PREPARED STATEMENT OF JAMES B. HELMER, JR.

My name is James B. Helmer, Jr. and I am an attorney licensed to practice law in the State of Ohio and in the District of Columbia. My law offices are located at 2305 Central Trust Tower, One West Fourth Street, Cincinnati, Ohio. I represent John Gravitt in his False Claims Act suit brought against Oefendant General Electric Company.

I would like to echo the comments of Mr. Gravitt and the prior speakers in supporting S. 1562 which would amend the False Claims Act and Title 18 of the United States Code regarding penalties for false claims and other purposes. My support is based upon both my personal experience in handling Mr. Gravitt's False Claims Act and my experience in litigation in the federal courts.

I would like to add a few comments to those of Mr. Gravitt. First, I would like to emphasize to you the personal sacrifice which Mr. Gravitt and his family have made in involving themselves in this lawsuit in order to bring to light what they believe are illegal and immoral practices. Mr. Gravitt, after long and careful consultation with me and several other attorneys, as well as his family, made the difficult decision to bring this False Claims Act case and take on one of the largest corporations in our country. What Mr. Gravitt did not tell you, by way of his background, is that he is a Viet Nam war veteran, a former Sergeant in the United States Marine Corp., wounded in battle and a recipient of a Purple Heart. It was in learning about Mr. Gravitt's background, as well as the facts of his False Claims Act case, that I became convinced that his lawsuit was anything but frivolous. Indeed, General Electric has admitted that "irregularities" in its claims procedure exist but claims that it only cheated itself of more taxpayers monies as a result of these false billing claims.

I graduated from the University of Cincinnati Law School in 1975. Thereafter, I was a law clerk to Chief Judge Timothy S. Hogan of the United States District Court for the Southern District of Ohio. Since 1977, I have been in the private practice of law and my practice has been exclusively devoted to complex litigation, primarily in the federal Courts in southern Ohio. As such, I am very familiar with the impact that procedural changes can have upon substantive laws. Procedure can often prevent Congress' intent from being fulfilled. The False Claims Act, as it currently stands, is one example of how procedures can be used to thwart the Congressional intent of prohibiting false and fraudulent practices by defense contractors.

First, the current False Claims Act, as written, is a little-known law. It will remain unknown to most lawyers unless it is strengthened. Thus, whistleblowers, like Mr. Gravitt, will never be able properly to bring fraudulent practices of government contractors to the attention of the public because they will not be aware of the legal method of doing so. The amendments proposed will strengthen the Act and, therefore, make it more attractive to lawyers and litigants and, therefore, encourage persons with knowledge of fraudulent practices to bring them to the attention of the United States Government and will encourage both the Department of Justice and private litigants to prosecute fraudulent contractors.

As Mr. Gravitt testified, the proposed amendments which would increase the amount a private party such as Mr. Gravitt could recover as well as making the amount of recovery less discretionary with the Court, would help to make this statute mucb stronger and more attractive to litigants. As it stands now, even if his lawsuit is successful in recovering millions of dollars for the United States Government, Mr. Gravitt is not assured of one penny in compensation. It is completely within tbe Court's discretion as to the dollar amount to which he will

be entitled and that amount will not be determined until the end of the litigation. This is a substantial risk that most potential False Claims Act plaintiffs could not undertake.

As the False Claims Act presently stands, there exists no protection from retaliation for whistleblowers like Mr. Gravitt. Ohio, like most states, recognizes the ancient doctrine of at-will employment which permits an employer to terminate an employee at any time for any or no reason. While there exists some statutory protection against discharge for certain discriminatory reasons, a whistleblower has no rights under state law to be reinstated to his former employment. We advised Mr. Gravitt that there exists no federal or Ohio law by which he could regain his employment at General Electric.

Thus, the amendments proposed by Senator Grassley which would provide protection from retaliation for those who oppose and bring to light false claims is critical. A job in our society is one of the main determinants of an individual's worth and ability to provide for his family. Unfortunately, few individuals have the courage displayed by Mr. Gravitt to risk their jobs to bring unlawful employer practices to light. Providing protection for employees will encourage them to step forward with their knowledge of improprieties.

The amendments to the Act which provide for attorneys fees, would also greatly strengthen the Act and make it more viable. Attorneys fees can vary greatly from case to case, depending upon the complexity of the case, the number of documents involved, the ferocity of the opposition, whether or not the Depertment of Justice is actively involved and does a thorough investigation, and upon numerous other variables such es the number of witnesses, the length of time involved, the number of procedural hurdles to overcome, etc. A provision ellowing compensation for False Claims Act plaintiffs to request ettorneys fees, in addition to their percentege recovery, would

further encourage individuals to bring illegal practices to the United States Government's attention.

I further support the amendments which allow the False Claims Act plaintiff, by and through his counsel, to remain in the action as a full party even though the United States Government intervenes in the case. In Mr. Gravitt's action, for example, his participation has been limited to filing the initial action, serving discovery upon Defendant General Electric Company, and cooperating with FBI agents who were conducting the criminal investigation for the Department of Justice. In the civil action, the Department of Justice has not requested any discovery and its main activity has been to request that Chief Judge Rubin postpone the case until a later date. Fortunately, Chief Judge Rubin operates an extremely efficient Court in the Southern District of Ohio, attempts to bring cases to trial within approximately one year of their filing, and has denied the Department of Justice's latest request for a postponement. However, so long as Mr. Gravitt is not involved, nothing prevents the United States Government and General Electric Company from "settling" his case for a nominal amount to avoid adverse publicity concerning defense procurement efforts. Such an event occurred in a False Claims Act suit brought in 1982 against Litton Systems, Inc. involving Navy contracts.

In short, Mr. Gravitt and other private litigants, if they were allowed the right to remain in the action as a full party, could act as watchdogs over taxpayers' funds and ensure that fraudulent contractors pay an appropriate amount of damages.

GENERAL ELECTRIC NOV 2 3 1983

W. G. KRALL
VICE PRESIDENT AND GENERAL MANAGER
EVENDALE PRODUCTION DIVISION

AIRCRAFT ENGINE BUSINESS GROUP
CINCINNATI, OHIO 45215

November 21, 1983

Paul D. Lynch
Colonel, USAF
Air Force Plant Representative
General Electric Company
Cincinnati, Ohio 45215

Dear Paul:

The purpose of this letter is to summarize the results of our audit of the alleged labor vouchering irregularities in the Development Manufacturing Operation (DMO). This review was performed by Evendale Production Division financial personnel under the direction of Evendale Internal Auditing. In addition, support in the statistical application was provided by General Electric's Corporate Audit Staff.

As you recall, allegations concerning improper labor vouchering in DMO were first made this past summer by a former employee. The existence of improper practices was confirmed during extensive interviews conducted by personnel from Evendale Auditing and Security. During these discussions, the interviewers indicated that the motive for the improper practices was to meet internal measurements.

During October 1983, a voucher sample was selected for review. The purpose of this review was to quantify the potential dollar impact of the irregular practices on Government contracts. The sample was a dollar unit sample, and consisted of 133 vouchers. The total population was vouchers from the three year time period which aggregated $6.1M in extended cost. Statistical extrapolation of the errors disclosed in the sample has resulted in a 95% confidence level in the following projected impact for the three year time period:

Underbilling to Government	$185 000
Overbilling to Government	138 000
Net underbilling to Government	$47 000
No effect	$163 000
Unknown	$ 41 000

Although the results of the sample did not indicate any net adverse impact on Government contracts, and although this situation occurred in a relatively small operation (DMO), we consider that the identified problems represent a serious breach of our policies. Accordingly, the following actions have been taken to ensure meeting our commitment to proper vouchering practices:

1. On December 15, each Department Manager in Manufacturing will issue a letter to all salaried employees affirming our commitment to proper adherence to voucher instructions.

2. Attached to the letter will be a revised, more comprehensive vouchering instruction.

3. Each supervisor will be required to sign an acknowledgment form that he understands the vouchering procedures and will adhere to them.

4. The three managers who were involved in the improprieties have received appropriate disciplinary action.

I would be happy to discuss this further at your convenience.

Sincerely,

W.G. Krall

/djw

15527 MARCUCCI — 2520 0110 1 — DATE 6-15-83

	NAME	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	ED022	8.0		21	60			17.8905 Sp 0026-003
2								
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — TOTAL 8 0 — FOREMAN SIGNATURE: [signature]

40535 [illegible] — 2520 0110 1 — DATE 6-15-83

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1	ED022	8	—	21	70			7999 [illegible]
2								
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE: [signature]

58272 [illegible] — 2520 0110 1 — DATE 6/16/83

	NAME	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	[illegible]05	8		21	0428			
2								
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — TOTAL 8 0 — FOREMAN SIGNATURE: [signature]

15421 MARCUCCI — 2520 0110 1 — DATE 6-16-83

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1 [illegible]22	8		21	[illegible]			12.8905 [illegible]
2							
3							
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7							
8							

LABOR VOUCHER — 8 0 TOTAL — FOREMAN SIGNATURE [signature]

13875 [illegible]MAN — 2525 0108 1 — DATE 6-15-83

	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION (Item No., Type No., Etc.)
1 [illegible]	8	0	21	150			8999-001
2							
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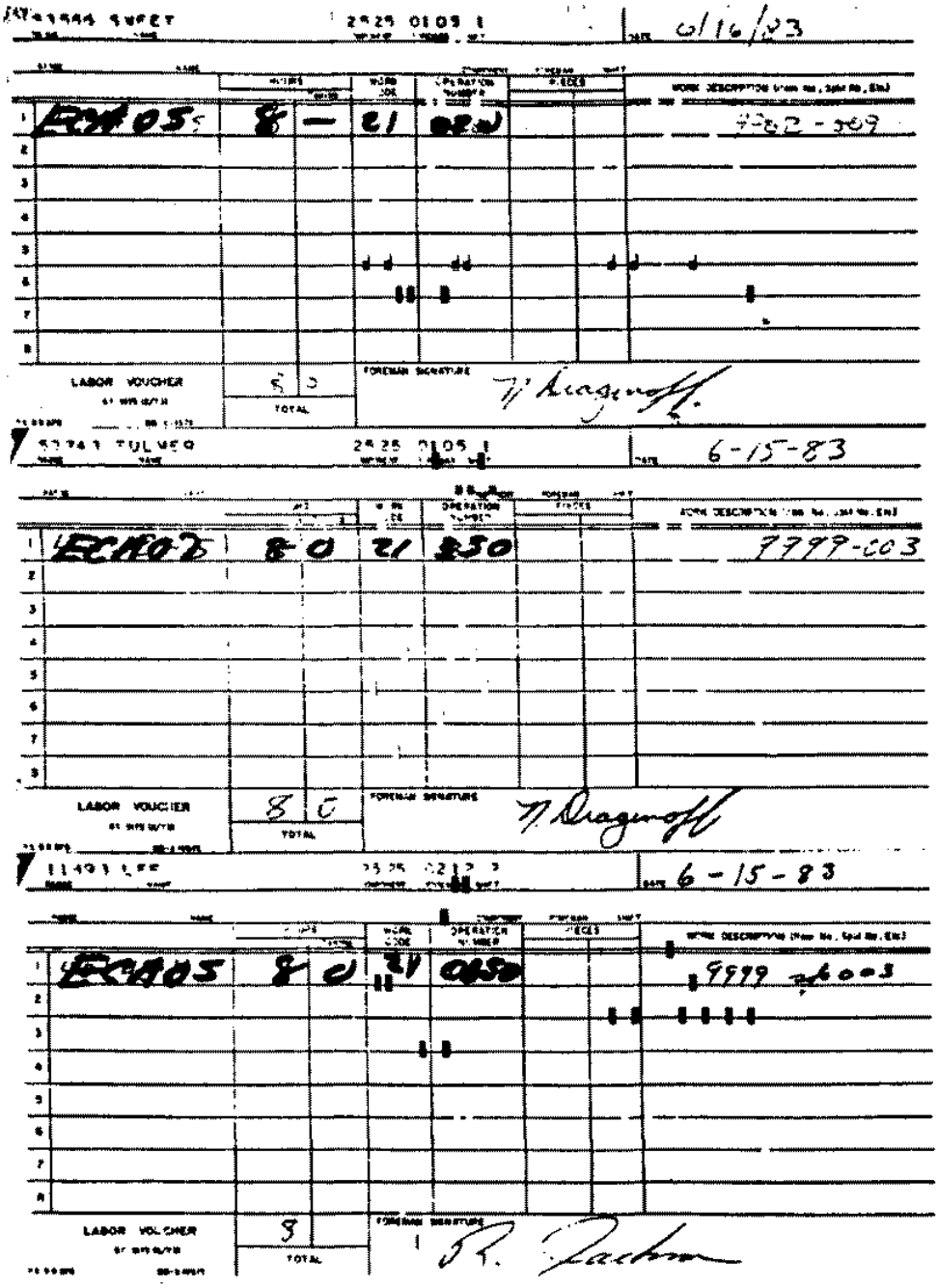
6							
7							
8							

LABOR VOUCHER — 8 0 TOTAL — FOREMAN SIGNATURE N. Dragenoff

39015 TOLES — 2520 0211 2 — DATE 6/16/83

	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION (Item No., Type No., Etc.)
1 [illegible]	8		21	[illegible]			7999 002
2							
3							
4							
5							
6							
7							
8							

LABOR VOUCHER — 8 TOTAL — FOREMAN SIGNATURE [signature]



1	EC405	8	—	21	020		7777-003
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LABOR VOUCHER — TOTAL: 8 — FOREMAN SIGNATURE: T. Dragunoff

11491 TULVEO — 2525 0105 1 — DATE: 6-15-83

1	EC405	8	0	21	030		7777-003
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3							
4							
5							
6							
7							
8							

LABOR VOUCHER — TOTAL: 8 0 — FOREMAN SIGNATURE: T. Dragunoff

11491 LEE — 2525 0213 3 — DATE: 6-15-83

1	EC405	8	0	21	030		7777-003
2							
3							
4							
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6							
7							
8							

LABOR VOUCHER — TOTAL: 8 — FOREMAN SIGNATURE: R. Pachon

55167 CUMMINS — 2520 0110 1 — DATE 6-15 83

	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION (Item No., Sub No., Etc.)
1 BCA85	8		35	170			999 SP5
2							
3							
4							
5							
6							
7							
8							

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE [signature]

54032 RICE — 2525 0104 1 — DATE 6/15/83

	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION (Item No., Sub No., Etc.)
1 KR138	8	0	N/M	50			99-99-8+9
2							
3							
4							
5							
6							
7							
8							

LABOR VOUCHER — TOTAL 8.0 — FOREMAN SIGNATURE N. Dragnoff

40475 WESON — 2525 0105 1 — DATE 6-16-83

	HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION (Item No., Sub No., Etc.)
1 KR132	8		21	60			999-8 -7
2							
3							
4							
5							
6							
7							
8							

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE N. Dragnoff

26629 ENSOR — 2525 0212 2 — DATE 6-15/83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EC405	8.0		21	210			9999-2
2	[redacted]	[redacted]						
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — 8.0 TOTAL — FOREMAN SIGNATURE: R. Jackson

23933 COLE — 2520 0110 1 — DATE 6/15/83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EC405	8		21	40			
2								
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — 8 TOTAL — FOREMAN SIGNATURE: [illegible]

43095 FOWLER — 2520 0110 1 — DATE 6-15-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EC405	8.0		21	40			
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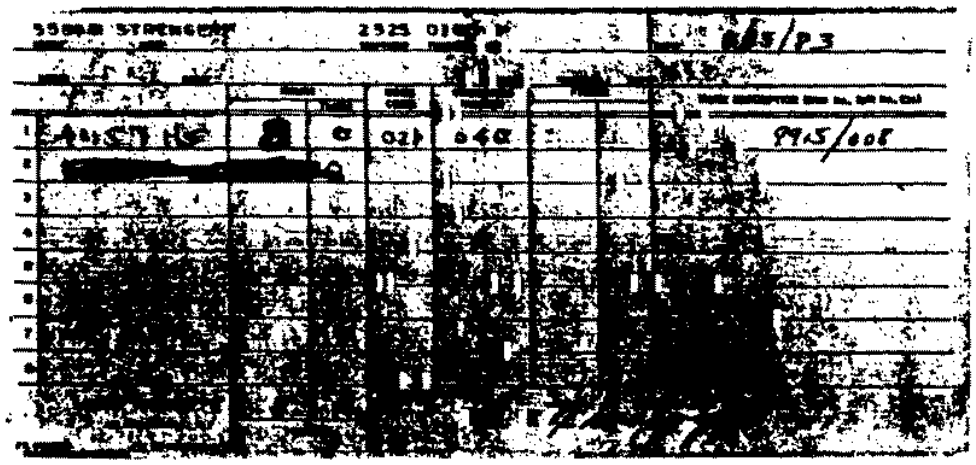
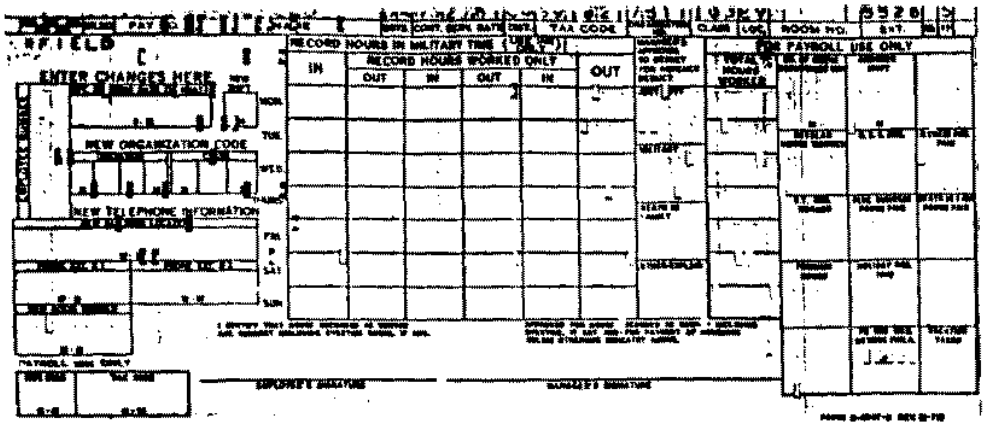
3								
4								
5								
6								
7								
8								

LABOR VOUCHER — 8.0 TOTAL — FOREMAN SIGNATURE: [illegible]

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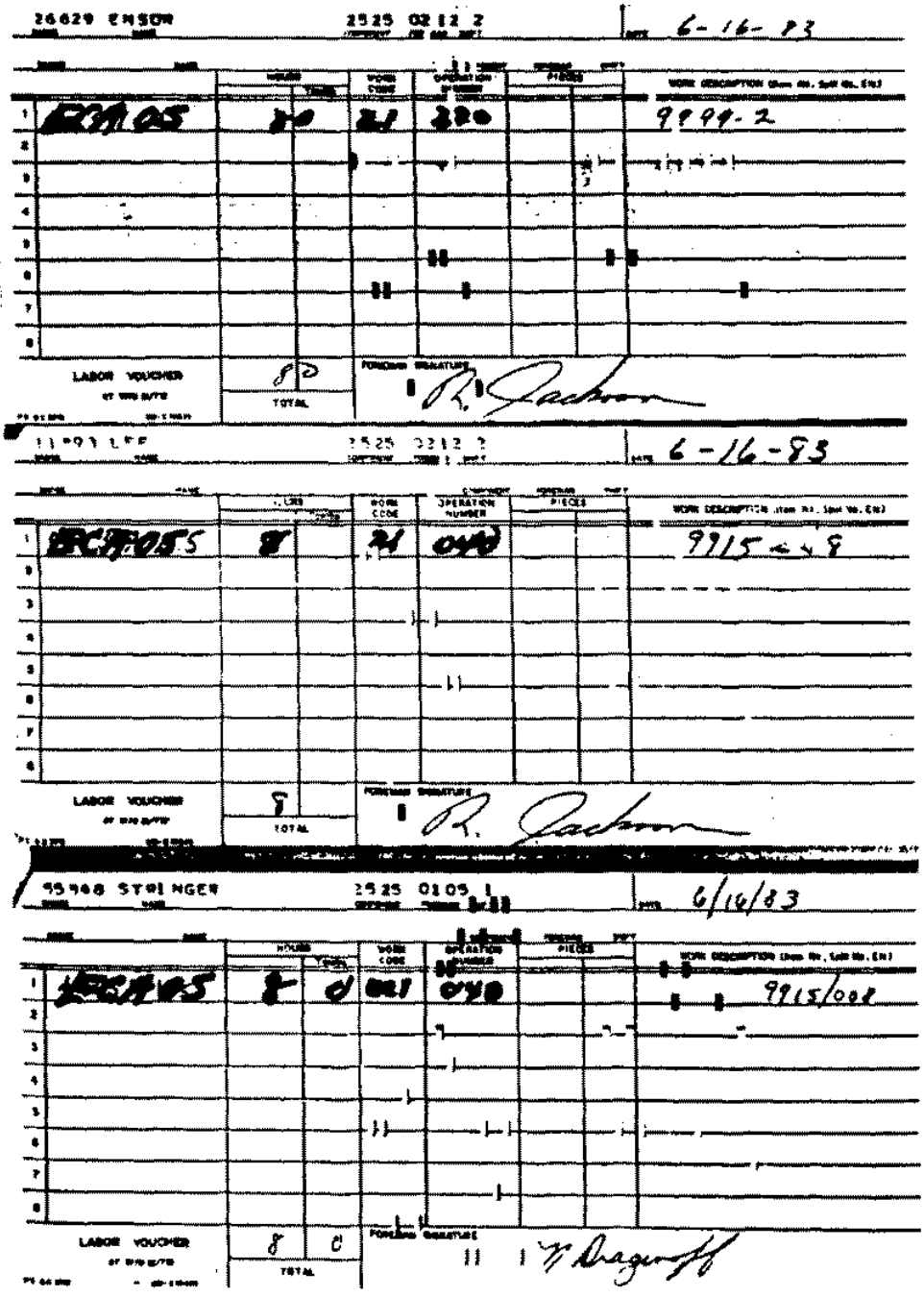
NEW ORGANIZATION CODE
NEW TELEPHONE INFORMATION
RECORD HOURS IN MILITARY TIME
RECORD HOURS WORKED ONLY
IN
OUT
FOR PAYROLL USE ONLY



26629 ENSON 2525 0212 2 6-16-83

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION
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LABOR VOUCHER TOTAL 8 FOREMAN SIGNATURE R. Jackson

11993 LEE 2525 0212 2 6-16-83

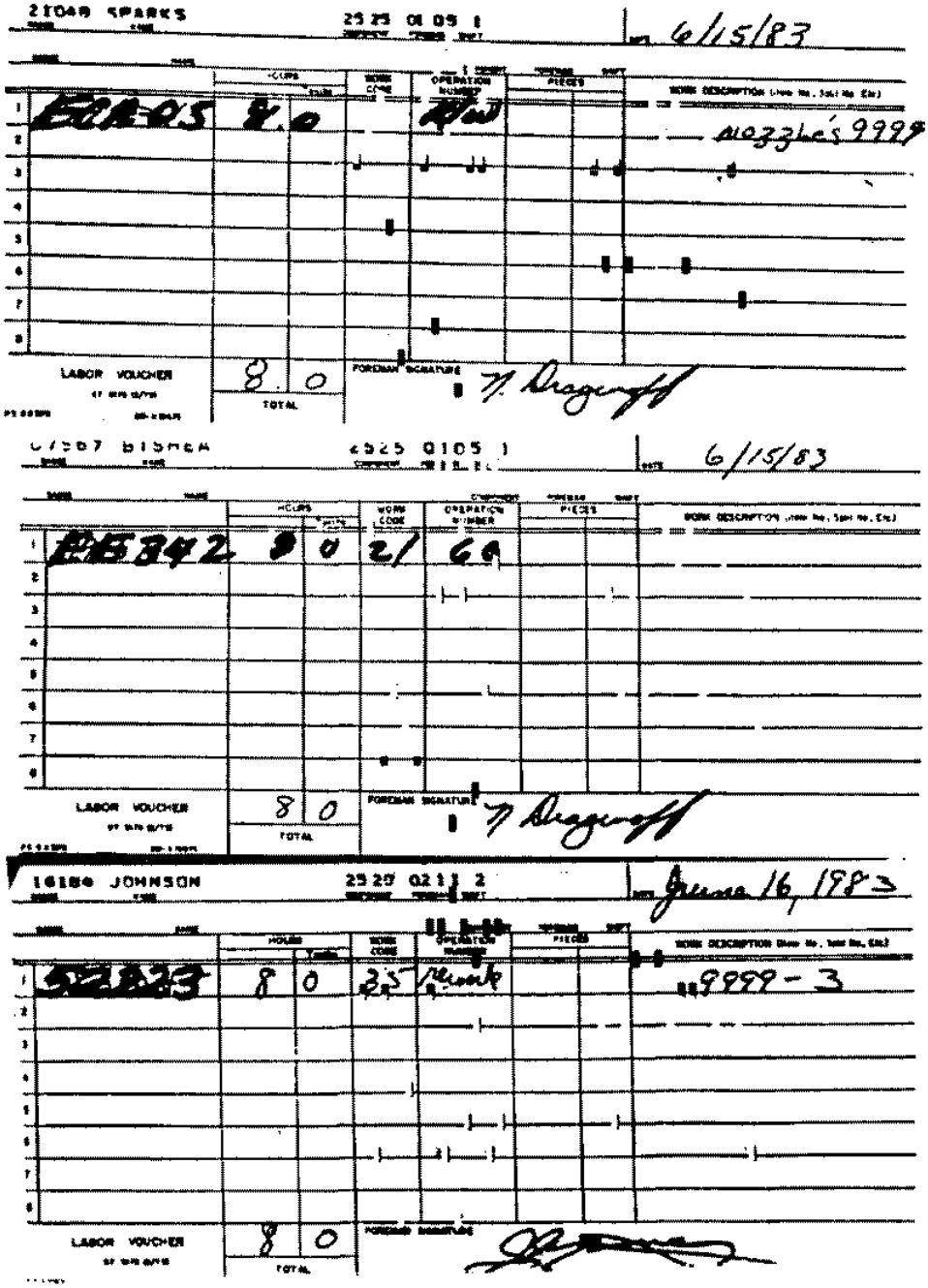
	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION
1	8	24	040		9915-002

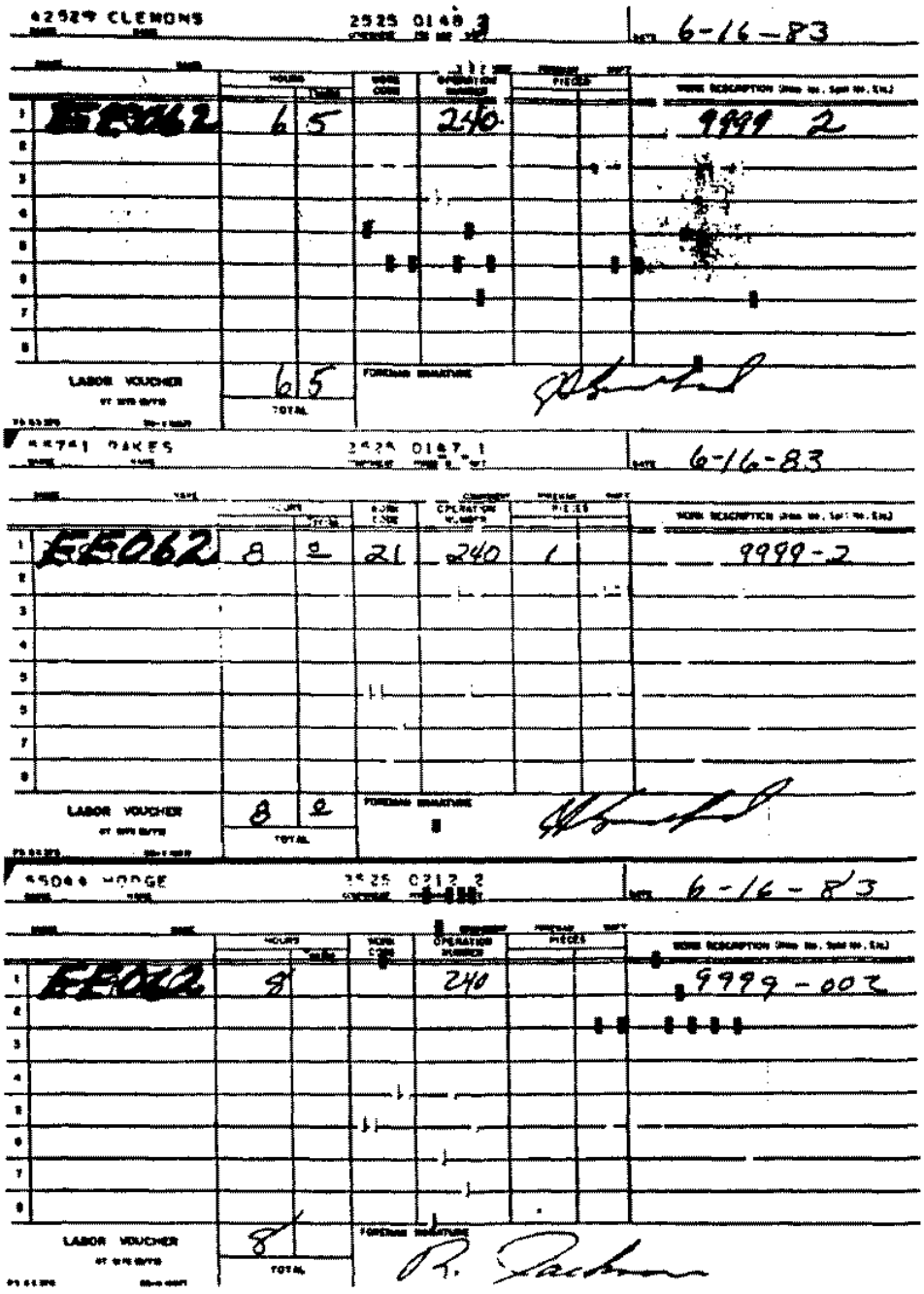
LABOR VOUCHER TOTAL 8 FOREMAN SIGNATURE R. Jackson

55968 STRINGER 2525 0105 1 6/16/83

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION
1	8	021	040		9915/002

LABOR VOUCHER TOTAL 8 FOREMAN SIGNATURE W. Dragoo


21049 SPARKS
2525 0105 1
6/15/83
LABOR VOUCHER
8 0
TOTAL
21067 BISHOP
2525 0105 1
6/15/83
LABOR VOUCHER
8 0
TOTAL
16184 JOHNSON
2525 0211 2
June 16, 1983
LABOR VOUCHER
8 0
TOTAL



42529 CLEMONS 2525 0140 3 6-16-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EE062	6	5		240			9999 2
2								
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	6	5	FOREMAN SIGNATURE				
		TOTAL						

44741 OAKES 2525 0147 1 6-16-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EE062	8	0	21	240	1		9999-2
2								
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8	0	FOREMAN SIGNATURE				
		TOTAL						

45048 HODGE 2525 0212 2 6-16-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	EE062	8			240			9999-002
2								
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8		FOREMAN SIGNATURE				
		TOTAL						

SSYAI PAKES — 2525 0147 1 — Date 6-15-83

	Job	Hours	Tenths	Work Code	Operation Number	Pieces		Work Description
1	[redacted]022	[redacted]	0	21	[redacted]	1		9999-2
2	[redacted]	[redacted]				1		9[redacted]
3	[redacted]	[redacted]						
4								
5								
6								
7								
8								
LABOR VOUCHER		8	2	Foreman Signature				
		Total						

52891 VARTUNKOVIL — 2525 0105 1 — Date 5-16-83

	Job	Hours	Tenths	Work Code	Operation Number	Pieces		Work Description
1	EE342	8	0	21	350			7909-001
2								
3								
4								
5								
6								
7								
8								
LABOR VOUCHER		8	0	Foreman Signature				
		Total						

9490 J. REITLER — 1st — 6/16/83

	Job	Hours	Tenths	Work Code	Operation Number	Pieces		Work Description
1	D [redacted]2	6	0					
2	D 5936	2	0					
3								
4								
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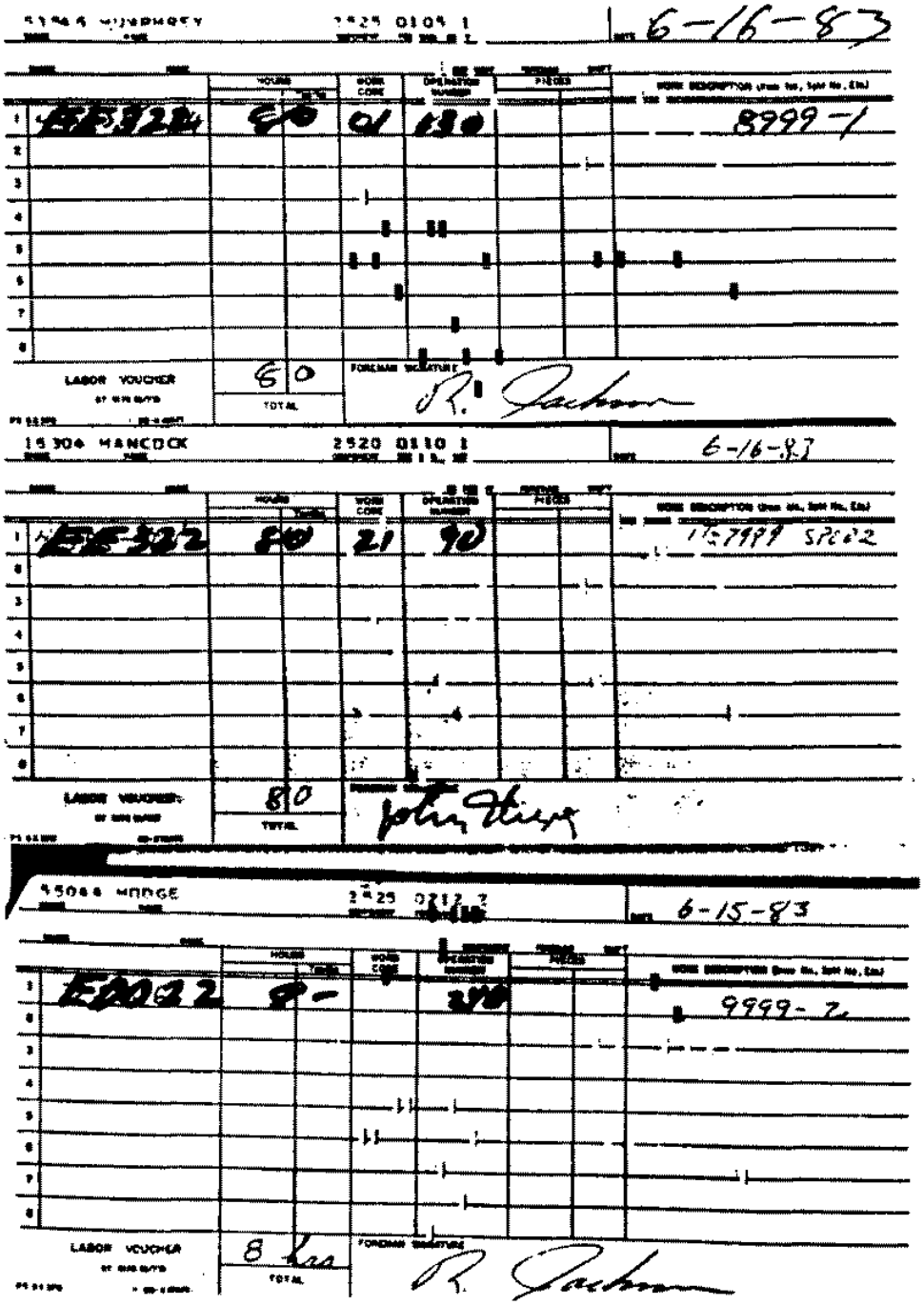
6								
7								
8								
LABOR VOUCHER		8		Foreman Signature				
		Total						



							6-16-83
1	EE322	60	01	130			8999-1
2							
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8							
	LABOR VOUCHER	60	FOREMAN SIGNATURE				
		TOTAL					

	15304 HANCOCK		2520 0110 1				6-16-83
1	EE322	80	21	90			1-7999 SPC02
2							
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6							
7							
8							
	LABOR VOUCHER	80					
		TOTAL					

	45066 HODGE		2425 0212 2				6-15-83
1	EE022	8-		370			9999-2
2							
3							
4							
5							
6							
7							
8							
	LABOR VOUCHER	8 Hrs	FOREMAN SIGNATURE				
		TOTAL					

51949 WHITACRE — 2520 0110 1 — DATE 6/15/83

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION (Item No., Spl. No., Etc.)
1 [illegible]	8 0	71	020		9999-7
2					
3					
4					
5					
6					
7					
8					

LABOR VOUCHER — TOTAL 8 0 — FOREMAN SIGNATURE John [illegible]

13875 [illegible] — 2525 0105 1 — DATE 6-16-83

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION (Item No., Spl. No., Etc.)
1 EE322	8 0	41	130		8999-001
2					
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LABOR VOUCHER — TOTAL 8 0 — FOREMAN SIGNATURE N. Draganoff

34207 RILEY — 2525 0149 3 — DATE 6-17-83

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION (Item No., Spl. No., Etc.)
1 EE322	8 0	35	130		Item 8999 Ser 1
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LABOR VOUCHER — TOTAL 6 5 — FOREMAN SIGNATURE N. Draganoff

[redacted] HIGGINS 2525 0105 1 DATE 6/16/83

	NAME	HOURS	WORK CODE	OPERATION NUMBER	FOREMAN PIECES	WORK DESCRIPTION
1	FA21K	8	21	50	1	9999-9
2						
3						
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7						
8						

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE N. Dragunoff

[redacted] SHEPARD 2525 0105 1 DATE 6-16-83

	NAME	HOURS	WORK CODE	OPERATION NUMBER	FOREMAN PIECES	WORK DESCRIPTION
1	FA21K	4 0	21	110		9999-1
2	FA21K	4 0	21	110		2777-5
3						
4						
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8						

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE N. Dragunoff

[redacted] 2525 0147 1 DATE 6-16-83

[redacted] 55315 [redacted] ARNEY

	NAME	HOURS	WORK CODE	OPERATION NUMBER	FOREMAN PIECES	WORK DESCRIPTION
1	[redacted]	[redacted]				[redacted]
2	X0001	1 0				ROUNDTABLE
3	38600 H5	7 0				
4						
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8						

LABOR VOUCHER — TOTAL 8 0 — FOREMAN SIGNATURE [redacted]

40475 YESOR 2525 0105 1 6-15-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	KR38	8		21	60			9999-7
2								
3								
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8								
	LABOR VOUCHER	8		FOREMAN SIGNATURE		N Dragieff		
		TOTAL						

42951 VERTUNKOVIL 2525 0105 1 6-15-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	KR38	8	0	21	110			9999-2
2								
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8	0	FOREMAN SIGNATURE		N Dragieff		
		TOTAL						

[illegible] 6-15-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	KR38	4			150			9999-4
2	D5934	4			150			9999-3
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8	0	FOREMAN SIGNATURE		N Dragieff		
		TOTAL						

39170 GILLESPIE 2525 0105 1 6-15-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES	UNIT	WORK DESCRIPTION
1	KRISS	8	0					0001-001
2								
3	[redacted]							
4								
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LABOR VOUCHER

8 0 TOTAL

FOREMAN SIGNATURE N. Dragoff

39170 GILLESPIE 2525 0105 1 6-16-83

		HOURS		WORK CODE	OPERATION NUMBER	PIECES	UNIT	WORK DESCRIPTION
1	KRISS	8	0		70			0001-001
2								
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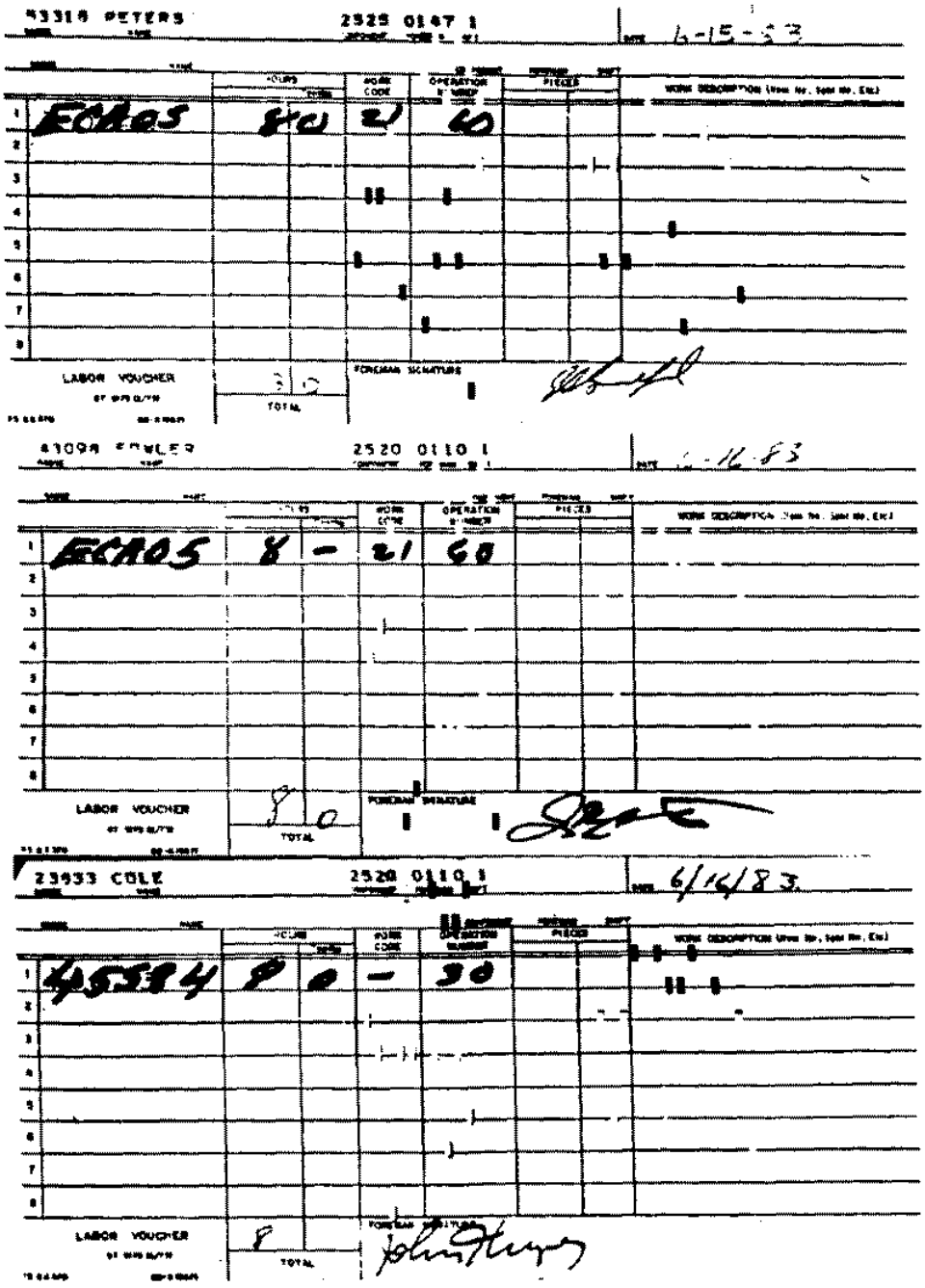
8								

LABOR VOUCHER

8 0 TOTAL

FOREMAN SIGNATURE N. Dragoff



53318 PETERS 2525 0147 1 DATE 6-15-83

		HOURS	HOUR CODE	OPERATION	PIECES	WORK DESCRIPTION
1	ECAOS	8 0	21	60		
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3						
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6						
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8						

LABOR VOUCHER TOTAL 8 0 FOREMAN SIGNATURE

41098 FOWLER 2520 0110 1 DATE 6-16-83

		HOURS	WORK CODE	OPERATION	PIECES	WORK DESCRIPTION
1	ECAOS	8 -	21	60		
2						
3						
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6						
7						
8						

LABOR VOUCHER TOTAL 8 0 FOREMAN SIGNATURE

23933 COLE 2520 0110 1 DATE 6/16/83

		HOURS	WORK CODE	OPERATION	PIECES	WORK DESCRIPTION
1	45584	8 0	-	30		
2						
3						
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6						
7						
8						

LABOR VOUCHER TOTAL 8 FOREMAN SIGNATURE

45607 [redacted] | 2525 0213 2 | DATE 6-16-83

KUNKA

	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION (Item No., Sale No., Etc.)
1 EF062	80		025		9902 S/N 009
2					
3					
4					
5					
6					
7					
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LABOR VOUCHER | 8.0 TOTAL | FOREMAN SIGNATURE

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	HOURS	WORK CODE	OPERATION NUMBER	PIECES	WORK DESCRIPTION (Item No., Sale No., Etc.)
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Senator GRASSLEY. Mr. Wityczak, can you summarize your statement in 5 minutes? Your full statement will be included in the record and your summary will set the ground work for questions I have.

STATEMENT OF ROBERT WITYCZAK, LOS ANGELES, CA

Mr. WITYCZAK. Thank you, Mr. Chairman.

I am a Vietnam veteran and I do believe our country needs a strong defense which is why I went to work for Rockwell in 1973. Yet, I soon found I was forced to choose in this position between loyalty to my company and loyalty to my country. My ethical principles and duties were tested to their very limits by having to either keep quiet about the mischarging I saw going on in Rockwell, or risk losing my job. I agonized over my decision to step forward. I have a wife, five children and a house mortage, and I had to provide a living.

Yet, once I made the decision to tell the truth about what was going on, I found no one inside or outside the company willing to act on the information. I had no job protection whatsoever and no support from any of the governmental agencies I approached, as I will describe in this testimony.

In 1973, I was hired in Rockwell's products support group, space transportation system in Downey, CA. My job involved processing materials orders, updating status of books, checking corrections of material orders, and expediting orders from outside vendors.

In early 1974, I started noticing mischarging of work during the Apollo-Soyuz Test Program. This is a fixed-price contract and I saw work being charged on timecards to cost-plus programs. I also began to notice certain items being ordered for personal use which were billed to cost-plus contracts, including excessive amounts of 24 karat gold polymide tape, exotic woods, wallpaper, and carpeting. I talked to my group leader about this but nothing was done.

In 1974, I was assigned to the products support function of production control and received an excellent employee performance review. Yet, I was still facing a tremendous personal conflict inside between my loyalty to the company and my loyalty to my country. I was in a state of turmoil about the cheating and mischarging going on in my company, and not able to talk about it to anyone, due to my Rockwell security briefing and feeling of loyalty to my friends. I felt a deep conflict inside concerning the oath I had taken as a junior vice-commander of the Military Order of the Purple Heart and the Vietnam Veterans Advisory Committee to report any corruption I saw.

Senator GRASSLEY. When you told them about these sorts of things being done, did they say something in particular or did they just ignore what you said?

Mr. WITYCZAK. At that timeframe, I was just a thorn in the side and I was pushed aside and nobody was really paying that much attention.

Senator GRASSLEY. Proceed.

Mr. WITYCZAK. In 1976, I was assigned to the purchased labor section of products support and, in 1977, promoted to a position in which I ordered materials directly from outside suppliers. It was in

this 1976–77 period that I continually saw mischarging of work on other projects to the space shuttle. I saw tools coming in from other departments without paperwork. Normally, parts should have tickets on them showing the work to be done, but these had no paperwork. They were from Seal Beach and Downey departments. I checked the space shuttle blueprints on these and the material callout sheets which designated which parts are needed. I found no callouts, so I reported this to the head of purchased labor. I was told by him to just do as I was told.

This was part of an elaborate scheme to charge work on other projects to the space shuttle. These tools, or fabricated parts, which were being sent out for work, were actually for the global positioning satellite [GPS], the NAVSTAR, P–80–1, the teal amber, and teal ruby satellite systems. Surely this practice would explain why Rockwells fixed price contracts come in on budget, while cost-plus contract (shuttle) goes way over budget.

In addition, I was ordered by our supervisors, along with 25–35 other employees in my office, to bill to the space shuttle time we had actually spent working on the B–1 bomber, teal ruby, P–80, and GPS satellites. I did file false timecards for a while, because I was feeling pressured to keep my job and go along with peer pressure.

On numerous occasions, when the word went out that the Defense Contract Audit Agency was investigating, the people in our department were alerted by management of the other department and told to cover up by keeping certain 918L forms on their desks which would match their timecards. The time was normally charged on a daily basis, but in reality our department was instructed how to file time charges at the end of the week. Yet, once we were questioned by the auditors, I would question it.

Yet, it really began to bother my conscience and I told my supervisors in late 1977 that I would no longer mischarge on my timecards. They reacted angrily, calling me antimanagement, anti-Rockwell, and a pain in the ass. Coworkers warned me that my refusal to mischarge would cost me my job and future. Supervisors often had me sign blank timecards, which they filled in later, often incorrectly. Gradually, I was squeezed out of the work I was doing. I was stripped of my confidential security, my access to documents was limited, I was excluded from meetings, and was put to work doing menial tasks outside my job description, such as sweeping, making coffee, and cleaning a 50-gallon coffee pot. The tasks were often difficult physically, and my back condition was aggravated, and I had to take medical leave.

Senator GRASSLEY. Are you saying that time frsud is ignored by our own governmental auditors as well as within the company?

Mr. WITYCZAK. No, sir, let me clarify that. What I meant by that statement wsa that auditors are completely innocent of this, at least what I have seen. They have no chance to conduct a sincere audit, because if they even hit anywhere near that plant, the whole plant is put on red alert, as they say in the service, and you see nothing but commotion running through the offices.

Senator GRASSLEY. So everybody cleans up their act when the Government auditors arrive?

Mr. WITYCZAK. Yes, sir; there were numerous occasions that we were instructed that DCAA auditors were in the area. We are instructed to take out a timecard and to make sure that we had paperwork or tickets to match the charges on the timecards and they would be filled out on that day, sir.

Senator GRASSLEY. Do you know the auditors are coming before they get there?

Mr. WITYCZAK. Yes, sir, on numerous occasions.

Senator GRASSLEY. Do the DOD auditors call up and say when they will be there?

Mr. WITYCZAK. No, the way that took place in the situations I am referring to, when the DCAA auditor would come and say to a department, surprise, if he happened to make a surprise visit to them, immediately upon them realizing a DCAA auditor is within the vicinity, they put every department on red alert and say get everybody's timecards out and make sure there are papers to substantiate whatever is in the charge. If they do match, make sure you take them out and issue another card.

Senator GRASSLEY. Does that happen at GE, too?

Mr. GRAVITT. Yes, sir, but it goes through just like wildfire. It is just word of mouth auditors are here and everybody straightens up their act.

Senator GRASSLEY. Does that make Government audits a sham?

Mr. GRAVITT. The Government auditors, Senator, don't really know what they are looking at to start with. They don't know whether the guy is working on a B-1 engine or a carburetor for his car. They don't know the difference. As long as the paperwork matches up, they don't really know what is going on.

Senator GRASSLEY. Your comment on that Mr. Wityczak?

Mr. WITYCZAK. I believe if the auditors put in a little more initiative, not to say they haven't, but if an auditor were to ask me does this timecard accurately reflect what I have seen here, I would have told him no. As a matter of fact, I was working on this program over here but they told me not to charge it.

Senator GRASSLEY. Does that make the point that private citizens have to be involved if we are going to be successful in keeping this stuff under control?

Mr. WITYCZAK. Yes, sir, in order to stop the raping of our country.

Senator GRASSLEY. Mr. Gravitt.

Mr. GRAVITT. Yes, sir.

Senator GRASSLEY. This is systematic. The Department of Justice told us that they have it under control.

Mr. WITYCZAK. As far as that is concerned, Mr. Chairman, I tried to go through the proper internal channels but got absolutely no results. For example, in 1978, I turned over some documents indicating mischarging and theft to a supervisor and another company official. They promised to pass on the material to Rockwell security and the FBI. However, I never heard from the FBI and, a year later, I discovered that the documents were in fact turned over to the people doing the mischarging. I was questioned by Rockwell security if I was responsible for the mischarging and theft. Other outside complaints had no impact on my situation either. In December 1979, I had met with someone from the NASA inspector general's

office and had given him some documents. I was told the grand jury would probably call me to testify. I never was called.

From that time on, I began to continually get harrassed on the job. I returned from a medical leave and found my desk was gone. I was told I would no longer be doing my old job and had to train others to do the work I had been doing. My supervisors made me work in a tool control area where I had to engage in heavy physical labor which was quite taxing on my health. For example, I had to pick up and inventory numerous items, including tooling parts, drill jigs, and compressed wood form blocks. These items were very heavy and quite hard to handle. I had to try to balance them with great difficulty on my wheelchair and sometimes the pieces would fall and hit me.

The harrassment didn't stop there. In 1981, I was assigned to the machine shop where I had to unload and store all the parts that came to the shop. To reach shelves ranging from 4 to 12 feet high I had to stand up and balance myself in my wheelchair on my stumps and sometimes I would fall and hurt myself.

While coworkers sympathized with me, no one objected to management. I complained to a company Equal Employment Opportunity official and nothing happened. My supervisors probably assumed that I would quit if they made things tough enough for me. But in the Corps, they teach you when the going gets tough, the tough get going.

The harrassment and pressure never stopped. It just kept increasing. In May 1982, I returned to work from a medical leave of absence. I had been warned earlier that spring by coworkers that I would be terminated as soon as I returned to work. Sure enough—Rockwell informed me that my job was no longer available and that my fate was in upper management's hands. In other words, I was fired. I was not the first employee to get fired for this reason. Others, such as Ray Sena, were fired for refusing to go along with contract mischarging schemes. Ray, too, took his allegations to the NASA inspector general's office in 1979, after receiving no action on his complaints from the corporate executives and company lawyers. He was fired by Rockwell after his approach to NASA. Other dismissals have occurred as well, which have effectively discouraged other potential whistleblowers that I know.

Mr. Chairman, I have always tried to be a patriotic man believing in my country. Yet, I feel in this situation my country is letting me, my fellow coworkers and taxpayers and fellow veterans down. There is absolutely no encouragement or incentive for someone working in the defense industry to report fraud and the submission of false claims to the Government. In my case I could not consciously work for a company stealing from the government in which I gave half of my body to. In fact, there is a disincentive because of the retaliation of the defense contractor employers who promptly fire or harass whistleblowing employees with almost complete impunity.

I am here to state that we desperately need S. 1562, the bill introduced by Senators Grassley, DeConcini, and Levin to amend the False Claims Act. If the amended act had been on the books, I could have filed a case on behalf of the Government to recover the fraudulently obtained money from the Treasury. I would have been

assured of some action and job protection. Once I filed the suit, I could not be fired, harrassed, demoted, threatened or suspended from my job without the company paying some penalty making it more costly and risky for them to embark on this course of action. Moreover, I could be sure that the Justice Department would look into the facts and evidence more earnestly. I presented and could make an informal decision whether to enter the case. The court would make sure that the case would be tried on its merits, and I would receive a financial benefit for my efforts from the proceeds of the settlement, if successful. Of course, the Treasury and taxpayers would benefit the most from the money received back into the Treasury, plus triple the damages.

This bill is needed to encourage employees like myself who know first-hand of fraudulent misconduct to step forward. Without this bill, these employees, the people in the best position to give such information, will be forced to remain silent—at the peril of risking their jobs, being blackballed from the industry, and finding no means of supporting a family or making a living, and to sit back and watch helplessly these acts of treason and rape against the people of the United States.

Senator GRASSLEY. Thank you very much. Anyone who is here would appreciate the healthy attitude you have. Particularly let me say to both of you that we appreciate the extent to which you are willing to fight against those things that you see wrong and to help correct the problem. I don't suppose we truly understand the suffering that you have gone through for being good patriotic Americans. This testimony will help us with that understanding. Hopefully some of the wrong will be righted some day.

I would like to ask both Mr. Wityczak and Mr. Gravitt—and, Mr. Helmer, since you are counsel for Mr. Gravitt, please feel free to comment—in the years you have spent working day in and day out do you feel the Government is adequately handling the Government fraud problem?

Mr. WITYCZAK. If I may take first shot at this, Mr. Chairman, now for example the Rockwell mischarge case, why if the budgets were overrun by $4.5 million did they settle it for $500,000. That comes out to one one-hundredth of 1 percent.

Senator GRASSLEY. Mr. Gravitt.

Mr. GRAVITT. If the Government were adequately handling the fraud problem, Mr. Helmer and I would not be getting reports that this started back during the Vietnam era with the J-79 engines, that it continued on through the SST program, the original B-1-B bomber program and of last report—they backed off a little bit when the FBI was in there.

My wife attended a union meeting yesterday and the major complaints from the union stewards to the committeemen were that the supervisors were telling the employees to falsify the vouchers. They've got all kinds of procedures.

Senator GRASSLEY. You are saying that a meeting yesterday would indicate that this is going on right now?

Mr. GRAVITT. Yes, sir, it was Sunday afternoon.

Senator GRASSLEY. This would be the position of the union being supportive of doing what is honest and not backing up.

Mr. GRAVITT. Yes, sir. The Air Force officials in-house at Evendale will not talk to the hourly and union members. They deal strictly with management.

Senator GRASSLEY. Would you say the opinion would be reflected by others workers in the plant as well

Mr. GRAVITT. Sir, when I was there, we didn't know what recourse to take. We didn't know who to trust. We didn't know who to go to. It was quite evident when I went up my chain of command everybody was involved in it.

Senator GRASSLEY. What about your coworkers?

Mr. GRAVITT. The coworkers that I had on my shift, some of them were stockholders and had seen this going on for many, many years, approached me and volunteered to sign proxies over to me for their stock so I could take the situation to the board of directors and hopefully they could stop what was going on.

Mr. WITYCZAK. Mr. Chairman, if I could take a whack at that, I feel all the Government contract employees are generally all for exposing fraud, but most of individuals just simply cannot and will not put their head on the chopping block jeopardizing their livelihood. They feel the Government just does not care. They've gotten that opinion due to the fact that the very, very mere pittance the Government has been able to collect from these defense contractors. The recoveries versus the crime–it is outraged us.

Senator GRASSLEY. What kind of a message do you think your cases have sent to your former coworkers and would-be whistleblowers?

Mr. WITYCZAK. I feel in my case, unless our Government backs us up as outlined in this bill S. 1562, we are at the mercy of the employers and you can anticipate a long, hard battle full of expenses and turmoil.

Senator GRASSLEY. I would like to have any of you comment on the Department of Justice's proposition as you have heard it explained today, just as best you can.

Mr. WITYCZAK. Just hearing the gsntleman earlier, I feel that the Justice Department is sort of reluctant to have private citizens participate actively on this because that would put more pressure on them to make sure that it would end the whitewashing of these offenses, sir. That is my opinion.

Senator GRASSLEY. Mr. Gravitt.

Mr. GRAVITT. I would like to echo what Bobby says. It appears they don't want somebody doing their job for them, but it is quite evident from what we have seen thus far with the situation at General Electric somebody hasn't done their job for a long, long time. Other people that have talked to us on the telephones are of the opinion gosh, in R&D, you can't do something like that. Whenever they would try to bring it to the attention of different agencies—"GE doesn't do things like that" but it appears they do.

Senator GRASSLEY. I do have other questions, but I am going to have to submit them to you and ask you to return them to us in writing just as soon as you can. In fact, speed is important because we would like to move on this bill as quickly as we can. It is not because your testimony is not very important but because of time that I am going to have to dismiss you and thank you all very much for your participation.

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Mr. WITYCZAK. Thank you very much, Mr. Chairman, and it has been a pleasure to have been here.

Senator GRASSLEY. Our next witness is Mr. John R. Phillips, codirector, Center for Law in the Public Interest. He is actively involved in assisting private whistleblowers in their efforts to expose fraud against the Government. He has spent considerable time in researching the False Claims Act.

Mr. Phillips, you may be a resident expert on the subject, considering the fact that very few people seem to know the False Claims Act exists, and the previous witness testified it was even in the banking area of the code.

Thank you for traveling all the way to be with us today. I would like you to proceed with a summary of your statement. We will print your entire statement in the record.

The reason I ask you to summarize is that I have some very important questions I want to ask you in porson.

STATEMENT OF JOHN R. PHILLIPS, CODIRECTOR, THE CENTER FOR LAW IN THE PUBLIC INTEREST

Mr. PHILLIPS. Thank you, Mr. Chairman.

I know the time is late, and I will be as brief as I can be.

I am the codirector of a nonprofit charitable organization for the last 15 years. In southern California, we have so many defense contractors. It is obvious from the news accounts and yours and others efforts that there are defense overcharges. We have received various anonymous calls, typically from employees within the defense industry—and there are many thousands of those people in California—who are very troubled by what they have seen in the way of overcharge, and what some have been forced to participate in.

Based on our inquiry and investigation, it appears that conscious overcharging by defense contractors is massive, widespread, and institutional. To be accomplished it requires the participation of workers at all levels. You have heard a couple of them here today. They do not like to be drawn into this type of fraud against the Government but they have been. It is a conspiracy of silence among employees that has been maintained for too long. It is an attitude of looking the other way, do not rock the boat.

While these people would like to step forward and tell what they know, they understandably are most reluctant to do so. It takes a very courageous individual, such as the type we heard here today.

The process of overcharging the Government is very simple. There is no mystery to it. We have heard these descriptions today of defense contractors which have knowingly overcharged. The temptation to cheat the Government is overwhelming. And this temptation is yielded to every day by many of these defense contractors.

But what is the person who is a defense contractor employee who is forced to participate in this unlawful activity expected to do? He does not trust his Government to do something about it, and he knows, based on previous experience and examples, that he will probably lose his job, there is no protection today under existing Federal law for these employoes who step forward and report illegal or questionable action taken by their employers. The Justice

Department officials did not know if any legal protection exists for some people. Let me tell you it does not exist. It is nowhere to be found in Federal law. Unless the change occurs at the most basic employee level where people who are unwilling participants in this fraudulent activity are given an opportunity to speak up and to take action to absolve their own conscience, nothing will change.

The False Claims Act had a laudable purpose. We have done an extensive amount of research on it, and have determined ways it can be improved. The fact that very few cases are brought is due to its obscurity, and some of the procedural limitations that now exist which deter people from actually taking an action against their employer.

First of all, and most obviously, there is no legal protection for people who blow the whistle on their employers. It is unbelievable to have to acknowledge that a person who, as a matter of conscience abides by the law and steps forward and says, "I know there is fraud being committed against this Government," it is unbelievable that he can be fired or harassed, as we heard here today, and have no remedy. That exists under the law today. Obviously, that should be changed. There can be no rational argument for the other side.

The question of whether you must base your complaint on new information not in the hands of the government at the time the complaint is filed, made a lot of sense. Nobody wanted a lot of parasitic lawsuits, merely piggybacking on the Government's efforts. That problem did appear briefly back in the 1930's. However, the language is so broad as to make it so discouraging for anybody to bring those actions today, which in turn so as to has resulted in the False Claims Act fulling into disuse.

The height of that absurdity is a case on the books decided 13 years ago, where a person saw massive fraud against the Government. This was the case of a contractor building a highway in Central America who went to the Justice Department, and exposed it. Nothing happened. He finally went to a lawyer, who filed a False Claims Act.

In the ninth circuit, that case was dismissed, because the Government had the information. Why did the Government have the information? Because he told the Government. That is an absurd decision and must be changed, in the way your amendment proposes. The law should invite people on behalf of the Government to file the action, and get the machinery of the Federal courts in motion. Once that machinery is in motion, there is no turning back. It gives an added incentive for people, as we heard here today, to do the right thing. The financial reward after a long successful effort, ought to be made available, but the current law guarantees nothing. It says they may receive something but they could receive nothing.

The procedural roadblocks also are very severe. The person should be permitted to participate in that lawsuit once filed, and not be forced out on the sidelines, simply because the Government decides to make an appearance. They may make an appearance, but that may be the last thing the Government does. Your amendments will alter that.

The advantage of this law is that it is self-executing. It does not add one more person to the Government payroll. It does not cost the taxpayers a dollar. It is self-policing. Everyone benefits—the Government, for what it obtains, the person benefits because he or she will have done the right thing, and the country and taxpayers are benefited because it is not fleeced. It is not working today. We need some dramatic changes. Those amendments will truly allow the False Claims Act to live up to its expectations.

Thank you.

[Statement follows:]

PREPARED STATEMENT OF JOHN PHILLIPS

I. INTRODUCTION

My name is John Phillips, and I am an attorney and co-director of the Center for Law in the Public Interest, a non-profit charitable organization based in Los Angeles that provides legal representation without charge to various unrepresented interests.

We first became interested in the False Claims Act several years ago when, after public disclosure of fraudulent overcharges within the defense industry, the Center received anonymous calls from employees of defense contractors who were aware of improper and illegal practices, but were not sure what they should do or where they should turn with this information. These potential "whistleblowers" did not believe they could go to the government -- they lacked confidence that anything would be done; nor could they go to the top officers of their employers for fear of retaliation. As a result of these calls the Center conducted research into the area of legal rights and remedies available to such people and discovered a little used 122-year old Act, the False Claims Act.

II. BRIEF BACKGROUND OF THE FALSE CLAIMS ACT

The original False Claims Act was passed in 1863 to combat the widespread fraud, corruption and misuse of federal funds that occurred during the Civil War. At that time, the F.B.I. did not exist and the U.S. Attorney General's staff was very small. The Department of Defense (then the War Department) lacked investigators to check on its various contractors and suppliers. Thus, the Government was largely dependent upon information received from private individuals concerning false claims or fraud against the Government.

The False Claims Act created civil liability for persons who made false claims against the federal government.

The Act provides that any person who knowingly makes false claims against the Government shall be subject to a $2,000 civil penalty and double the amount of damages sustained.

One portion of the Act, referred to as the qui tam section, was designed to encourage individuals to come forward and bring suit on behalf of the Government against the perpetrators of the fraud. In return for bringing suit, the person received half of the civil penalty, half of the damages, and all court costs.

Nonetheless, few private actions under the False Claims Act were brought prior to the 1940's, and the Act remained unchanged until 1943. In 1943, the Supreme Court ruled in United States ex rel. Marcus v. Hess that a private person could sue under the Federal Claims Act on behalf of the U.S. Government, even though the action was based solely on information acquired from the Government. Following that decision, numerous "parasitic" law suits were filed based solely on information they obtained from court indictments, newspaper stories, and congressional investigations, without providing any new information. While the literal wording of the Act permitted this type of action, it was obviously not consistent with the intent of the Act.

In the same year, in reaction to these suits, Congress amended the statute. The amended Act provides that the court shall dismiss an action brought by a person on discovering the action was "based on evidence or information the Government had when the action was brought." The qui tam plaintiff's recovery was also changed. Instead of receiving one-half of the recovery, the plaintiff was entitled to up to 10% of the recovery if the Government intervened in the suit. If the Government did not intervene in the suit, the plaintiff was entitled to up to 25% of the recovery.

III. BENEFITS OF THE EXISTING FALSE CLAIMS ACT

The False Claims Act is the best tool available to private citizens for attacking an important problem plaguing the nation today -- namely the millions of taxpayer dollars that are paid out to private corporations based on fraudulent claims made on government contracts. The purpose behind the enactment of the False Claims Act in 1863 -- to encourage individuals to aid the Government in ferreting out fraud against the Government -- is even more critical today, where the federal government is spending billions of dollars on federal contracts with private corporations in areas such as defense, aerospace, and construction. All one has to do is read the headlines to know mischarging practices are prevalent in the industry. The Justice Department does not have unlimited resources and should benefit from the additional non-governmental resources brought to bear to develop and pursue instances of false claims submitted to the government. Moreover, the critical element -- knowledge of such practice -- is uniquely in the possession of people within the industries which have government contracts. The False Claim Act encourages those people to reveal such information.

The False Claims Act benefits everyone: The government, because it recovers twice the amount of damages sustained because of the false claim; the person bringing the suit, because he can receive a substantial monetary award for doing his patriotic duty of exposing fraud against the government; and taxpayers, because they see that their dollars are not being wasted or misspent and know the Act deters fraudulent practices perpetrated by companies doing business with the Government.

A False Claims suit brought by an individual puts the machinery of the courts in motion to determine whether false claims have occurred. Once the suit is filed, the government cannot ignore the charges for political or administrative reasons, including lack of resources or low priority.

IV. DISADVANTAGES OF THE EXISTING FALSE CLAIMS ACT

Despite its wide application, the existing Act is not utilized by potential plaintiffs because it is flawed both substantively and procedurally, creating problems for both individuals and the U.S. Attorney's Office. First, the individuals who have the information of fraudulent practices are very reluctant to risk their jobs and livelihood to expose fraud without a guarantee of adequate protection. There are many risks and personal sacrifices involved in filing a False Claims Act suit, or testifying in such a suit. These risks include, first and foremost, being fired by an employer, being harassed or threatened by employers or co-workers, and if fired, being blackballed from within the industry in which they work.

These fears have a basis in fact, for "whistleblowers" have historically not been treated well within our system. They have divulged their information and then lost their jobs. Even if they were able to bring suit against their employer for a retaliatory firing, the cases might take years to prosecute and are a big drain on personal resources, without any guarantee of success.

In order for the False Claims Act to be truly effective in encouraging individuals to expose fraudulent claims against the Government, the Act must contain both employment and personal safeguards for those persons filing the suits or testifying in such suits. Moreover, the Act must contain strong measures to deter and punish an employer who violates the Act and retaliates against an employee for fulfilling his patriotic and ethical duty.

Another problem with the False Claims Act as presently written is that some provisions create harsh and unreasonable obstacles for both the individual plaintiff and the Government. These provisions effectively defeat the objectives of the Act and create disincentives for an individual to file suit. These obstacles include the following:

-- the opportunity for an individual's suit to be dismissed if the Government already has the information upon which the suit is based, even if the information is not being acted upon or analyzed in any way. This provision is unclear and courts have interpreted it differently. For example, a suit could be dismissed if the information was in unanalyzed storage files of disconnected government agencies.

-- the chance that an individual who files a case can be completely cut out of the suit if the U.S. Attorney enters the case, leaving the individual unable to ensure the case's effective and speedy prosecution on its merits;

-- the chance that an individual plaintiff will receive a small percentage (or even no percentage) of the recovery, due to the completely discretionary nature of the award and the fact that the person must pay the attorneys' fees out of the recovery amount awarded;

There is also a need to amend the Act to provide the Government with more flexibility in a case. The existing Act provides that once the U.S. Attorney's Office decides not to enter the case, the case is completely prosecuted by the individual filing the suit. What if new material information is uncovered which was not known by the Government when making its decision not to enter the case?

The proposed amendments to the False Claims Act contained in S.1562 would remedy these unintended disincentives in the Act and fulfill the true purpose of the Act -- to encourage people with knowledge of false claims to step forward.

V. *EFFECT OF S.1562 AMENDMENTS*

(A) Protection of Plaintiff and Witnesses

The existing False Claims Act does not provide any protection whatsoever for the person bringing a lawsuit on behalf

of the Government. After filing a suit, such person might be immediately fired by his employer, threatened or harassed by supervisors or co-workers, and blackballed from the industry in which he works. Thus, most individuals would be very reluctant to risk their jobs, their livelihood, and their personal security to expose either through filing a lawsuit or providing testimony the fraudulent practices of their employer or former employer in a False Claims Act suit.

The proposed amendment is <u>essential</u> to help alleviate the fears of a potential plaintiff or witness in a False Claims Act suit, and is reasonable and just given the many risks the plaintiff assumes in stepping forward. The effect of the proposed amendment is twofold: first, it will encourage a person to do his patriotic duty and expose a false claim with reduced fear of being left stranded without a job or personal security; and second, it will allow punishment - and hence deterrence - of an employer who engages in retaliatory action against such person.

The new provision carefully details examples of possible job discrimination outside of employee discharge, including threats, demotions, suspension, and harassment. The examples are given to deter the situation where an employee isn't fired outright, but is treated in an inferior manner by his company. The amendment also protects witnesses and those assisting in a False Claims Act investigation or lawsuit who might otherwise be afraid to testify on behalf of the prosecution.

The phrase "discriminated against... in whole or in part..." is included because an employer might offer another reason why the employee was fired, when in fact, the initiation or participation in a False Claims Act suit was an element in the employee's discharge.

The relief portion is designed to make the person whole again, whether that includes restitution with full seniority

rights, back pay with interest, or compensation for any special damages sustained as a result of the discrimination.

To resolve the problem of a potential plaintiff being unable to bring a suit because of prohibitive attorneys' fees, the provision provides litigation costs and reasonable attorneys' fees as part of the plaintiff's recovery.

The provision also provides stiff penalties against employers found guilty of retaliatory action. An employer is liable to the employee for twice the amount of back pay and special damages, and if warranted, is liable for punitive damages.

This new provision would go far in ending the "conspiracy of silence" which often surrounds a company and intimidates its employees into compromising their ethical standards.

(B) Government "Acting" on Information

The purpose behind the existing Section -- 3730 (4) was to eliminate the former practice of "parasitic" law suits. Back in the early 1940s, private individuals were filing False Claims suits based on information they obtained from court indictments and congressional investigations without providing any new information. In 1943, the section was amended to prevent this abuse by allowing the court to dismiss an action brought by a person on discovering the action was "based on evidence or information the Government had when the action was brought."

The serious problem with the existing language is that it places no responsibility on the Government to have developed the information or evidence in any way before the private citizen's suit is completely precluded. The evidence can just exist in a government file or within several disconnected government agencies without any analyses or connection being made for the suit to be dismissed.

The proposed amendment strikes a balance between closing the loopholes which lead to "parasitic" lawsuits and more reasonably and clearly defining what information or evidence is sufficient to warrant a case's dismissal by the court.

Under the proposed language, if a person bases a lawsuit on information or evidence that the Government has already disclosed in a prior administrative, civil, or criminal proceeding, the person's suit is to be dismissed. Moreover, if a person bases the lawsuit on specific information disseminated by any news media or disclosed during the course of a congressional investigation, the person's suit is to be dismissed. In this way, a person is foreclosed from merely "piggybacking" their lawsuit on to a prior or existing investigation into the facts alleged.

On the other hand, the U.S. Attorney's office would not be granted unlimited time to investigate the evidence or information disclosed. If the Government has not initiated a civil action within six months of becoming aware of such evidence, the court shall not dismiss the action brought by the person. If, however, the Government has been diligently pursuing the information but still has not had sufficient time to investigate the facts and bring a lawsuit, the Government can be granted additional time by the Court upon a showing of good cause. This time limit assures the person who carried the burden of initiating the action that if the lawsuit has merit, it will proceed, despite the Government's reluctance to act on its information for whatever reasons.

(C) Active Involvement of Plaintiff

The existing language of the Act (Section 3730 (3) and (4)) present a harsh, ineffective and self-defeating "all or nothing" proposition both for the person bringing the action and for the Government. If the Government proceeds with the action within the designated time limits, then according to existing

Section (3), the action is conducted only by the Government. Thus, the person who often faces substantial hardships and considerable personal risk in bringing the action is forced out of the suit entirely, unable to have any role to ensure that the case will be vigorously prosecuted.

The proposed language in Section (3) would allow the person who brought the action to continue in the action as a full party on the person's own behalf, even if the Government proceeds with the action. The government would have primary responsibility for prosecuting the case but the person would continue to have a direct stake in the outcome, ensuring that once the Government takes over in the case, the Government doesn't "sit" on the evidence, drag out the case, or let it drop for administrative or political reasons.

Since the person bringing the case often has risked their job and livelihood, if not his or her safety, in order to expose the fraud, it is only fair as a matter of public policy to allow the person to continue as a party to see that the case proceeds forward on its merits. Moreover, this furthers the primary purpose of the False Claims Act - to encourage private parties to expose fraud that they are otherwise discouraged from exposing. The Government, however, will not be bound by an act of the person bringing the action and will still be in the position of controlling the litigation.

(D) Guarantees of Monetary Awards

These provisions deal with the amount of recovery a person may receive for bringing a civil action under Section 3730. The amounts a court currently may award are quite undefined and discretionary.

In the existing Act, if the Government proceeds with the action, the person may receive "no more than 10 percent of the proceeds of the action or settling of a claim," if the Government does not proceed with an action, the person bringing

the action or settling the claim may receive no more than 25 percent of the proceeds of the action or settlement.

The problem with such an undefined and discretionary amount is that it discourages people from bringing a false claims action because there is no guarantee that they will be awarded anything even if there is a substantial recovery. There are many risks involved in bringing such an action. First, a person must find the courage and the confidence to step forward and personally testify to the fraudulent practices of his employer, for example. This can immediately lead to being fired from the job, being blackballed from the industry, and being harassed and threatened by employers and co-workers.

In addition, court cases generally take a long time to try and are fraught with continuances and delay tactics on the part of the defendant. The person bringing the case will be forced to spend a tremendous amount of time on the case, and assuming he is fired, must find alternate sources of income to support a family and/or himself. Thus, the case becomes a substantial investment of time, money, energy, and emotion.

If a possible plaintiff reads the present statute and understands that in a successful case the court may arbitrarily decide to award only a tiny fraction of the proceeds (or nothing at all) of the action or settlement to the person bringing the action, the person may decide it is too risky to lose a job over a totally unpredictable recovery.

The proposed amendments take into account the risks and sacrifices of the plaintiff and offer minimum monetary incentives to induce individuals to step forward and expose fraudulent practices. If the Government proceeds with the action within 60 days of being notified, the person bringing the action shall receive between ten and twenty percent of the proceeds of the action or settlement of a claim, based on having brought the important information or evidence to the Government's attention.

The aetting of such a range ia sensible and can be looked upon as a "finders fee" which the person bringing the case should receive as of right. The Government will still be more than made whole receiving between 80 and 90 percent of the proceeds based on double damages -- substantially more than the zero percent it would have received had the person not brought the evidence of fraud to its attention.

Additionally, if the person bringing the action substantially contributes to the prosecution of the action, the person shall receive at least 20 percent of the proceeda of the action or settlement. This award can be looked upon as a "performance fee" baaed on contributions made in the litigation itself. The more substantial award encouragea the person to contribute and participate in the suit through his lawyers in a poaitive, conatructive way and to keep the preasure on the Government to effectively try the case.

Where the Government does not proceed with an action within 60 days of being notified, the person bringing the action or settling the claim shall receive an amount not less than 25 percent and no more than 30 percent of the proceeds of the action or settlement. In this case, the person is principally reaponaible for the lawsuit and should be well compenaated based on having the primary role of prosecuting the case.

Another important change made in the existing provisions involves attorneys' fees awards. If the Government does not proceed with an action, under the exiating Act, the person bringing the action may receive "reasonable expenses the court finds to have been necesaarily incurred." No expreas reference is mada, however, to attorneys' fees.

Aasuming the case involves a defendant with subatantial resources, the litigation will be hard fought, with the plaintiff facing a phalanx of well financed dafandant'a lawyers with motions, discovery disputes and continuancas. In a case involving a $200,000 claim, for example, the attorneys' bills

alone (based on hours spent) in a case such as this could easily reach $100,000 or more. Since under the existing provisions, attorneys' fees are to be paid out of a person's recovery, it works as a disincentive for persons to bring a suit involving smaller cases of fraud, i.e., cases of 1/2 million or less. In almost all cases a plaintiff will have to offer the lawyer a percentage of the recovery available to the plaintiff. If there is a formidable array of lawyers on the other side, the plaintiffs' attorney could be required to spend enormous amounts of time for a relatively small financial reward. This would discourage attorneys from agreeing to take the case even though there may be strong evidence of fraud. Thus, reasonable attorney's fees, as defined by the courts, should be paid separately by the guilty defendant and is a fair apportionment of the cost incurred in disgourging the illegally obtained money. Under existing court procedures, these fees would be based on hours reasonably spent times a reasonable hourly rate.

In the proposed amendments, a person who contributes to the prosecution of the action along with the Government, or who prosecutes the action alone, may receive an amount for reasonable attorneys' fees and costs awarded against the defendant.

These proposed monetary awards will serve two main purposes: to provide a person with the incentive to bring a false claims case against a powerful defendant with substantial resources, and to adequately compensate the person for all the resources expended during the course of prosecuting the case.

(E) Government's Ability to Re-Enter the Case

The existing provision of Section 3730 (2) (A) also works an extremely unreasonable hardship on the government, for it bars the government from entering the case if it does not enter by the end of the 60-day period. What if new material evidence comes to light after that period which would have altered the government's initial decision not to enter the case?

The most reasonable solution is to allow the government in such a case to enter so it can bring its considerable resources to bear on the case. This is especially true in a complex case with a great deal at stake, where the resources of the defendant are tremendous and the person initiating the action on behalf of the government is almost inevitably put at a great disadvantage. It is thus in the interest of justice to ensure that the government may enter the case when it knows of new material evidence which will expose the fraud and substantiate the claims filed.

The proposed amendment solves this problem because the government now has a chance to enter in the case at a later date even if it did not proceed with the action within the 60-day period after being notified, if it can show the court that it now has new material evidence or information it did not have within the 60-day period after notice. The limitation as to situations where the government has "new" material evidence is to assure that the 60-day limit for the government's initial decision whether to enter the case is meaningful.

While allowing the government to enter so that it can play a significant role in the case, the language also ensures that the person who bore the burden of initiating the case and developing it into a strong one is not just pushed aside. The status and rights of the person are retained and protected so that the person remains a formal party to the action.

V. CONCLUSION

Adoption of S.1562 will make available a new and significant tool to combat a serious problem facing the nation today -- fraud against the government. It offers this potential without any additional costs or additional government personnel and does not create any new government enforcement bureaucracy. It will be self-executing and self-enforcing, calling upon its own citizens to join in the fight to protect the public fisc. And, it will provide a powerful disincentive to government contractors who have in the past forced their employees to either witness or participate in fraudulent and illegal schemes designed to overcharge the government. The only losers from this amendment will be those who cheat the government.

Senator GRASSLEY. Thank you very much.

I do have questions.

First of all, let me highlight again your leadership in this area. Your research has been very helpful. Particularly, you have come forth with changes in the legislation, which really is, in my judgment, going to change some of the institutional things within DOJ, which keeps prosecution from being carried out to the ultimate.

In DOJ's testimony, you heard that the qui tam provision was more useful at a time when the Government was lacking in law enforcement resources, unlike today, when tbe Government employs many thousands of Government investigators.

You also heard Mr. Stephens' assessment of how necessary or unnecessary the Department views these private citizens' suits.

What is your assessment of the need for a workable qui tam provision, in light of the Government's expansive resources today in 1985?

Mr. PHILLIPS. It is needed. The Government can use all the help it can get. It is not fair to assume we are adding a new cadre of lawyers who are going to be doing the Justice Department's job.

What this law will do, is create inducements and encouragement to the very people seeing the fraud going on day in and day out in these defense establishments. It will help the Justice Department ferret out the information.

Right now the people will not come forward, because they will lose their jobs. Obviously, people willing to bring that information directly to the attention of the Government, and the courts will see to it that more of this fraud is exposed. So I do not see what possible outside risk there would be to the Justice Department enlisting all these people out there who want to do the right thing, and having them come forward.

I disagree that this would in any way interfere with the Justice Department's capacity to go forward, and it unquestionably would augment them.

Senator GRASSLEY. As you know, S. 1562 could allow a private citizen to bring a false claims suit made public at least 6 months before the claim, before the Government showed good cause why it had. This is, in a way, a Department of Justice accountability session. DOJ calls this provision, in their words, difficult, and complains it would force it to be aware of all allegations of fraud when they become public knowledge.

I am having a difficult time figuring out what the problem is with forcing the Justice Department to become more aware of fraud allegations.

Do you see any possible difficulties in this area?

Mr. PHILLIPS. No, Mr. Chairman, I do not. I think the Justice Department would just like to be able to move the case at its own pace, without any effort being exerted upon them. That is precisely the value of this section. It keeps the pressure on. It says once fraud is disclosed to a court, it will move to a logical conclusion, to find out who is responsible for the fraud.

If you have a willing plaintiff, like Mr. Gravitt, to go forward and root out the fraud, and place the responsibility as to who is doing this within the company, unless that type of discovery is allowed to go forward and not stopped merely because the Govern-

ment has entered his case, we will see these cases languish. That is what has happened in the past.

Yes, it is an accountability procedure for the Justice Department, and I think it is appropriate that it be placed there.

Senator GRASSLEY. I guess, based on what you just said, I ought to ask what the real effects on the Department of Justice would be if this provision were in effect. I think your answer would be it would speed up some of their actions.

Mr. PHILLIPS. I certainly think it would. I think they should see this as a partnersbip, as an opportunity to work with many witnesses out there who are experiencing this fraud daily, and they should not see it somehow as a threat to their own prosecutorial activity.

I understand their reluctance to change the stetus quo. They like to run their own shop. They do not like anyone telling them they are not doing it fast enough, but the status quo needs to be changed. The evidence speaks for itself.

Senator GRASSLEY. It is a kind of us versus them attitude, but you are really saying that with stronger provisions of qui tam, it can be a partnership, with everybody trying to help get fraud under control?

Mr. PHILLIPS. Absolutely. It should be the duty of every citizen, and it should be the responsibility of the Government agency to support those citizens who choose to do so.

Senator GRASSLEY. Can I ask you to comment on DOJ's proposal as they presented it today?

Mr. PHILLIPS. One provision deserves comment, and that is the role of the qui tam plaintiff once it is filed. If the Justice Department makes an appearance in the case, that person who filed the case and has a great deal at stake is completely shunted to the sidelines, and has no formal role. Your provisions would give tbat person who has risked so much to step forward, an opportunity to participate in that litigation, to keep the movement going forward.

The Justice Department has objected to that, as I understand their testimony, and would like, as an alternative, to merely require that the person be kept informed of developments. That is nothing. That is the status of amicus curiae. You have no rights, and no opportunities to participate.

I think a better proposal would be to allow the person to actively participate. The person bringing the action is not trying to take the case away from the Government. It is the Government's responsibility to pursue, and as long as they pursue it, they are doing the right thing.

I think a better proposal would be to enable a person to go forward, take depositions, have interrogatories answered, as the attorney for Mr. Gravitt presented to General Electric, not allow it to remain on the shelf.

I think a better procedure would be to allow the discovery activity by the plaintiff to go forward unless it interferes in a demonstrable way with the Department of Justice's prosecution of the case. If discovery is going to interfere with the case, and they can demonstrate how it could interfere, then such discovery should not go forward. That is a fair way to present it to a judge.

No one is trying to oust the Government in this role, but we want to be sure the Government performs its obligations.

Senator GRASSLEY. I apologize for having to cut my questioning short. I also want to say you have contributed, both through your statement, and the answers, to a very good record.

We would still like four or five other questions to be submitted to you in writing.

Thank you.

I would apologize to our last witness, as well, for taking so much time in this hearing, but I think everybody realizes how important it is.

Our last witness is D. Wayne Silby. He is chairman of the Calvert Fund. He is speaking on behalf of the Business Executives for National Security, Inc.

I thank you for being here, Mr. Silby, and even though I know your colleague, I would ask that you introduce him for the record.

STATEMENT OF D. WAYNE SILBY, CHAIRMAN, THE CALVERT FUND, ON BEHALF OF THE BUSINESS EXECUTIVES FOR NATIONAL SECURITY, INC., ACCOMPANIED BY MIKE BURNS, DIRECTOR OF LEGISLATIVE LIAISON FOR BENS

Mr. SILBY. With me is Mike Burns, director of legislative liaison for BENS.

As the Senator just remarked, BENS is a national, nonpartisan trade association of 3,500 business executives and entrepreneurs favoring a strong, effective, affordable defense.

BENS lobbies Congress to adapt some of the lessons of successful businesses to our defense planning and spending. Among the issues we have worked on are increased competition in military procurement, independent testing, and evaluation of military equipment, and improved budgeting practices at DOD.

At the outset, I would like to stress that we are not lawyers, we are business executives. I think most of the discussions here today have been on legal aspects of the legislation. That is important. It is not our particular expertise.

We would like to offer, in brief, general terms, a business perspective on the issues the committee is weighing.

First, let me explain how we look at national security issues. BENS places the issues it lobbies on in three categories.

Integrity issues, quality assurance issues, and economical use of resources issues.

Integrity issues come first, because they are the most important. It is axiomatic that one cannot succeed in business while bearing the burden of a reputation for lack of integrity. Dishonest business practices poison commercial relationships, corrode morale in the affected businesses, and usually destroy the offending businesses.

Worse, such practices exact a terrible toll throughout the entire business community by tainting honest businesses with public perceptions of widespread business dishonesty.

Where the defense industry is concerned, dishonest practices have another major consequence: they deeply erode the consensus for necessary expenditures to support a strong, effective national defense.

The legislation being consider today is supportive of improved integrity in military contracting. The bill adds no new layers of bureaucracy, new regulations, or new Federal police powers. Instead, the bill takes the sensible approach of increasing the penalties for wrongdoing, and rewarding those private individuals who take significant personal risks to bring such wrongdoing to light.

This is a legislative approach that has been used before—having been developed during the Civil War—and has worked well. It permits the Government to enter into an investigation, or lawsuit, but does not force the Government's hand. It holds the promise of saving the taxpayers' billions of dollars, and imposing a new self-regulating discipline on wrongdoers in the defense industry.

Thus, the bill's real payoff may come in the form of a stronger and more affordable national defense.

I would ask that the balance of my remarks be placed in the record.

[Statement follows:]

PREPARED STATEMENT OF D. WAYNE SILBY

Mr. Chairman, members of the subcommittee, thank you for asking Business Executives for National Security, Inc. (BENS) to present its views on S. 1562, amendments to the False Claims Act, also known as the Lincoln Law. I am Wayne Silby, Chairman of the Calvert Fund, a group of mutual funds based here in the Washington area. With me is Mike Burns, director of legislative liaison for BENS. Business Executives for National Security, Inc. (BENS) is a national, nonpartisan trade association of 3,500 business executives and entrepreneurs favoring a strong, effective, affordable defense. BENS lobbies Congress to adapt some of the lessons of successful businesses to our defense planning and spending. Among the issues we have worked on behalf of are increased competition in military procurement, independent testing and evaluation of military equipment, and improved budgeting practices at DoD. At the outset, I would like to stress that we are not lawyers; we are business executives. By now you have had an ample discussion of the legal subtleties of the legislation. It is important that such matters be discussed, but that is not our particular expertise. Today we would like to offer, in general terms, a business perspective on the issues the subcommittee is weighing.

First, let me explain how we look at national security issues. BENS places the issues it lobbies on in three categories: integrity issues, quality assurance issues, and economical use of resources issues.

Integrity issues come first because they are the most important. It is axiomatic that one cannot succeed in business while bearing the burden of a reputation for lack of integrity. Dishonest business practices poison commercial relationships, corrode morale in the effected businesses, and usually destroy the offending businesses. Worse, such practices exact a terrible toll throughout the entire business community by tainting honest businesses with public perceptions of widespread business dishonesty. Where the defense industry is concerned, dishonest practices have another major consequence: they deeply erode the consensus for necessary expenditures to support a strong, effective national defense.

In recent years, the sense of a major critical integrity problem in defense contracting has grown. Many of the nation's top ten defense

contractors are under criminal investigation, as are 45 of the top 100. (For the subcommittee's convenience, I have attached to my testimony a list of these companies and the charges against them.) Something is clearly wrong with the incentives and disincentives in this industry. Part of the problem is the whole "central planning" economic approach at the Defense Department. Too many contracts and contract dollars are going out non-competitively, through an "old-boy network", and that breeds corruption. More competition would help a lot. But another part of the problem is a lack of fully effective sanctions against corrupt practices.

In promoting integrity as an important "basket" for national security issues, we have backed select legislative initiatives which we believe will effectively encourage honest business practices in defense contracting without at the same time causing undue governmental interference with the day-to-day operations of vast majority of businesses, which is to say honest businesses.

For example, we have backed the so-called "Revolving Door" legislation, which would establish a new condition of employment at DoD that personnel with significant defense contract responsibilities may not become employed by firms they have supervised for a set period of time. We believe that the appearance and reality of honest relations between DoD and the defense industry outweighs the minor inconvenience the legislation may cause to a handful of individuals.

The legislation before the subcommittee today is also beneficial. S.1562 avoids the kind of pitfalls that would make such legislation impossible for business to support. The bill adds no new layers of bureaucracy, new regulations, or new federal police powers. Instead, the bill takes the sensible approach of increasing the penalties for wrongdoing and rewarding those private individuals who take significant personal risks to bring such wrongdoing to light. It is a legislative approach that has been used before - having been developed during the Civil War - and has worked well. It permits the government to enter into an investigation or lawsuit, but does not force the government's hand. It holds the promise of saving the taxpayers billions of dollars and imposing a new self-regulating discipline on wrongdoers in the defense industry. Thus, the bill's real payoff may come in the form of a stronger, but more affordable, national defense.

Our one reservation concerning the bill lies in the area of potential harrassment suits by a company's former employees.

We are persuaded that the expense of litigating such a case would deter most, and perhaps nearly all, frivolous or harassing lawsuits. Nevertheless, we would urge the subcommittee to buttress this protection by adding report language that urges judges to warn attorneys against bringing frivolous or harassing suits to trial under the Act. We would also recommend the inclusion of report language suggesting that any suit brought by a former employee of a company be promptly and carefully scrutinized by the courts for evidence of harassment.

I would conclude by noting again that we are a business organization, not a legal organization. No doubt today's testimony, and subsequent testimony will bring on further refinements in the language of S.1562 that would improve th bill. We would be happy to continue working with the subcommittee as the legislation moves forward.

Keeping in mind the suggestions regarding report language that I mentioned earlier, we are happy to support these amendments to the Lincoln law. We urge prompt passage of the legislation.

Defense Contractors Under Investigation

The following defense contractors were under criminal investigation by the Inspector General of the Defense Department as of May 1, according to a list made public by Rep. John D. Dingell (D-Mich.), Chairman of the House Energy and Commerce oversight and Investigations subcommittee.

Contractor	Allegation
Allied Corp.	Conflict of interest
Avco Corp.	Subcontractor kickbacks Cost mischarging
Boeing Co., Inc.	Cost mischarging Supply accountability Labor mischarging
Congoleum Corp.	Mischarging Gratuities/theft
Dynalectron Corp.	Cost mischarging
Eaton Corp.	Conflict of interest-gratuities Cost mischarging
Emerson Electric Co.	Cost mischarging Gratuities-cost mischarging
Fairchild Industries, Inc.	Gratuities Product substitution Cost mischarging False statements
Ford Motor Co.	Defective pricing-labor mischarging Falsification of performance records
General Dynamics Corp.	Cost mischarging Subcontractor kickbacks Labor mischarging Product substitution Security compromise Defective pricing Cost duplication False claims
General Electric Co.	False claims Defective pricing Labor cost mischarging Product substitution
Gould, Inc.	Cost mischarging
Grumman Corp.	Cost mischarging
GTE Corp.	Unauthorized acquisition and utilization of classified data
Harris Corp.	Defective pricing
Honeywell, Inc.	Diversion of government property Bid rigging
Johns Hopkins University	Civilian health and medical program of the uniformed services fraud
Lear Siegler, Inc.	Product substitution
Litton Industries, Inc.	Bribery-subcontractor kickb[illegible] [illegible] mischarging False claims Bid rigging Cost mischarging
Lockheed Corp.	Labor mischarging
Martin Marietta Corp.	Subcontractor kickbacks Cost mischarging
McDonnell Douglas Corp.	Cost mischarging
Motorola, Inc.	Labor mischarging
Northrop Corp.	Labor mischarging False progress payments
Raytheon Co.	Labor mischarging Product substitution
Rockwell International Corp.	Cost and labor mischarging
Sanders Associates, Inc.	Unauthorized release of contract information
Sperry Corp.	Labor mischarging Cost mischarging Defective pricing
Tenneco, Inc.	Cost mischarging
Texas Instruments	Product substitution
Textron, Inc.	Cost mischarging
Todd Shipyard Corp.	Noncompliance with contract
Tracor, Inc.	Product substitution
TRW, Inc.	Defective pricing Cost mischarging
United Technologies Corp.	Gratuities Subcontractor kickback Cost mischarging Bribery Defective pricing
Westinghouse Electric Corp.	Cost mischarging

Mr. SILBY. In summary, I think the bill encourages integrity in the marketplace, without increasing the bureaucratic burden, and provides an enforcement function using market incentives. It will eventually contribute to the popular perception of national security business as being above board. Thank you.

Senator GRASSLEY. Thank you very much. I want to thank you as a member of the organization. I had an opportunity to thank many of your people here, who work in Washington. We appreciate the many areas that you have worked on with us such as changing the status quo within the defense procedures as well as within the budget. It has been very useful having people out there in the business world, who know what it is to have to show a profit to stay in business.

Mr. SILBY. Senator, we business executives are very busy. When I think about doing some public interest work, though, the whole issue of military spending is one thing important to me, above everything else.

Being in the investment business and managing a couple of billion dollars, I must say my own self interest is to want good investment opportunity to exist. The kind of spending the military sector is doing today creates economic problems.

Senator GRASSLEY. I have just one more question, and I will ask you to respond to writing to other questions.

You heard testimony from earlier witnesses that one comes away from the Department of Justice with the impression that justice is not being administered justly because the Department of Justice has no incentive to do so. In fact, there may be some insensitivity in doing so.

Since you are a businessman, and you must certainly know how to use and manipulate incentives, would you provide us some insight as to how a favorable system of incentives can be brought to bear on the Justice Department?

Mr. SILBY. Looking at it from the Justice Department's point of view, obviously, they would like to run their own shop. Like them, we business people like to run our own shops, but we are part of a larger world and we need to respond to external actions. We need to be responsive, and sometimes we need help in a broader context through regulation, through regulatory groups to conform some of our practices to those which are in the larger public interest.

Yes, Government incentives and disincentives may make some problems for us. We never favored Government regulation in business. At the same time, I think the incentives you are looking about will help bring about a partnership under regulation. I think the overall result is really what we want to focus on, and those results can only be positive.

Senator GRASSLEY. Mr. Burns, would you have anything you would like to add?

Mr. BURNS. Yes; I would like to observe that businesses just love to have monopolies. The only people who do not want a monopoly are the people outside looking in. But monopolies are very dangerous things, and we restrict them legally.

With this legislation, what we would be doing in a very subtle and succinct way is removing the monopoly the Department of Justice has in these kinds of cases. It will provide an ingredient that

we all enjoy the benefits of which is competition. It most certainly will be useful in the production of justice.

Senator GRASSLEY. Thank you very much.

As I indicated to you, we have several questions we would like you to respond to in writing. That is because of the time. I want to apologize.

Mr. BURNS. No apology is necessary.

Senator GRASSLEY. Particularly since you were so patient in waiting on the last panel.

I notice that none of the witnesses from the Justice Department are still here. In fact, the witnesses left right afterwards. If there are people still here from Justice, hopefully they will take a message back that all of this testimony, I think, indicates that the Department of Justice could use some help, and that things are not quite the way their witnesses suggested that they are. Something more dramatic needs to be done than what is being suggested by the Justice Department in their testimony or public consumption at yesterday's news conference.

Mr. Stephens, who testified for the Department of Justice, is an Iowan. His father served with me in the legislature so I know from whence he comes, and he knows that Iowans are generally open people.

I would like to say in the fashion that we Iowans do business, that Justice Department premises its position and activity on an erroneous assumption that the current status of law enforcement handled by just the Government is adequate and that justice is adequately taking care of the fraud problems. I think if they had stayed here, they would see that there are problems that they need help with.

However, a preponderance of today's testimony not only could contradict DOJ's assumptions but also suggest that the Justice Department is removed from what is occurring out there in the real world.

While conscientious citizens around the world are fighting for their lives, our Department of Justice is up here on Capitol Hill telling the public and Congress that everything is just hunky-dory. In fact, the only people who think that the Justice Department is doing a good job are those people right there in the Justice Department. The rest of the world rightly perceives their activities as a comedy of errors.

It is understandable then that the Department of Justice's response during yesterday's news conference about the legislation failed to adequately address real problems out there in the real world and, of course, that figures because an erroneous premise will always yield an erroneous response.

The status of the current law is not the real problem nor is fixing it the real cure. The real problem is Justice Department's failure to find out what is happening beyond its own walls thereby being unable to respond to the current fraud theme. Any real cure must begin with much reflection and much more humility than Government institutions generally exhibit.

It is undeniable that institutions such as the Department of Justice, even the Congress of the United States and, of course, the Defense Department are often guided by interests that are at odds

with the interests of the taxpaying public. In such an environment, the justice is administered selectively.

The primary means for doing so is called prosecutorial discretion. At times, the only effective counter to such a well-entrenched interest is the collective exercising by the Nation's citizens of their conscience and their judicial rights. Private citizen involvement in uncovering fraud against Government would render prosecutorial discretion to be much more accountable and would be a desirable discipline on the enforcement process.

The public is demanding sufficient Government action against fraud, and it will tolerate nothing less. It is perhaps advisable for the Justice Department to do a bit of soul searching and return to the drawing board for a more appropriate and deserving response to what we have demonstrated is happening in Cincinnati, OH.

In the meantime, the Congress intends to move ahead with much needed reform so that the thousands of frustrated litigants fighting the system will have some degree of hope to continue pursuing true justice.

The meeting is adjourned.

[Whereupon, at 12:40 p.m., the committee adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF SENATOR HOWELL HEFLIN
S. 1562, THE FALSE CLAIMS REFORM ACT OF 1985
SEPTEMBER 17, 1985

MR. CHAIRMAN:

I COMMEND YOU FOR YOUR FINE RECORD OF ACTION IN BRINGING TO THE CONGRESS' AND THE NATION'S ATTENTION THE INEXCUSABLE WASTE OF TAXPAYER DOLLARS THROUGH FRAUD AND ABUSE IN THE DEFENSE DEPARTMENT AND OTHER AGENCIES. TODAY THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE CONSIDERS LEGISLATION TO PUT TEETH INTO THE LAWS PROHIBITING PRIVATE COMPANIES FROM SUBMITTING FALSE AND EXAGGERATED CLAIMS TO THE GOVERNMENT FOR SERVICES RENDERED, OR NOT RENDERED, AS THE CASE MAY BE.

A GREAT MANY CONTRACTORS, IN RECENT MONTHS, HAVE BEEN EXPOSED AS CHEATING OUR TAXPAYERS. WE NEED TO SHOW THESE COMPANIES THAT THE UNITED STATES CONGRESS IS NOT WILLING TO ALLOW THESE CONTRACTORS A MOMENTARY SCARE AND THEN TO GO BACK TO BUSINESS AS USUAL. IT IS CONGRESS' RESPONSIBILITY TO ENSURE THAT THOSE ENTRUSTED WITH BRINGING THE ABUSERS OF OUR AMERICAN SYSTEM TO JUSTICE HAVE A STIFF SET OF PENALTIES ON THE BOOKS TO BACK THEM UP. THE ENORMOUS PROFITS OF TODAY REQUIRE PENALTIES THAT WILL MAKE THESE PROFITEERS THINK TWICE BEFORE CHEATING THE AMERICAN TAXPAYER BY CHARGING HIM WITH A CORPORATE EXECUTIVE'S DOG BOARDING EXPENSES OR THE PRICE OF A KING-SIZE BED. THESE AND OTHER ABSURD CLAIMS SHOULD BE SEVERELY AND SWIFTLY PUNISHED.

THE LEGISLATION NOW ON THE BOOKS TO PUNISH FRAUDULENT CLAIMS DATES BACK TO 1863, WHEN ABRAHAM LINCOLN BECAME CONCERNED ABOUT THE DANGER OF GOVERNMENT CONTRACTOR PROFITEERING DURING THE CIVIL WAR. THE HORROR STORIES FROM THAT ERA HAVE A FAMILIAR RING TO THEM, SUCH AS RESELLING HORSES TO THE CAVALRY TWO AND THREE TIMES AND SELLING BOXES OF SAWDUST TO THE MILITARY INSTEAD OF MUSKETS.

THE FALSE CLAIMS ACT WAS ORIGINALLY ENACTED TO ENCOURAGE INDIVIDUALS TO REPORT GOVERNMENT FRAUD, AND IS NEEDED JUST AS DESPERATELY IN 1985, WHEN HUNDREDS OF BILLIONS OF DOLLARS ARE SPENT ON WEAPONRY AND CONSTRUCTION NOT DREAMED OF IN 1863.

SENATOR GRASSLEY'S AMENDMENT TO THE FALSE CLAIMS ACT WILL ENHANCE ENFORCEMENT IN SEVERAL WAYS. THE CIVIL FORFEITURE AMOUNT WOULD BE RAISED FROM THE ORIGINAL 1863 AMOUNT OF $2,000 TO $10,000. DAMAGES PAYABLE TO THE GOVERNMENT WOULD BE INCREASED FROM DOUBLE TO TREBLE, AND CRIMINAL PENALTIES WOULD BE RAISED TO $1 MILLION, AMONG OTHER PROVISIONS.

I UNDERSTAND THAT THE REAGAN ADMINISTRATION HAS ALSO PROPOSED A PLAN TO COMBAT CONTRACTOR FRAUD WITH SOME OF THE SAME PROVISIONS AS THE BILL THE SUBCOMMITTEE IS CONSIDERING TODAY.

I LOOK FORWARD TO REVIEWING THE MERITS OF BOTH OF THESE BILLS AS WE CONTINUE OUR WAR ON WASTE, FRAUD AND ABUSE IN THE GOVERNMENT.

THANK YOU, MR. CHAIRMAN.

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