Perhaps that material can be provided.

Senator METZENBAUM. Doesn't the Department know there is strong need for protection for whistleblowers?

Mr. STEPHENS. I think whistleblowers need protection indeed. One, indeed, if they are blowing the whistle on fraud that contractors are engaging in. There are two points to that. One is the Government obviously needs protection. If the Treasury and Defense Establishment is being raided, it is important that individuals know those organizations and who have information that would suggest fraudulent conduct feel free to come to the auditors of those departments or agencies or the Department of Justice with that material. It is a second area of concern as to what happens to that individual within his organization for providing that information. I think those are two separate questions.

I don't think we disagree at all with regard to the need to get that kind of information. Indeed, many criminal prosecutions are

based on people coming forward. How you protect that individual is a question which you may want to address. I am not convinced that the False Claims Act is the way to do it.

Now, the whistleblower is protected through, basically, the civil rights statutes and civil rights kinds of actions showing discrimination.

Senator METZENAAUM. Can you give us some indication in the past 5 years or any other period you want to describe where whistleblowers have been protected by their Government in their effort to protect the Government from defense contractors?

Mr. STEPHENS. Cases in which a whistleblower has brought to an audit agency or the Department of Justice a Federal allegation of fraud and then has had some internal action—that is the type of thing you are asking for?

Senator METZENAAUM. Yes. I would eliminate credible. As soon as you put that word in, you throw out all cases.

Mr. STEPHENS. For harassment and vindictive purposes, it is not clear that an individual should be protected.

Senator METZENAAUM. The word may just be too strong.

Senator GRASSLEY. Mr. Stephens, since you said the Department was of the philosophy that whistleblowers ought to be protected, is there any chance you would be working with us then on that portion of our bill? We were of the impression that the Department objected to those portions of our bill.

Mr. STEPHENS. I think I have indicated in my prepared remarks as well as my oral testimony that we do have significant concerns with the qui tam provisions of your bill, Senator. That is one area; and the other area is grand jury access. I don't want to leave any misimpression; we have a concern about the impact of this legislation. That having been said, we want to work with you to try to come up with some remedy that would permit and encourage perhaps even this kind of information flow from individuals within the Defense Establishment to the Department or auditors; also, we need to look at the next step of what kinds of protection is out there for individuals who do that. I am not convinced at this time that those protections come under the False Claims Act. Perhaps an injunction brought by the Government where the Government is pursuing a case is one alternative. There may be another appropriate way to protect an individual who is being discriminated against for information he or she disclosed.

Senator GRASSLEY. With regard to Federal employees who are whistleblowers, I believe the Department of Justice has not offered any suggestion for changing or beefing up laws that protect whistleblowers. In fact, a bill I got through the Senate last year was killed in the last hour of the Congress in the House of Representatives because Bob McConnell, who was the congressional liaison for the Department of Justice, got it killed over there and he doesn't make any bones about how he got it killed.

Mr. STEPHENS. We may differ on the credibility issue of the allegation. There is another whole area here and that is to avoid harrassment of Senators, Congressmen, individuals in the private sector by individuals who are operating on other motives. I am not ascribing that to any particular cases.

Senator METZENBAUM. We people on this side of the table usually have the privilege of filibustering and not our witnesses.

Will the Department of Justice work with this committee to provide effective protection for whistleblowers in the private sector?

Mr. STEPHENS. Yes.

Senator METZENBAUM. Under the present law, a private suit is dismissed if the Government has information upon which the suit is based even if the Government does nothing. As I understood your original testimony, you still want that to be the law. You have to explain to me how that serves the public interest. Do you understand the point?

Mr. STEPHENS. I believe so, Senator. If I may restate it. Your concern is that the Department of Justice or the Government takes no action with regard to information provided it and even though we may take no action that the individual is precluded from taking action. You would like to change that.

Senator METZENBAUM. Right.

Mr. STEPHENS. Our concerns are several fold and Mr. Schiffer may wish to amplify on that because he has personal experience in dealing with this area of the law. We have the same concern in many respects that Congress addressed in 1943 when the bounty hunters or parasite suits were taken out. Tbat is, any individual can read the press, can read reports and say there is some information about this that looks like an allegation of fraud and bring suit. You are probably immune from suit, but he may bring suit against any number of public officials or private citizens on actions which the agency in our Government, which is charged with the responsibility of making balanced judgments with regard to the credibility of information, has decided that perhaps there is not a credible case here; has decided that the case should be held in abeyance until a criminal case is completed; has decided for a good honest number of reasons that bringing suit may not be appropriate. It is generally our position it is inappropriate to permit another type of suit going on from the outside by an individual.

Mr. Schiffer may want to amplify on that.

Senator METZENBAUM. Before you answer, let me say the American people have lost confidence in their Government's willingness and ability to act effectively against defense contractors. Day after day, they read about cases that are washed under the rug, wiped out. GE is now OK, GTE is now OK, General Dynamics is OK, and they believe the Government is not on their side but they are on the side of the defense contractors.

Then you have a whistleblower who learns something, he wants to move, he does move to try to do something about it in the court. The Government goes in and says you can't do anything because we bave that information, and under the provisions of present law, you can't move forward. One of the witnesses today will testify that is exactly what is happening to him in this very moment in his case. What is the Government's answer to that?

Mr. SCHIFFER. As Mr. Stephens indicated, we are quite proud of the record we have in both the criminal and civil area. Day after day the newspapers carry in small print prosecutions that bave been brought and recoveries that have been obtained.

Senator METZENBAUM. A total of $4½ million in recovery from defense contractors.

Mr. SCHIFFER. Perhaps in an individual case but recoveries have certainly been well above that.

Senator METZENBAUM. How much?

Mr. SCHIFFER. I don't have exact figures, but I think I have heard $60 million.

Senator GRASSLEY. That is $4½ million and that is the defense procurement fraud unit setup, chartered solely to go after big defense contractors, not the locals.

Senator METZENBAUM. That is the figure I was referring to.

Mr. SCHIFFER. I was simply going to make the point we have no disagreement whatsoever that private citizens should and must be encouraged to come forward with information of this nature. If we have any disagreement, it is our belief there is ultimate responsibility somewhere, and we believe in this instance the somewhere is in the Department of Justice for investigating and finally making a prosecutive decision and to permit these suits to go on after matters have been prosecuted after determinations have been made there is simply no merit in our view does not serve the Department of Justice.

Senator METZENBAUM. Will the Justice Department work with this committee to help an individual go forward with his or her suit and at the same time protect the Government's concern and possibly that might be done by involving the district judge and discretionary decision that might have to be made or there might be some other alternative. Are you willing to work with us to alleviate that problem? And it is at the present time a major one.

Mr.' STEPHENS. Senator, we are willing to work with the subcommittee. We have expressed what we believe are relatively institutional concerns about information being handled and prosecuted by the agency responsible for that. I am not sure the suggestion you have made is one that we would find acceptable, but we are willing to explore this area.

We have indicated that we have common objectives here in trying to cut down on the amount of fraud in the procurement area. We may have disagreements as to institutional relationship as to how that can or should be done, but we are willing to work and explore these areas. I don't want to leave you with the impression——

Senator METZENBAUM. If you have some suggestions, I would hope you would be in contact with the chairman promptly. We would be happy to have your help, but we don't want to drag it out. The session is rapidly coming to a close.

Senator GRASSLEY. Senator DeConcini.

Senator DECONCINI. Along the line the Senator from Ohio has pursued here, I would like to urge Mr. Stephens and his colleagues to submit to the subcommittee any constructive information you have and do so in a most expeditious manner. I think it is important we give serious consideration to that. I think your record is not so hot based on the information I have, and I don't pretend to have it all. I welcome information on how great you effort has been in going after contractors and how many millions you have saved and how many people you have prosecuted. I hope it is better than

what I read in the media which is not very encouraging from this Senator's point of view.

This bill is going to move, and probably the reason it is going to move, and rather rapidly, is the fact that the public has, indeed, lost confidence. I am well aware that publicity that is given to the obvious abuses make it difficult for prosecutors and investigators. I truly think it is important to try to set-aside past differences between DOS and the Congress. I certainly have my own feelings of the failure of the Justice Department to do more in this area, but we can't back. You can justify your actions and we welcome hearing about it. We are trying to put a strong bill together and your willingness to come and offer the technical changes and the logical reasons for those changes is very helpful.

If you will give us those ideas in writing, it will be very helpful to me. I just want to urge the chairman to expedite this bill.

I might say, Mr. Chairman, it is not easy to do this. I have defense contractors in my State, plenty of them, and several have had questions raised about their conduct. It causes problems when these things are brought to the public's attention, either by a whistleblower or prosecutor. I firmly believe, Mr. Chairman, neither we nor the administration have not met our obligation and responsibility to the public. I only hope we can work together in the spirit that has been offered here today.

Tbank you, Mr. Chairman.

I will submit some questions, Mr. Chairman.

Senator GRASSLEY. You were asking if we were going to be able to expedite this and the answer to that is yes. That is why I want to be able to sit down with the Department of Justice if they want to put forward other information prior to our markup which should be shortly.

I would like to ask my questions on the second round just to clarify where DOJ stands on some things, and I would ask that you answer briefly because we have to move on.

Mr. Stephens, do you believe qui tam portions of the False Claims Act are useful or necessary?

Mr. STEPHENS. Yes.

Senator GRASSLEY. To what extent?

Mr. STEPHENS. We think it is helpful in bringing forth information to the institutions charged with the responsibility of investigating and prosecuting. Individuals have some incentive to bring that information forward and the recovery permitted personally does on occasion assist us in ferreting out and prosecuting fraud in the defense industry or in other types of Government programs.

Senator GRASSLEY. But it does not need to be changed to promote more use of it?

Mr. STEPHENS. That is correct. We believe as it currently stands it operates relatively effectively and we don't think any major changes are necessary. As I indicated earlier, we are willing to work with the subcommittee. If there are areas that you think are imperative to change so those areas of change do not impact negatively on litigation that occurs or do not create confusion in the system.

Senator GRASSLEY. Everything you said is based on the fact that the provisions are used very rarely today?

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Mr. STEPHENS. I think qui tam is not the predominant source of information about procurement fraud. There are hundreds of auditors in these agencies which are charged with the responsibility of doing that. There are inspectors general, there is the Congress, there are FBI agents, and civil investigative demands. It is a small slice that in certain circumstances may bring forth information that needs to be brought forth and would not otherwise surface.

Senator GRASSLEY. I wanted to clarify that that was your position, and I thank you for doing that.

You would say the Justice Department is adequate and competent in enforcing laws in the area of Government fraud without the substantial aid of private qui tam litigants?

Mr. STEPHENS. I would say in the unusual circumstances, the qui tam litigant does not contribute to the major picture of the defense procurement fraud; but, occasionally in certain individual cases there are specific examples which there is a contribution. The provision is necessary because in specific kinds of cases information may not otherwise have surfaced. In the big picture, they don't contribute 20 percent or 30 percent to the overall enforcement effort. There is an escape there if the fraud is not turned up through normal investigative process.

Senator GRASSLEY. You do feel the Justice Department is doing its work along this line without any help through the qui tam process?

Mr. STEPHENS. We are doing our job. We always welcome information from others who have information to bring forth that would assist us on the civil side as well as the criminal side. We depend on our citizenry to have an honest defense establishment.

Senator GRASSLEY. I am curious. With regard to a general briefing within the Department of Justice for witnesses who come up here, are you instructed to testify that things are great and improving in a very general way? Was there any indication to you that that is the posture that you ought to take?

Mr. STEPHENS. No, Senator; I hope my testimony today reflects my views from my experience with the Department of Justice. I don't personally know every nook and cranny of what is going on there. We have able, talented, dedicated prosecutors and civil lawyers who have no motive not to do their best professional job. We have a terrific institution, and I am proud to serve there.

Senator GRASSLEY. It is not just the Department of Justice but also the Department of Defense. It seems like it is fairly standard policy for the happy talks I referred to previously. It seems like every Department of Justice witness paints a rosey picture, even though the evidence contradicts what they say.

I thank you very much for presenting the Department's point of view and look forward to working with you. Hopefully, we can reach some agreement not only where there is a refinement of the law but also where we suggest some basic changes in the law.

Mr. STEPHENS. Thank you very much, Senator. I appreciate the opportunity to appear.

[Statement follows:]

Prepared Statement of Jay B. Stephens

Mr. Chairman and Members of the Subcommittee --

It is a pleasure to appear today to discuss legislation that will strengthen our ability to attack fraud against the government. In a July 31 message to the Congress, President Reagan announced his Management Improvement Program to reduce fraud and waste, develop cash and credit management programs, and consolidate payroll, personnel and accounting systems. This message reflects the Administration's continuing commitment to reducing the cost of government while improving the timeliness and quality of goods and services being delivered to the American public.

A major part of the President's broad Management Improvement Program is directed at fraud in connection with government programs. This part of the Administration's initiative consists of an eight-bill Anti-Fraud Enforcement Initiative which the Attorney General announced yesterday morning. The eight bills which make up our anti-fraud legislatve package would give the Department of Justice important and, in some oases, long overdue weapons with which to deter fraud and bribery in connection with federal programs and to recover tax dollars from those who would abuse government programs to line their own pockets.

The components of our legislative package make up a comprehensive anti-fraud legislative agenda for consideration by the Congress and we look forward to working with you in the weeke ahead in an effort to secure enactment of these reforms by the 99th Congrese. Of couree, two of the principal componenta of our legielative package are incorporated in your bill, S. 1562, which closely tracke our own proposala for atrengthening the False Claima Act and facilitating accese to

grand jury materials. I will, of course, discuss these measures in detail in a moment.

The other six parts of our package, which are within the jurisdiction of other Subcommittees of the Senate, include the Program Fraud Civil Penalties Act, the Contract Disputes Act and Federal Courts Improvement Act Amendments, the Bribery and Gratuities Act, the Anti-Fraud Criminal Enforcement Act, the Federal Computer Systems Protection Act, and the Debt Collection Act Amendments. We are pleased to see that legislation substantially similar to our Program Fraud Civil Penalties Act is being processed by the Senate Committee on Governmental Affairs and that the computer crime issue is receiving attention in the House Judiciary Committee. With this hearing today, four of our proposals will at least have been the subject of congressional hearing.

Before proceeding to discuss S. 1562 and the two Administration proposals to which it is similar, let me note that we at the Department of Justice are strongly committed to attacking fraud against the government and other species of white-collar crime. We genuinely need these various reforms, however, if our investigative and enforcement efforts are to achieve the result we all want. Despite the landmark criminal justice reforms enacted last year in the Comprehensive Crime Control Act of 1984, we must have the help of the Congress in making further refinements in our laws relating to fraud.

We are proud of our record in the area of white-collar crime and are confident that the record will show more major white-collar crime prosecutions in recent months than for any comparable period in the last decade. The Department of Justice has an unrelenting commitment to pursuing white-collar crime, and we believe an objective and informed review of the record

will demonstrate that the dedicated and able prosecutors and investigators responsible for the large number of important and innovative prosecutions of recent months deserve accolades for their determination and imagination in attacking the frequently very complex patterns of such criminal conduct. Ths tools we have proposed in our Anti-Fraud Enforcement Initiative will provide genuine assistance in our common efforts to root out and punish fraudulent conduct.

Let me turn now to a discussion of S. 1562 and, where appropriate, to compare it with the corresponding provisions of our Anti-Fraud Enforcement package. The False Claims Act currently permits the United States to recover double damages plus $2000 for each false or fraudulent claim. Enacted in 1863 in response to cases of contractor fraud perpetrated on the Union Army during the Civil War, this statute has been indispensible in defending the federal treasury against unscrupulous contractors and grantees. Although the government may also pursue common-law contract remedies, the Falee Claims Act is a much more powerful tool in deterring and punishing fraud.

Since the Act was last amended in 1943, we have identified several areas where improvements are werranted, or where we believe judicisl interpretstione have been incorrect. S. 1562 containe many of the changee proposed by the Administration'e bill, and I would hope that after studying the matter more thoroughly, the Subcommittee will adopt all of the much needed changes contained in our bill.

Perhaps the moet eignificant amendments contained in S. 1562 and our False Claims Act Amendments are two which go to the heart of the civil enforcement provieions of tha Act: tha

standard of intent and the burden of proof. As a civil remedy designed to make the government whole for losses it has suffered, the law currently provides that the government need only prove that the defendant knowingly submitted a false claim. However, this standard has been misconstrued by some courts to require that the government prove that the defendant had actual knowledge of the fraud, and even to establish that the defendant had specific intent to submit the false claim. This standard is inappropriate in a civil remedy, and both our proposal and S. 1562 would clarify the law to remove this ambiguity.

Both bills also establish a standard of scienter, or intent, which punishes defendants who knowingly submit false claims. The key term "knowingly" is defined to punish a defendant who:

(1) had actual knowledge; or
(2) had constructive knowledge in that the dafandant acted in reckless disregard of the truth;

This standard is well crafted to permit the government to recover for frauds where the responsible officers of a corporation deliberately attempt to insulate themselves from knowledge of false claims being submitted by lower-level subordinates. This ostrich-like conduct may occur in large corporations, and the United States can face insurmountable difficulties in attempting to establish that responsible corporate officers had actual knowledge of the fraud. This standard would not punish mistakes or incorrect claims submitted through mere negligence, but it does recognize that those doing business with the government have an obligation to ensure that the claims which they submit are accurate.

While this standard articulated in S. 1562 is acceptable -- and, in fact, is identical to that included in the False Claims Act Amendments of 1980 as reported from the Senate Judiciary Committee -- we feel that the language in the Administration bill would be a slight improvement and provide somewhat greater clarity. Our bill would define constructive knowledge as those situations where "the defendant had reason to know that the claim or statement was false or fictitious." We believe that this formulation is better crafted to address the problem of the ostrich-like refusal to learn of information which an official, in the exercise of prudent business judgment, had reason to know and would provide greater guidance in litigation of these issues.

The burden of proof in civil false claims cases is another area where legislative clarification is necessary to resolve ambiguities which have developed in the caselaw. Some courts have required that the United States prove a violation by clear and convincing, or even clear, unequivocal and convincing, evidence, United States v. Ueber, 299 F.2d 310 (6th Cir. 1962), which we have found to be the functional equivalent of a criminal standard. Because the False Claims Act is basically a civil, remedial statute, the traditional "preponderance of the evidence" standard of proof is appropriate.

With respect to both of these points, it is important to keep in mind that the civil, double-damage remedy of the False Claims Act is remedial, designed to permit the government to recover money improperly paid out, and not penal or punitive. This was long ago recognized by the Supreme Court which held that:

> ...the chief purpose of the statutes here was to provide for restitution to the government of money taken from it by fraud, and that the device of double damages plus a specific sum was chosen to make sure that the government would be made completely whole.

United States ex rel. Marcus v. Hess, 317 U.S. 537, 551-2 (1943). Single damages alone would not reimburse the government for its loss of the use of funds or costs of investigation and prosecution, nor would they serve the obvious deterrent purpose envisioned by Congress.

However, this crucial principle -- that a civil False Claims Act prosecution is remedial and not punitive -- may be jeopardized by proposals to increase greatly the penalties which may be recovered. We have found that where judges perceive the penalties which may be assessed under the Act to be grossly disproportionate to the wrongdoing, they will rule against the government outright or subtly engraft criminal standards and procedural hurdles onto the civil portions of the Act. Consequently, we are concerned about the proposal contained in S. 1562 to move to treble damagea and a $10,000 forfeiture. Naturally, we are sympathetic to the desires of Congress to strengthen our hand in litigation and to increase recoveries under the Act. We believe, however, that double damages plus a $5,000-per-claim penalty is more appropriate and consistent with the fundamental purpose of the statute.

The Administration's bill contains numerous other amendments, some of which are also included in S. 1562, which were designed to resolve specific problems which have arisen under the Act:

- First, as noted above, the Administration's bill raises the fixed statutory penalty for submitting a false claim from $2,000 to $5,000. The $2,000 figure has remained unchanged since the initial enactment of the False Claims Act in 1863.

- Second, our bill amends the Act to permit the United States to bring an action against a member of the armed forces, as well as against civilian employees. When the Act was first enacted in 1863, the military waa excluded because the government had available more severe military remedies. Since then, however, experience has shown that the False Claims Act should be applied to servicemen who defraud the government -- just as it is to civilian employees.

- Third, the Administration's bill contains an amendmsnt to permit the government to recover any consequential damages it suffers from the submission of a false claim. For instance, where a contractor has sold the government defective ball bearings for use in military aircraft, the government could recover not only the cost of new ball bearings, but the much greater cost of replacing the defective ball bearings. See, United States v. Aerodex, Inc., 469 F.2d 1003 (5th Cir. 1972). S. 1562 contains a consequential damages provision, which we believe should be amended to permit the government to double the amount of the consequential damages. Without such a change, the provisions provids no snforcement enhancement bscause we currently can recover single consequential damages under common law contract theories.

- Fourth, our proposal providss that an individual who makee a material misrepresentation to avoid paying money owed the government would be equally liable under the Act as if he had submitted a falee claim. For instance, the manager of HUD-owned property may falsely understate income and overstate expenses in order to reduce the rental receipts which must be paid to HUD at ths end of each month. This amendment would eliminats current ambiguity in

the caselaw by clearly authorizing the extension of liability to such misrepresentations.

- Fifth, the Administration's bill would allow the federal government to sue under the False Claims Act to prosecute frauds perpetrated on certain grantees, states and other recipients of financial assistance. A recent decision, United States v. Azzarelli Construction Co., 647 F.2d 757 (7th Cir. 1981), has created some confusion with respect to whether the federal government may recover in grant cases where the federal contribution is a fixed sum. There is no dispute that the federal government may bring a False Claims Act case where its grant obligation is open-ended, in that the fraud will require additional federal money. The amendment would make clear that the United States may bring an action even under grant programs involving a fixed sum.

- Sixth, our bill creates a new, uniform remedy to permit the government to seek preliminary injunctive relief to bar a defendant from transferring or dissipating assets pending the completion of False Claims Act litigation. Currently, the government's prejudgment attachment remedies are governed by state law. A uniform federal standard would significantly enhance the government's remedies and avoid inconsistent reaults.

- Seventh, the Administration's bill modernizes the jurisdiction and venue provisions of the False Claims Act to permit the government to bring suit not only in the district where the defendant is "found," (the current standard) but aleo where a violation "occurred". Currently, when multiple defendante live in different districts, the government may be required to bring multiple suits, a time-coneuming process that is wasteful of judicial resources.

- Eighth, the bill modifies the statute of limitations to permit the government to bring an action within six years of when the false claim is submitted (the current standard) or within three years of when the government learned of a violation, whichever date is later. Because fraud is, by nature, deceptive, such tolling of the statute of limitations is necessary to ensure that the government's rights are not lost through a wrongdoer's successful deception.

- Finally, our bill provides that a nolo contendere plea in a criminal prosecution, like a guilty plea, would estop a defendant from denying liability in a civil suit involving the same transaction. Defendants who cheat the government by making false claims, and then enter a nolo plea, should not be able to relitigate the question for civil purposes.

Another important amendment -- contained in the Administration bill, but not in S. 1562 -- is the grant of Civil Investigative Demand, or CID, authority to the Civil Division to aid in the investigation of False Claims Act cases. As in all complex, white-collar fraud cases, investigative tools are critical to the success of a case. We currently rely in large part on FBI reports and matters referred for prosecution by the various Inspectors General. Our investigative capacity would be greatly aided if our attorneys could compel the production of documents or take depositions prior to filing suit. CID authority would permit us to focus our resources better as well as to winnow out those cases which have little merit.

The CID authority contained in section 105 of the Administration's bill is nearly identical to that available to the Antitrust Division under the Hart-Scott-Rodino Act of 1976,

15 U.S.C. 1311-1314. Briefly, where the Assistant Attorney General of the Civil Division believes that a person has access to information relating to a False Claims Act investigation, he may, prior to filing a complaint, require the production of documents, answers to interrogatories and oral testimony. The standards governing subpoenas and ordinary civil discovery would apply to protect against disclosure of privileged information. The CID would be enforced in district court, like any other subpoena.

In the only substantive difference from the Antitrust Division's authority, the Administration bill would permit the Civil Division to share CID information with any other federal agency for use in furtherance of that agency's statutory responsibilities. These might include enforcement of environmental and safety laws, banking regulatory laws and suspension and debarment actions.

The next point I will address, Mr. Chairman, is that of the citizen suit, or qui tam, provisions of S. 1562. The False Claims Act, since its inception, has contained provisions permitting informers to come forward with evidence of fraud on the government, file suit in their own name, and keep a share of any recovery. These provisions were adopted at a time when the government had practically no investigative resources -- unlike today, when the FBI and the Inspectors General generate most of our cases. Nonetheless, the qui tam statute occasionally motivetes an informer to come forward with a meritorious suit, which the Department can then prosecute in the name of the United Statee. Hence, we heve not proposed any changes to the qui tam[1] provisions of the Act in our bill. S. 1562,

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[1] Qui tam is from the Latin, meaning "who ae well". Thus, when an informer filee euch an action, it is said that he brings the action "for the state es well es for himself," beceuee he may be pereonally awarded a portion of the judgment grented to the government.

however, does propose a number of changes in the qui tam provisions of the Act, and we have serious reservations about those proposed changes.

Our first concern is with that portion of the bill which provides that even after the Justice Department has stepped in to litigate a qui tam action on behalf of the United States, "the person bringing the action shall have a right to continue in the action as a full party on the person's own behalf." Since both the United States and the relator (the person who brought the action) are pursuing the same claim, this presents a serious problem, i.e., who will control the litigation?[2] It also creates the potential for collusive litigation, since an associate of the defendant could bring a qui tam suit and then remain in the action to frustrate effective prosecution. If enacted, this provision could create enormous difficulties and seriously hamper our civil fraud enforcement efforts.

If Congress wants to permit the relator to remain involved in the action in order to protect his stake, this could be done in another manner which does not raise these problems. We would suggest that the relator be kept abreast of developments in the case by receiving copies of all court filings and that he be permitted to file with the Court his objections or views on any proposed settlement by the government. This is analogous to a provision in the current statute which only permits a qui tam action to be dismissed if the Court and the Attorney General give written consent and their reasons for consenting. 31

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[2] We note that under the Federal Rules of Civil Procedure, unrelated parties may intervene in a lawsuit, (thus giving rise to litigation with several "parallel" plaintiffs) but such such "intervenor" represents a separate, distinct interest. We are aware of no precedent in which two parties represent the same, identical interest in the same suit.

U.S.C. § 3730(b)(1). Such a solution would provide an appropriate role for the relator without interfering with the Department's prosecution of the case.

Another serious problem is posed by the provision permitting a relator to bring an action based on evidence available to the government, and to proceed with the action even where the Justice Department chooses not to enter the suit. The Act currently forbids such "parasitic" actions by "bounty hunters" and, in fact, was amended by Congress in 1943 to address just this problem. In the early 1940's, a rash of suits were brought which merely restated the allegations in the government's criminal indictment in an effort to make a windfall. Such practicee were criticized by Justice Jackson in U.S. ex rel. Marcus v. Hess, 317 U.S. 537, 557-558 (1943) and moved the Attorney General to write to Congress proposing the deletion of the entire qui tam section. Congress responded by enacting the current prohibition on parasitic actions, codified at 31 U.S.C. § 3730(b)(4). See, United States v. Pittman, 151 F.2d 851, 853-54 (5th Cir. 1945) for a summary of the legislative history of the 1943 amendments.

S. 1562 would amend the Act by permitting the relator to proceed with an action based upon information known to the United States (including information disclosed in ongoing criminal or administrative proceedings as well as allegations arising out of congressional investigations and public information disseminated by any news media) if the Justice Department had not initiated any action within six months. The language of the amendment would seem to permit the government to move for an extension of time in which to decide whether to take over an action upon a showing of good cause, but this provision would be difficult to apply in practice. In effect, the civil frauds section of the Justice Department would have to be aware

of all allegations of fraud when they became public knowledge in order to protect the interests of the United States in such litigation.

There are several legitimate reasons why the Department might choose not to bring a civil action on the basis of information in its possession. There may be an ongoing criminal case or investigation which would be jeopardized by a civil suit. Or, by holding off and conducting a more detailed investigation, the government may be able to make a better case or bring in other defendants. Finally, the allegations may involve conduct which is not clearly improper, and hence, which the Department, in the exercise of its prosecutorial discretion, does not believe should be prosecuted.

It is this latter problem which is most troublesome. In recent years, we have seen a growing number of frivolous qui tam actions brought against public figures for political motives. Members of Congress, Executive Branch officials and even the President have been sued on the basis of publicly available information which raises questions about the expenditure of federal money.

Most such cases have been dismissed on the basis of the current statute which prohibits the courts from exercising jurisdiction over any action which is "based on evidence or information the Government had when the action was brought". 31 U.S.C. 3730. However, if this section is deleted from the Act, (as it would be under S. 1562) we can expect a significant increase in frivolous, politically-motivated lawsuits. In the absence of any evidence that the Justice Department is neglecting meritorious False Claims Act suits, we believe that such an open-ended expansion of private standing is entirely unjustified.

S. 1562 would also raise the relator's share in any recovery from the current maximum of 10% where the government takes the case and 25% where it does not, to 20% and 30% respectively. Obviously, any such recovery comes out of the federal treasury, but we do not believe that these percentages are unreasonable if Congress wishes to increase the incentive to utilize this Act. The bill also creates a new class of recovery for relators who can be said to have "substantially contributed to the prosecution of the action". Such persons would receive "at least 20% of the proceeds of the action". As an initial matter, we note that this provision, while providing an additional award to the more diligent relator, will inevitably result in litigation over whether a relator's actions "substantially contributed" to the government's success. We believe the prospects for such collateral litigation (not unlike that we see in the attorneys fees area) is not a productive use of resources, and believe that any additional marginal incentive such a "substantially contributed" category would provide is outweighed by the confusion and litigation it would generate. In any case, if the "substantially contributed" category is retained, there should be an upward limit on the amount of the relator's recovery, just as there is for the relator who prosecutes the entire action himself.

Finally, Mr. Chairman, I would like to turn to the sensitive and very important issue of grand jury access. S. 1562 adopts, almost without change, the Justice Department's proposal to modify Rule 6(e) of the Federal Rules of Criminal Procedure to permit attorneys enforcing federal civil law to have access to grand jury materials without having to make a showing of particularized need for the materials. This change would overrule two recent Supreme Court decisions, thus restoring the pre-1983 status quo.

On June 30, 1983, the Supreme Court ruled in United States v. Sells Engineering, Inc., 103 S. Ct. 3133 (1983), that Department of Justice attorneys handling civil cases are not "attorneys for the government" for the purposes of Rule 6(e) of the Federal Rules of Criminal Procedure. Therefore, they may not obtain grand jury materials that pertain to their cases without a court order; and such an order may be granted only upon a showing of "particularized need". The Court further held that the "particularized need" standard was not satisfied by a showing that non-disclosure would cause lengthy delays in litigation or would require substantial duplication of effort.

In a companion case, United States v. Baggot, 103 S. Ct. 3164 (1983), the Court further limited federal law enforcement abilities by narrowly defining the purpose for which disclosures may be made. It held that agency proceedings, such as civil tax audits, are not "preliminary to a judicial proceeding," and thus, no court order may be secured in such cases, no matter how compelling the need.

Law enforcement efforts have been frustrated by the inability to share grand jury materials with Department of Justice civil attorneys or with agencies that contemplate using those materials in administrative or regulatory proceedings such as debarments, suspensions, and civil penalty assessments.

The impact of Sells and Baggot has been profound. First, the prosecutor is precluded from even advising civil Department of Justice attorneys or agency authorities of significant criminal activities which they should investigate, sometimes preventing meritorious civil cases from being pursued. Then, if the civil attorneys or agencies do learn of the allegations from non-grand jury sources, they must duplicate virtually the entire

criminal investigation -- an effort which may not be feasible or, at best, will cause substantial delays and require needless expenditure of effort, time and money. In one instance alone, Civil Division attorneys expended four man-years to completely reconstruct a complex, white-collar fraud case. While a precise "damage assessment" is impossible, it is believed that the United States hae lost millions of dollars as a reeult of current restrictions on the ability to share grand jury information for civil enforcement purposes.

Accordingly, in its proposal, the Administration recommends amendments to Rule 6(e) designed to overcome the impediments caused by Sells and Baggot to the government's ability to pursue important non-criminal remedies. The amendments will (1) permit automatic disclosure of grand jury materials to Department of Justice attorneys for civil purposes without a court order; (2) expand the types of proceedings for which other Executive departments and agencies may gain court-authorized disclosure to include not only "judicial proceedinge," but also other matters within their jurisdiction, such as adjudicative and administrative proceedings; and (3) reduce the "particularized need" standard for court-authorized disclosure to a lesser standard of "substantial need" in certain circumstances. The amendments also resolve another issue left unanswered by Sells: whether the same criminal prosecutor who conducted the grand jury investigation is authorized to present the companion civil case.

In two significant respects, S. 1562 differs from the grand jury access provisions of the Administration's bill. First, S. 1562, ae drafted, permits dieclosure to other agencies and departments without the disclosure being at the request of an attorney for the government, and even without notice to the Department of Justice. We believe that adequate control over secret grant jury material and prevention of even unintended

interference in an ongoing criminal investigation by another federal agency requires that such disclosures be accomplished only at the request of an attorney for the government or, at least, with the concurrence of the attorney for the government.

More significantly, S. 1562 provides for the disclosure of sensitive grand jury information to Congress without the concurrence of the prosecuting attorney; as drafted, the bill would even permit such disclosure in open, ongoing, criminal investigations. We believe congressional access raises significant constitutional issues and separation of powers concerns. Congressional access to grand jury materials during the course of an investigation opens the door for congressional intrusion into prosecutorial decisions entrusted by the Constitution exclusively to the Executive, while not assisting Congress materially in performing its oversight function. Within the Executive Branch, which is charged with enforcement of the laws, we believe it is permissible to provide for civil or administrative access to information developed during a grand jury investigation. But even within the Executive, we believe, as a matter of policy, it is very important to control access to grand jury materials, especially during an ongoing investigation, in order to protect the integrity of the criminal investigation process. In fact, if Congress enacts the Administration's proposed bill, the Department of Justice expects to issue policy guidelines applicable to disclosure within the Executive Branch, giving the criminal prosecutor responsibility for controlling disclosures to avoid interference in prosecutions and also to ensure that the grand jury process is not used as a substitute for civil discovery.

These concerns are magnified, of course, when considering access by Congress, which has no enforcement responsibility. We believe most Members of Congress are cognizant of the

constitutional problems, as well as the significant deleterious impact on the criminal investigative and prosecutive processes,posed by congressional access to grand jury investigative materials. Likewise, we believe the Congress's oversight function can be performed effectively by reviewing decisions after the prosecutor has had an opportunity to perform his constitutional function fully and finally. Any use by Congress of grand jury materials is for a very different purpose than that for which they were originally developed by the grand jury. The Congress seeks to determine the need for legislative modifications; the Executive uses grand jury materials to determine if an offense against the law has been committed and to penalize an individual perpetrator.

Currently, Rule 6(e) contains no express provision for congressional access to information that would reveal matters occurring before a grand jury, although some lower courts have held that there is indirect power in the courts to order such disclosure. We believe that the present situation, whereby requests by congressional committees for grand jury materials are accommodated on an ad hoc basis through discussions with the Department of Justice, has functioned well in protecting both the interest of congressional oversight and the integrity of federal investigations. Consequently, for this reason coupled with our fundamental concern about protecting the integrity of federal criminal investigations, we question the need for amending Rule 6(e) to deal with this issue.

Finelly, with respect to the proposed increase in penelties for the felse claims statute, 18 U.S.C. §§ 286 and 287, we agree that the increase in the meximum fine provisions to $1,000,000 is appropriete, but suggest that the maximum prison term should be perellel to the five-yeer penalty of other similar Title 18

statutes used frequently to prosecute conduct that also violates the false claims statute (cf. 18 U.S.C. §§ 1001, 1341, 1343). Indeed, in 1948, the penalty for the predecessor statute of 18 U.S.C. 287 was reduced from ten to five years to harmonize the punishment under that section with that of other comparable provisions of Title 18.

Once again, I would like to commend the Subcommittee for moving promptly to hold hearings and to consider this important legislation. We look forward to working with you on this. I would be happy to respond to any questions you may have.

Senator GRASSLEY. I would like to explain to Mr. Phillips that as a courtesy to the witness we have from Cincinnati, OH, and also to my colleague who has been so helpful, I am going to call the panel foward at this time.

Mr. Robert Wityczak is a highly decorated Vietnam war veteran who became a triple amputee as a result of that war, is a former employee of Rockwell International at Downey, CA, and witnessed various billing violations at that plant.

We also have from the Evendale plant of the General Electric Co. there, Mr. John Gravitt. He is a machinist foreman. He also witnessed contract misinforming. With Mr. Gravitt is his attorney, Mr. James Helmer, who was able to provide us the practitioner's point of view of the workability of the False Claims Act. I would ask the Senator from Ohio his comments.

Senator METZENBAUM. I want to say to Mr. Phillips, and no personal offense to him, I certainly appreciate what he is trying to do.

Mr. Gravitt and Mr. Helmer are both from my State. I have to leave here in about 10 minutes because of another commitment. I think Mr. Gravitt's testimony is particularly important and I want to hear it in part and no offense to you either, Mr. Wityczak.

Senator GRASSLEY. I would ask you to wait. I would ask Mr. Gravitt to go ahead. Please be relaxed. You folks are contributing to this legislative process in a very important way. We are trying to reach a solution with citizen participation like yours as well as the Department's. It is a very important part of the legislative process. Please proceed.

STATEMENT OF JOHN MICHAEL GRAVITT, CINCINNATI, OH

Mr. GRAVITT. My name is John Michael Gravitt, and I reside at 6305 Orchard Lane, Cincinnati, OH 45213. I am 45 years old and am currently employed as a foreman by the Ford Motor Co. I am married and have two children. I am here today to talk to you about my experiences with the False Claims Act, including the law-

suit which I have brought alleging a multimillion dollar fraud scheme by General Electric Co.

Prior to my employment with Ford Motor Co., I was employed at the General Electric Co., Aircraft Engine Business Group, Evendale Plant, Interstate-75 and Neumann Way, Evendale, OH 45215, located in the suburbs of Cincinnati, OH. The Evendale General Electric plant employs about 15,000 employees. I worked for General Electric Co. from June 23, 1980, until June 30, 1983. I was first employed as a machinist, but was promoted to a machinist foreman in developmental manufacturing operations, then called DMO, later changed to component manufacturing operations.

As a machinist, I set up and operated various machine tools such as mills, lathes, jigbores, grinders, and other machine tools necessary to do my job. After my promotion, I supervised 18 to 30 machinists who worked with similar machine tools. I also supervised some inspectors, laborers, and toolmakers. As a supervisor, my job was to assign work to each employee, determine that time cards and vouchers were accurate and correct, and try to expedite work by making sure that the proper tools, fixtures, gauges, et cetera were available and in working order so that employees under my supervision were productively employed. Vouchers were used by General Electric to charge the work performed by each employee to the proper account or customer. In my area of the plant, we worked on both commercial and U.S. Government defense contracts. In particular, we worked on parts for the engines for the B-1B bomber, an energy efficient engine for the National Aeronautics and Space Administration known as E3, the nozzle section of the F-404 aircraft engine, and other U.S. Government contracts.

It took me considerable time to learn the coding system so that I knew which work was Federal Government defense contract work and which work was similar work, but being performed for private, commercial accounts. I eventually learned which was which because I was instructed to alter and falsify vouchers by my supervisors. I was instructed, along with at least one other foreman and probably others, to alter the hourly employees' time vouchers so that all time spent by them on the 8-hour shift was charged to Government jobs, regardless of whether the machinist had been idle because he was waiting for an engineer, waiting for parts, or did not have work to be done. As a result, the Government was being charged for time that was not being spent by employees on Government contract work.

I was also instructed, usually on a weekly basis, by means of a hot sheet, that certain commercial jobs were already in a cost overrun situation. My supervisors did not want us to charge any employee time to these commercial jobs that were already in cost overrun situations as indicated on the hot sheet.

In other words, since the vouchers were not supposed to show idle "time" and were not supposed to show time charged to commercial jobs that were in a cost overrun situation and on the "hot sheet," and were, of course, not supposed to show time charged to other commercial contracts, practically the only category of job left upon which time could be charged in the vouchers for these commercial contracts were rework and modification jobs, which were basically developmental U.S. Government defense contracts.

When I finally figured out the system and the method that was being used to defraud the Government, I talked with my supervisors, with other foremen on the joh, and others. I got no response. But I refused to falsify and change vouchers. Instead, I discovered that my supervisor would then change the vouchers that I had not changed and charged the time to the Government. Sometimes, he completely substituted vouchers in order to charge time to the Government. Also, occasionally, I would be told several days after vouchers had been submitted that they had turned up "missing." Rather than let me go hack and review the records to try and reconstruct what work had been done on those days, my supervisors would tell me what joh numhers to fill in—always Government joh numbers.

My opposition to the falsification of vouchers was well-known by my supervisors. But I got no meaningful response from my immediate supervisors when I complained ahout these fraudulent practices. Instead, during the spring of 1983, I was informed that I was going to be laid off due to a so-called lack of work. At about the same time, my wife, who is also employed as a machinist at General Electric Co., and I began putting together the information regarding falsification and changing vouchers. Approximately the same time as my last day of work, in late June 1983, I wrote a letter to the executive vice president of General Electric Co., Brian H. Rowe, the top General Electric executive at the Evendale plant, reporting false vouchers. I attempted to talk with Mr. Rowe and after a number of phone calls, his secretary told me that he had read my letter and that an internal auditor would investigate.

Eventually, I met with a company auditor, R.G. Gavigan. We did not meet on GE property hut at a nearby restaurant. After the investigation ended in September 1983, Mr. Gavigan called me and told me that 80 percent of my allegations had been proven to be true and the other 20 percent could not be disproved. That was the last I heard from General Electric Co. regarding the falsified vouchers. As my wife is employed at General Electric Co., I know that no changes in the voucher procedures resulted after that investigation, nor am I aware of any disciplinary action taken against anyone involved.

I am not satisfied hy the investigation of Mr. Gavigan, because it seemed that General Electric had not done anything to correct the situation. Moreover, I believe I was laid off because of my opposition to the false vouchering practices. I was never called hack to work, even though General Electric Co. has hired thousands of new employees since then. I was personally very troubled hy what I had observed at General Electric. As a taxpayer, I thought something should be done so the U.S. Government did not continue to be overcharged millions of dollars, and perhaps more.

I met with Mr. Helmer and told him that I have told you here today. I showed him many documents which supported my observations and conclusions. He, too, was very concerned, as an attorney and as a taxpayer, about what appeared to have happened at General Electric Co. and continued to be happening. However, he was not then aware of any laws that I could act upon which would do much to correct the situation. He did suggest that I could hring a wrongful discharge action against General Electric Co. Since I was

working at Ford in a job similar to that which I had at General Electric Co., the small amount of money which I might recover in a wrongful discharge action was such that my expenses of filing a lawsuit and paying Mr. Helmer might exceed the money I could recover.

Mr. Helmer and his staff of attorneys did not give up, however. They consulted with several other lawyers, researched the U.S. Code, and eventually became aware of the False Claims Act laws. After they informed me of these laws, I hired Mr. Helmer to take my False Claims Act case. It was filed in October 1984.

This case is an extremely risky proposition for me. First, my False Claims Act case has to be successful for me to have even my expenses recovered. Second, Chief Judge Carl B. Rubin, the judge in my case, has discretion as to how much, if any, compensation I receive for bringing this matter to the U.S. Government's attention. Out of that money, I also have an obligation to pay my attorney for his services. Right now, my out-of-pocket expenses have been about $100 a month, but Mr. Helmer tells me that if the Department of Justice will allow me to be more actively involved in the case, my expenses could easily be in the tens of thousands of dollars or more. That is only for costs. It has nothing to do with my agreement to pay my attorney for his time and efforts.

From a personal standpoint, I have invested hundreds upon hundreds of hours of my time in the case. My wife has also been very involved even though it may jeopardize her job at General Electric Co. We have received many phone calls and other inquiries from present and former employees at General Electric who reported similar experiences, as well as other employees of other companies who found themselves in similar situations.

I believe it is very important for the U.S. Government to make the False Claims Act laws stronger. If the law was stronger and, therefore, more used, more lawyers would be aware of it and be able to inform people like me about it. Also, whistleblowers like myself would have protection from losing their jobs. Also, the proposed changes would help make sure that if my lawsuit is successful, that I would receive some compensation for my efforts and for sticking my neck out. If it were not for the fact that my wife and I are both employed with steady work, we could not have taken on the financial and time demands of this lawsuit at all. As the law stands right now, we have taken on a considerable financial risk with no assurance that our efforts will be compensated.

Since my main purpose in bringing this lawsuit was to force General Electric to stop overcharging the taxpayers and the U.S. Government, I am very concerned that my case move forward. As long as the Department of Justice claims that they are investigating, however, the current law prohibits me and my attorney from being actively involved in the case. So, I would support the changes in the law that would allow me and my attorney to be actively involved to push this case to resolution and to put an end to this multimillion dollar fraud scheme.

I thank you very much for inviting me here to testify today, and I offer my assistance in your further consideration of this bill.

Senator GRASSLEY. Thank you very much, Mr. Gravitt. I think now I should go to James Helmer and then back to you. Would you proceed, please.

STATEMENT OF JAMES B. HELMER, JR., ESQ. CINCINNATI, OH

Mr. HELMER. Tbank you, Mr. Chairman.

My name is James Helmer, Jr. I am an attorney admitted to practice in the State of Ohio and the District of Columbia. My offices are located in Cincinnati.

Upon my graduation from law school in 1975, I began work for the chief judge of the U.S. District Court for the Southern District of Ohio, Timothy Hogan.

After completing that clerkship, I spent the last 8 years involved in representing plaintiffs in Federal litigation in the U.S. district courts in Cincinnati, Dayton, and Columbus. With that, we have used a number of Federal statutes including the age discrimination laws, the truth in lending laws, the securities statutes and various fraud statutes.

My office has won every case it has tried. In every case, it has been involved with corporations as defendants and individuals as the plaintiffs we represented. That is how Mr. Gravitt ended up on our doorstep. Because of this experience I have had on almost a weekly basis in the district courts, I think it might be appropriate for me to comment somewhat on the procedures that are employed by the False Claims Act and particularly the amendments that Senator Grassley and others are proposing, because I believe that without these procedural amendments, the intent of the U.S. Congress in the qui tam provisions will be thwarted and suits such as Mr. Gravitt's will never get off the ground.

Let me echo a couple of Mr. Gravitt's comments. What he did not tell you is that he is a former U.S. Marine who was highly decorated in Vietnam, received this country's Purple Heart award for injuries suffered in battle west of DaNang.

I spent a lot of time with Mr. Gravitt reviewing his situation at General Electric. My staff and I became convinced his complaints are meritorious and indeed should be looked into.

After we filed his action in 1984, the General Electric Co. in Cincinnati presented papers in the court proceedings in which they admitted that certain irregularities and improper vouchering procedures had occurred during Mr. Gravitt's time at General Electric Co. I believe we submitted to the committee a copy of a letter from Mr. W.G. Krall, a vice president of General Electric to a Paul D. Lynch, Colonel, U.S. Air Force in which these improper procedures are confirmed. That letter was written in 1983, some 5 months after Mr. Gravitt was discharged. No action was taken by the U.S. Defense Department or the Department of Justice until Mr. Gravitt's suit was filed in 1984, nearly 11 months later.

As the statute is written now, there are very few practicing attorneys who are aware that it even exists. When Mr. Gravitt first came to us, we became concerned that the representations he was making should be against some law somewhere. We could not find such a law. In the State of Ohio and many other States, there is no protection for whistleblowers under State law. There is no protec-

tion under the Federal laws for Mr. Gravitt or those who step forward with information and false charges. I welcome the Justice Department to present me with citations which would allow us to provide such protection for Mr. Gravitt. We do not believe it exists.

Senator GRASSLEY. You remember the testimony that the Justice Department gave. They thought there was some protection.

Mr. HELMER. Senator, I spent 8 years in this area representing individuals who have lost their jobs, and I can represent you in the State of Ohio, there is no such law. There is only one wrongful discharge case that ever found for an employee in that case.

Senator GRASSLEY. And there is no Federal law.

Mr. HELMER. There is no Federal statute. It took an associate in my office, Ann Lugbill, 6 months to find this statute that you are addressing. The reason is it is buried in the banking regulations as you know. It is not the first place you would look for a False Claims Act.

If the act is not in need of amendment, I would suggest to you that there would have been several more of these cases brought since 1943. I believe if you check the reported cases, there are somewhere in the neighborhood of 10 such cases that have been brought in the last 43 years.

I believe that speaks volumes about the need to encourage people to come forward with the type of information which Mr. Gravitt has submitted today and which be submitted in October 1984.

I might add that when I filed this suit, I sent a copy of it to the office of the Attorney General of the United States, and I received an irate call a couple of days later from a member of his staff asking me why I had the audacity to send that complaint there. When I explained the statute required it, I received a long pause at the other end of the telephone and then was asked why did you not bring this information to us prior to filing your suit. I then explained that as the statute is now written, without the benefit of the amendments that you are proposing, that that would have barred Mr. Gravitt from bringing this case to light, even though arguably the Defense Department has known about these improper procedures since November 21, 1984, and had chosen to take no action.

Next, I would like to address the protection for wbistleblowers because I believe it is critical. A man's job is one of the most important things he possesses. Without that job, he cannot provide for the well-being of his family which is another important thing that a man has. He cannot provide for the health needs of his family. He cannot provide for the security that this society requires of individuals. If you take away that job from someone without a just cause, it seems to me individuals should have the right to fight to reacquire that job. There is no way Mr. Gravitt through any court proceeding can get his job back at General Electric as the law stands now.

In all other areas of civil rights, in title VII, in the age discrimination statute, even in the EPA statutes, whistleblowers and those who have testified or assisted someone in the prosecution of a case are protected from retaliation. This is one glaring deficiency in the law. It is a crack.

Senator GRASSLEY. Let's clarify. There is no way that person can get his job back?

Mr. HELMER. That is correct. There is no statute.

What I am saying is there are several statutes in other areas which provide for protection from retaliation. It is not uncommon from the law whether it is age or sex discrimination. If you bring such charges, you can get your job back. You cannot in this area.

If individuals at the General Electric Co. step forward to assist Mr. Gravitt in his case, there is no way they can be protected. There is no manner of protection in the laws today that protects them from even assisting Mr. Gravitt. This is something which is addressed in your bill, Senator, and I would urge you most strongly that you redouble your efforts to make sure that it is included in anything that is submitted to the entire Senate. It is greatly needed in this area.

Next, as it stands now, there is no provision in the act for an award of attorney's fees. I have some self-interest in this area admittedly, but we did not take on Mr. Gravitt's case with the idea of receiving attorney's fees. I would suggest like many citizen in the State of Ohio, we are absolutely outraged by the conduct uncovered by Mr. Gravitt. We believe that the only way that this conduct is going to be stopped is if it is brought to the attention of the proper authorities and action is taken.

Senator GRASSLEY. Do you have any examples of things like Mr. Gravitt uncovered, such as other timecards?

Mr. HELMER. Sir, I have brought with me several timecards that Mr. Gravitt was able to make copies of before he was discharged. These timecards are not changed in a subtle fashion. What was done was the timecard that was filled out by the employee doing the job would write out a job number on the timecard and submit that to his supervisor. The supervisor or other unknown person simply took a darker colored pen and wrote over a B-1 job number over the private contract number. This was done in such a way that you can still read the original numbers under the time voucher.

We turned this information—and we have over 150 of these vouchers. You have to remember, there are tens of thousands of these vouchers turned in every month at the General Electric plants in Cincinnati. We turned these vouchers over to the FBI who ran handwriting checks on the vouchers. We turned these over to Mr. Brian Rowe, I should say Mr. Gravitt did, to show him what was going on. The General Electric Co. ran a statistical study. It did not use the vouchers we provided. It went out of the tens of thousands of vouchers and pulled 133 to examine. Of those 133 vouchers, the General Electric Co. concluded that it had, indeed, mischarged the United States of America, but the General Electric Co. contends that it underbilled the United States some $41,000, and it suggested to us and the U.S. attorney in Cincinnati that if we did not drop our lawsuit, if we did not dismiss our case, the General Electric Co. would bring a countersuit against the United States to recover that $41,000 which it claimed it underbilled the United States.

I also have some swampland in Florida that I have been trying to unload. Whoever takes the position that such creative account-

ing would standup in a court of law, I would like to talk to them about that swampland.

Senator GRASSLEY. I hope we can have a copy of those for our record.

Mr. HELMER. We will make copies available, Senator, as we have done to the authorities and we are still waiting at this point for action from the Department of Justice.

Let me just conclude my remarks, sir——

Senator GRASSLEY. I need a generalization as to whether tbis manner of mischarging timecards is a reflection that that sort of activity is commonplace with timecard fraud?

Mr. HELMER. I have received numerous telephone calls from employees and past employees of the General Electric Co. since Mr. Gravitt's case has been filed and the media has given it some attention in the Cincinnati community. Not one person has told us that we are not on to something, that we are all wet. Every individual has said, "If you think that is bad, wait until you hear my story." Many of those individuals to this day are afraid to come forward because there is no protection for them in the U.S. laws and because they have seen no action taken by the Department of Justice in pursuing Mr. Gravitt's case.

If I might point out, sir, the Department of Justice did move to take over prosecution of Mr. Gravitt's civil suit in late December of 1984 to oust Mr. Gravitt from prosecuting that case.

Senator GRASSLEY. That has to be an editorial conclusion that you came to to oust him or do you have some information that leads you to know that is a fact?

Mr. HELMER. Yes, sir, the information I have leads me to know that is fact. When Mr. Gravitt's case was filed, he caused to be served on the General Electric Co. hundreds of requests for documents and interrogatories and even noticed the depositions of Mr. Gavigan and Mr. Rowe so we could get this story and get to the bottom of it. We are not talking about a year later—45 days after the complaint was filed. The first action taken by the United States of America was to stay or stop all that discovery. That was done in December. To this day, no discovery has gone on under Mr. Gravitt's civil suit.

The Department of Justice has said let the qui tam plaintiff participate by receiving copies of pleadings. In Mr. Gravitt's case, that is going to be a short list because there are no pleadings that have been filed except for repeated requests for extensions from the court. That is the only thing you will find in that file. There have been no discovery proceedings, there have been no motions filed, there is nothing to object to at this time because there has been no movement on his civil case. This is some 11 months after it has been filed. To put that in proper perspective, Mr. Gravitt's case has been assigned to Chief Judge Carl Rubin who is a U.S. district judge of some repute in Cincinnati. Judge Rubin has a rule that requires all civil cases filed before him to be disposed of within a year of being filed, which means that Mr. Gravitt's case has to be dismissed, settled or tried by November of this year.

At this point in time, the Department of Justice has done nothing toward pursuing that civil case so that Judge Rubin's schedule can be adhered to. Had Mr. Gravitt been permitted, as amend-

ments to your statute suggest, had he been permitted to maintain his position in the lawsuit, I can assure you that that discovery would have been completed and this case would be ready to go to trial in November 1985.

As it stands now, there are serious questions as to when, if ever, this case can go forward.

Finally, Senator, there is no cost to the United States of America or to the taxpayers to letting individuals like Mr. Gravitt proceed with these qui tam actions. There is no cost to the Treasury. There is no cost to anyone in saying a defense contractor has actually committed fraud upon the taxpayers.

I would suggest to you because of that, the Government of the United States and the Department of Justice has everything to gain by allowing these qui tam actions to proceed and absolutely nothing to lose.

Thank you very much for your time this morning.

[Statement follows:]