Judicial remedies are available to penalize and deter such fraudulent behavior. For small-dollar cases, however, the cost of litigation often exceeds the amount recovered, thus making it economically impractical for the Justice Department to go to court. The government is consequently left without an adequate remedy for many small-dollar cases.

In one case, for example, the Defense Department discovered that a contractor who operated a parts store on ten different military bases was illegally inflating parts prices. While the total alleged fraud amounted to over $50,000, no single base was defrauded for more than $6,000. Each of the cases was presented to a separate U.S. Attorney, but was declined at each office because the dollar value was too low.

Unfortunately, this case is not an isolated example. A 1981 General Accounting Office report, "Fraud in Government Programs: How Extensive Is It? How Can It Be Controlled?," reviewed more than 77,000 fraud cases committed against the government during a three-year pariod and found that, of those cases referred to the Justice Department, less than 40 per cent were prosecuted.

The consequence, according to the Justice Department, is that the federal government loses "tens, if not hundreds, of millions of dollars" to fraud each year. Beyond the actual monetary loss, fraud in federal programs also erodes public confidence in the

administration of these programs by allowing ineligible persons to benefit from them.

S. 1134, the Program Fraud Civil Remedies Act, which we introduced along with Senators Nunn, Chiles, Gore, Grassley, and Boren, would provide agencies with an administrative remedy for false claim and statement cases under $100,000 which the Justice Department has declined to litigate. S. 1134 was recently reported from the Governmental Affairs Committee report with only one dissenting vote, and is strongly supported by the General Accounting Office, the Justice Department, the Inspectors General, the Administrative Conference of the United States, and the Federal Bar Association.

We believe it is important to emphasize, Mr. Chairman, that S. 1134 would not create a new category of offenses. Rather, it simply provides an administrative alternative, petterned largely after the civil False Claims Act, that would capture only that conduct already prohibited by federal civil and criminal laws.

The benefits of establishing an administrative proceeding for adjudicating small-dollar false claim and statement cases, as provided in S. 1134, are numerous. First, it would allow the government to recover money that, up until now, has been irretrievably lost to fraud. Second, it would provide a more expeditious and less expensive procedure to recoup losses,

compared with the extensive investments of time and resources required to litigate in federal court. Finally, such an administrative remedy would serve as a deterrent against future fraud by dispelling the perception that small-dollar frauds against the government may be committed with impunity.

An additional benefit is that we know such a remedy can work. Under the Civil Monetary Penalties Law (CMPL), the Department of Health and Human Services is authorized to impose penalties and assessments administratively against health-care providers who knowingly or with reason to know submit false claims for services. Since implementation of the CMPL, HHS has been able to recover over $15 million resulting from 117 settlements and litigated cases.

Before we discuss the major issues that were considered during our Committee's deliberations on S. 1134, we would like to provide a brief description of how the bill would work.

Under S. 1134, a typical case would begin with an investigation conducted by the agency's investigating official, usually the Inspector General. The IG's findings would be transmitted to the agency's reviewing official -- an individual separate from the IG's office -- who would independently evaluate the allegations to determine whether or not there is adequate

evidence to believe that a false claim or statement has been submitted.

If so, the matter would be referred to the Justice Department for consideration. This procedure ensures that the Department will have an opportunity to review the charges and elect, if it so chooses, to litigate in federal court. If the Department declines litigation and does not veto administrative action, the agency may commence administrative proceedings against the person alleged to be liable. The reviewing official would notify the person of the charges and of his or her right to a hearing.

An Administrative Law Judge -- an independent, trained hearing examiner -- would conduct the hearing to determine whether or not the person is liable and the amount of penalty and assessment, if any, to be imposed. The hearing itself would be conducted pursuant to the due process safeguards of the Administrative Procedure Act, which entitles the person to a written notice of the allegations, the right to be represented by counsel, and the right to present evidence on his or her own behalf. The bill even goes beyond these APA protections by granting the person limited discovery rights.

Throughout the consideration of this legislation, we have consulted with the Justice Depertment, the Inspectors General, the American Bar Association Public Contract Law Section, defense

industry associations, federal employees' organizations, and other interested individuals and groups. We carefully considered the comments provided by these organizations and individuals and incorporated many of their recommendations into S. 1134 as reported by the Governmental Affairs Committee. While the Committee considered a wide range of issues, we thought it might be helpful to focus our testimony on the two issues that consumed much of the debate.

Probably the most important issue considered is the knowledge standard required for establishing liability. Under S. 1134, the government would not only have to prove that a claim is false, but also that the person either "knows or has reason to know" that the claim is false. Judging from the different interpretations of the "knows or has reason to know" standard expressed by witnesses at our hearing, we felt that a definition was needed to promote fairness and consistency.

S. 1134 defines the standard to cover those persons who either have actual knowledge that a claim or statement submitted is false, or are grossly negligent of the duty to make such inquiry as would be reasonable and prudent to conduct under the circumstances to ascertain the true and accurate basis of the claim or statement. This definition is adopted, in part, from the pattern jury instruction which judges use to instruct lay jury members regarding what the law has traditionally required as a

basis for finding knowladge, and is consistent with certain circuit court decisions interpreting the knowledge standard under the False Claims Act.

The imposition of this scienter requirement is intended to draw the line of liability between "gross" and "mere" negligence -- that is, a person's gross neglect of facts which are known or readily discoverable upon reasonable inquiry should result in liability, while errors resulting from mistake, momentary thoughtlessness, or inadvertence should not. The definition clarifies, therefore, that a person who makes a false claim or statement through mere negligence does not meet the requisite scienter requirement and would not be held liable under the Act. Only those individuals who are extremely careless, who demonstrate an extreme departure from ordinary care, would be subject to liability.

The affirmative duty, as required under the definition, to "make such inquiry as would be reasonable and prudent to conduct under the circumstances" is premised on our belief that a person seeking government business or benefits has an inherent obligation to "advise the government of the true and accurate factual basis of [his or her] claim." United States v. Cooperative Grain and Supply Co., 476 F.2d 47, 55 (8th Cir. 1973). Given the wide range of programs to which S. 1134 applies, we intend that this "duty to make inquiry" language should be interpreted to allow for the

consideration of factors relative to the sophistication and resources of the person, the amount of time available, and the costs involved. Liability would, as a result, be tailored to the program, with persons judged according to the general conduct of others participating in the same program.

Within the corporate context, this duty language would limit personal liability for the submission of a false claim to those individuals who -- based on their job responsibilities and their substantive role in advancing the claim -- knew or had reason to know that the claim was false. While this does not mean that the corporate vice president, responsible for certifying the truth and accuracy of the company's claims, has to redo the work of his or her subordinates, the executive could be found liable for failing to take any steps whatsoever to ensure the truth and accuracy of the claims.

The second issue concerns the need for testimonial subpoena authority. Investigating officials are authorized under S. 1134, for purposes of conducting an investigation, to require by subpoena the attendance and testimony of witnesses. We believe, as do the Inspectors General, that this authority would be an essential tool in helping the government prove the elements required under the bill to establish liability, since few who defraud the government leave a sufficicent "peper trail" to enable proof of fraud by documents alone.

Concerns have been raised, primarily by some defense industry representatives, that this testimonial subpoena authority is "unfettered" and "unprecedented." Neither is the case.

Under S. 1134, an Inspector General may only subpoena a witness when the subpoena is necessary to the investigation. The bill was amended in Committee to provide other significant limitations to safeguard against abuse. First, the Justice Department is given veto authority over its use. S. 1134 requires that the investigating official, prior to issuing a subpoena, must first notify the Attorney General, who then has 45 days within which to disapprove the subpoena. Second, S. 1134 limits the use of this authority only to the 18 statutory Inspectors General, appointed by the President and confirmed by the Senate; the IGs may not delegate this authority.

In addition to these safeguards, S. 1134 provides due process protections for those individuals subpoenaed to testify. These protections afford persons subject to testimonial subpoenas a notice of the date, time and place at which the testimony will be taken; the right to be accompanied, represented and advised by an attorney; an opportunity to examine and, within certain limits, to make changes in the transcript of the recorded testimony; and the right to a copy of the transcript. The bill also specifies that the testimony is to be taken in the judicial district in which the subpoenaed person resides or transacts business, or in any other

place agreed to by the person and the investigating official taking the testimony. The person subpoenaed would be paid the same fees and mileage paid to witnesses in U.S. district court.

Moreover, there is ample precedent for granting investigatory testimonial subpoena authority to executive departments and regulatory agencies. The American Law Division of the Congressional Research Service compiled a list of more than 65 statutes that provide such authority, ranging from the broad power granted to the Department of Health and Human Services for investigations of claims for Social Security retirement and disability benefits to the authority given to the Department of Agriculture for investigations under the Horse Protection Act.

Opponents of S. 1134 have focused their criticisms on these two issues and have recommended, on the one hand, that a more stringent knowledge standard be adopted, while on the other hand, that the investigative tool helpful in proving knowledge be stricken. We rejected these proposals and respectfully recommend that you do so as well. We might add that, on these two issues, S. 1134 is consistent with the provisions of Senate legislation to amend the False Claims Act, S. 1562. The Senate Judiciary Committee adopted our knowledge standard virtually word for word and provided civil investigative demand authority (the functional equivalent to testimonial subpoena authority) for Justice Department investigations under the False Claims Act.

Without going into as much detail, we would like to briefly outline several other improvements made to the bill from earlier years' versions. S. 1134 would:

o strengthen the due process protections afforded to persons subject to the administrative proceedings by spelling out the specific protections provided by the Administrative Procedure Act and by providing limited discovery rights;

o designate Administrative Law Judges, or ALJ-like officials for agencies not covered by the Administrative Procedure Act, to serve as "hearing examiners;"

o clarify the linkage between a Program Fraud finding of liability and separate suspension or debarment action;

o apply the $100,000 jurisdictional cap to groups of related claims submitted at the same time;

o clarify that the assessment for false claims applies to double the amount claimed in violation of the Act, not double the amount of the claim;

o ensure independent prosecutorial review by clearly separating the positions of investigating official and reviewing official; and

o substitute the term "remedies" for "penalties" throughout the bill to emphasize that the Program Fraud Civil Remedies Act is a remedial, and not a penal, statute.

In conclusion, Mr. Chairman, we believe that the enactment of an administrative remedy for small-dollar fraud cases is long overdue. The fact that the Justice Department declines prosecution in most cases where the government does not sustain a significant monetary loss is an open invitation to those individuals tempted to defraud the federal government. Until federal agencies are given the power to bring administrative proceedings in such cases, these "nickel and dime" frauds will continue unabated. The Program Fraud Civil Remedies Act will help combat fraud without compromising the rights of individuals accused of wrongdoing. We look forward to working with you and your colleagues to enact this bill this year.

Mr. Chairman, we ask that letters from the General Accounting Office, the Justice Department, the Inspectors General, and other organizations endorsing S. 1134 be included in the Committee's printed hearing record following our statement.

OCT 2 2 1985

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

October 21, 1985

B-204345

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is to express our continued support for the enactment of legislation to authorize federal agencies to levy administrative penalties for certain false claims and statements made to the United States. We firmly believe such legislation would further strengthen the government's overall ability to combat fraud, waste and abuse within government programs.

As you know, we have testified in support of bills similar to S.1134, the Program Fraud Civil Penalties Act of 1985, before the Senate Governmental Affairs Committee on two previous occasions. In 1982 we expressed our support of S. 1780, and in 1983 we supported the enactment of S. 1566. Our position stems from a 1981 report entitled "Fraud in Government Programs:--How Extensive Is It--How Can It Be Controlled?" (AFMD-81-57; May 7, 1981), in which we recommended that the Congress consider enacting legislation giving agencies the authority to administratively impose civil money penalties against persons who defraud the government. Our study showed that the Department of Justice declined to prosecute about 61 percent (7,800) of 12,900 fraud cases referred for prosecution. In many of those cases Justice declined to prosecute on the grounds that the cases involved small dollar amounts, had no prosecutive merit, or jury appeal. We believed, and continue to believe, that the establishment of an administrative penalty system could provide the government with a viable alternative remedy in such cases. Such a system would not only strengthen the government's ability to recover misappropriated funds, but also serve as a deterrent against others committing similar offenses.

We are pleased to see that the bill under consideration by the Congress--S. 1134--has received strong support from the Justice Department and the Inspector General community. In Justice's testimony before your subcommittee this past June, it recognized that the administrative resolution of fraud cases involving small amounts of money would offer the

government an efficient and effective alternative to litigating such cases in federal courts, usually a lengthy and costly process. Representatives from the Inspector General community also provided numerous examples during their testimony of where S. 1134 would be most appropriately used. The Deputy Inspector General of the Department of Defense (DOD) cited a case in which a contractor operated a parts store on 10 different military bases. He illegally inflated parts prices on each contract. While the total fraud amounted to over $50,000, no single base was defrauded for more than $6,000. Each case was presented to nine separate United States Attorneys, and was declined at each office because the dollar value was too low. Seeking an administrative penalty such as provided for in S. 1134 would be a viable alternative remedy in such a case.

Your subcommittee has made several notable changes to the proposed legislation since our 1983 testimony on S. 1566, the predecessor of S. 1134, such as: (1) modifying the standard of liability to authorize the imposition of penalties when a person submits claims or statements that he knows or has reason to know are false; (2) clarifying the effect of a finding of liability under an administrative proceeding, as not automatically requiring a contractor's suspension or debarment; (3) clarifying that the assessment for false claims applies to double the amount falsely claimed rather than double the amount claimed; and (4) separating the position of investigating officials and reviewing officials so as to ensure independent prosecutorial review. Although we have not had time to thoroughly review the other subcommittee amendments, we consider the above changes, primarily designed to further insure that the administrative penalty system is fairly and objectively administered, to be improvements over the prior bill.

We commend your particular interest and efforts in this area, and we look forward to working with Congress in insuring the enactment of legislation authorizing agencies to levy administrative penalties, as a means of combating fraud, waste and abuse within government programs.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 4 1985

NOV 04 1985

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Justice strongly supports S. 1134, the Program Fraud Civil Remedies Act, as it was reported from the Oversight of Government Management Subcommittee. Both you and Senator Roth are to be commended for your leadership in moving forward with this important piece of legislation, and we urge you to expedite action at the full committee so that the bill can come to the floor of the Senate in this session.

The Department, the Inspectors General and this Committee have long recognized the need to develop some alternate dispute resolution mechanism for small fraud cases. Because of limited Justice Department resources and the growing caseload burden in the federal courts, it often is not cost effective to file suit in district court to collect on small-dollar frauds. Consequently, unless these cases are simply to be written off, we must develop a mechanism, such as S. 1134, which provides the government with a meaningful remedy.

We believe that the Committee has crafted an excellent bill, preserving all necessary due process protections without unduly complicating and delaying the adjudication process. The bill closely tracks the False Claims Act, the Civil War-era statute which the government has relied upon to bring civil and criminal fraud prosecutions, and follows the better-reasoned holdings of the courts under that statute. Notably, we believe that S. 1134 adopts a reasonable compromise in imposing liability on a person who "knows or has reason to know" that a claim was false. This standard would prohibit a corporate officer from avoiding liability by insulating himself from knowledge of the truth or falsity of the claims he is submitting. The bill correctly holds persons claiming money from the government to the duty to make "such inquiry as would be reasonable and prudent to conduct under the circumstances." Persons doing business with the

United States should be under an obligation to make reasonable efforts to ensure that the claims which they submit are accurate.

We also believe that the bill properly requires the United States to prove a violation by a preponderance of the evidence -- the traditional standard of proof in civil litigation. Raising the burden to that of clear and convincing evidence, as some have suggested, would, in our view, place an unwarranted burden on the government. For instance, the burden of proof in civil treble damage actions filed under the antitrust laws has always been a preponderance of the evidence. There is no justification for imposing any greater burden on the government in a program fraud proceeding.

Finally, Mr. Chairman, the Department of Justice and the Administration continue to object to section 804(a)(1)(C) of the bill, authorizing the Inspectors General to compel the testimony of witnesses. We do not believe that there is a demonstrable justification for such extraordinary powers and we are seriously concerned with the potential this provision creates for interference with ongoing criminal investigations. While we recognize that the proponents of S. 1134 have made efforts to accommodate our concerns on this issue, the proposed procedure for Department of Justice review of testimonial subpoenas is simply unworkable. Our views on this issue are set out in detail in the Deputy Attorney General's letter of August 26, 1985.

Sincerely,

PHILLIP D. BRADY
Acting Assistant Attorney General

cc: Attached List

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT 21 1985

The Honorable William S. Cohen
United States Senate
Washington, D.C. 20501

Dear Senator Cohen:

The Committee on Governmental Affairs is soon to consider S. 1134, the "Program Fraud Civil Remedies Act of 1985," reported out by the Subcommittee on Oversight of Government Management. The members of the Legislation Committee of the President's Council on Integrity and Efficiency (PCIE), representing the seventeen statutory Inspectors General, wish to express our unanimous and enthusiastic support for this important legislation. This bill would establish an administrative mechanism to impose civil monetary penalties and assessments for fraudulent claims and statements made to the United States. As the Federal officials who are charged with the formidable task of preventing and detecting fraud and abuse in our respective agencies, we strongly believe that the civil monetary penalties authority will provide an invaluable tool in efforts to combat fraud against the United States.

Experience has shown that the Justice Department does not possess the resources necessary to prosecute all meritorious civil fraud cases referred to it by the Inspectors General and by others. Further, certain cases may lack prosecutive merit for a variety of reasons -- for example, loss to the Government is small or impossible to calculate or there is insufficient jury appeal. The result is that often the United States does not have the opportunity to recoup its losses, both actual damages and consequential damages, such as the cost of detection and investigation.

The bill to be considered by the Committee, S. 1134, offers an alternative to judicial remedies for fraud - an alternative that promises numerous benefits to the public. First, the authority would act as a powerful deterrent, particularly in those types of cases in which the Justice Department does not usually pursue civil action or criminal prosecution. Second, an administrative mechanism for resolution of fraud cases is both expeditious and relatively inexpensive. Third, an administrative alternative will relieve the Department of Justice of the burden of referrals of "smaller" fraud cases, thereby

freeing that Department to more effectively allocate its own resources to the most significant cases. Finally, the proposed civil monetary penalties authority would provide a means of recovering sums that, heretofore, have been irretrievably lost to fraud.

In conclusion, we strongly urge the Committee to act favorably and expeditiously on S. 1134. At a time when every dollar lost to fraud adds to the existing budget deficit, we feel it is imperative to do whatever can be done for the taxpayers, and for the beneficiaries of Federal programs, in order to make sure that every Federal dollar is properly spent. We believe S. 1134 is one important means of moving towards that objective.

Sincerely yours,

Richard P. Kusserow
Inspector General

Chairman, Legislation Committee
President's Council on
Integrity and Efficiency

Members of Legislation Committee:

Sherman M. Funk
Inspector General
U.S. Department of Commerce

John V. Graziano
Inspector General
U.S. Department of Agriculture

James R. Richards
Inspector General
U.S. Department of Energy

Joseph Sherick
Inspector General
U.S. Department of Defense

Mary F. Wieseman
Inspector General
Small Business Administration

DEPARTMENT OF DEFENSE
INSPECTOR GENERAL
WASHINGTON, D.C. 20301

14 NOV 1985

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of Government
Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

NOV 14 1985

Dear Mr. Chairman:

Your staff has requested that I provide additional views on the Bill S. 1134, the "Program Fraud Civil Penalties Act of 1985." I understand this Bill is scheduled for mark-up by the Senate Governmental Affairs Committee in the near future.

I strongly support this legislation. Many frauds against Federal programs are not prosecuted because the Department of Justice often does not have sufficient resources to devote to fraud cases covered by this Bill. Since the Government has traditionally relied upon judicial proceedings to recover for false claims and statements, if a case is not prosecuted in Federal court the Government is left without any effective remedy.

The Program Fraud Civil Penalties Act would allow Departments such as the Department of Defense to impose an administrative penalty for false claims and statements, and to recover damages. The Department of Health and Human Services obtained similar statutory power in 1981 which has been highly successful in combating false claims in the Medicare and Medicaid programs. The Bill would allow a similar authority to be used in areas such as Defense procurement fraud.

Contrary to the assertions of certain contractors and organizations who oppose this Bill, it does not create a new category of offenses, nor does it deny due process. The Bill is designed to place an administrative penalty upon conduct which is already prohibited by Federal criminal and civil statutes relating to false claims and statements. Furthermore, the Supreme Court has repeatedly upheld other remedial statutes which have contained due process provisions similar to S. 1134.

Sincerely,

Joseph H. Sherick
Inspector General

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

October 18, 1985

OFFICE OF
THE CHAIRMAN

Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
U. S. Senate
Washington, D.C. 20510

Dear Senator Cohen:

This is in response to your letter of October 9, requesting the comments of the Administrative Conference on S. 1134, the Program Fraud Civil Remedies Act of 1985.

We understand that the bill is at present in mark up and its details are subject to revision. Accordingly, we shall address only the major features of the bill.

S. 1134 would provide an administrative procedure for imposing civil penalties for false claims and statements made to the United States in connection with agency programs. It would cover a broad range of agencies and programs and be administered by the respective agencies. The procedure would be available only for relatively small cases, i.e., those in which the amount involved in the claim was $100,000 or less. The maximum penalty would be $10,000 for each false claim or statement, plus twice the amount of any claim or portion of a claim. The procedure prescribed by the bill would include an initial investigation of the suspected false claim or statement by an investigating official who reports his findings to a reviewing official. If the reviewing official determines there is adequate evidence to indicate liability for civil penalties, he would refer the case for a formal adjudicative hearing under the Administrative Procedure Act, 5 U.S.C. §§554, 556 and 557, presided over by an administrative law judge of the agency. (We understand that proceedings in the military departments would not be governed by the Administrative Procedure Act but by procedures prescribed in the bill and generally similar to those in the APA. We have not studied these provisions of the bill, and we limit our comments to those proceedings governed by the APA.) If the administrative law judge determines on a preponderance of the evidence that the respondent had made a false or fraudulent claim or statement, he could impose the appropriate penalty. The respondent could obtain review of the ALJ decision by the agency head or his delegate and judicial review of an adverse agency determination in the United States Court of Appeals. Such review would be on the administrative record in accordance with the substantial evidence rule, 5 U.S.C. §706(e).

As you know, in 1972 the Administrative Conference adopted its Recommendation No. 72-6, Civil Money Penalties as a Sanction, 1 CFR §305.72-6 (copy enclosed). In Part B of that recommendation we urged that agencies consider the possible advantages to their enforcement programs of a procedure for administrative imposition of civil money penalties for regulatory violations, and we suggested some of the factors the presence of which in the regulatory scheme would argue for such administrative imposition. The preamble of the recommendation explains the basis for our urging consideration of administrative imposition:

> Under most money penalty statutes, the penalty cannot be imposed until the agency has succeeded in a de novo adjudication in federal district court, whether or not an administrative proceeding has been held previously. The already critical overburdening of the courts argues against flooding them with controversies of this type which generally have small precedential significance.
>
> Because of such factors as considerations of equity, mitigating circumstances, and the substantial time, effort and expertise such litigation often requires in cases usually involving relatively small sums (an average of less than $1,000 per case), agencies settle well over 90% of their cases by means of compromise, remission or mitigation. Settlements are not wrong per se, but the quality of the settlements under the present system is a matter of concern. Regulatory needs are sometimes sacrificed for what is collectible. On the other hand, those accused sometimes charge that they are being denied procedural protections and an impartial forum and that they are often forced to acquiesce in unfair settlements because of the lack of a prompt and economical procedure for judicial resolution. Moreover, several agency administrators warn that some of the worst offenders, who will not settle and cannot feasibly be brought to trial, are escaping penalties altogether.

At the time the recommendation was adopted comparatively few statutes provided for administrative, as opposed to judicial, imposition of civil penalties.[1] However, in recent years, in response in part, perhaps, to the Conference recommendation and, certainly, to the increasingly urgent need to alleviate the burden on the Federal courts, Congress has frequently provided for administrative imposition under procedures similar to those set forth in S. 1134.[2] In 1979 the Conference in its

1/ The report of the Conference's consultant concluded that only four statutory schemes provided for "true administrative imposition," i.e., without a de novo judicial determination. Goldschmid, An Evaluation of the Present and Potential Use of Civil Money Penalties as a Sanction by Federal Administrative Agencies, 2 ACUS 896, 907-08.

2 See, e.g., Migrant and Seasonal Agricultural Worker Protection Act, §503, 29 U.S.C.A. §1853; Medicare and Medicaid Amendments of 1981, P.L. 97-35, Tit. xxi, 42 U.S.C. §1320a-7a; Communications Act Amendments of 1978, §2, 47 U.S.C. §503(b); Toxic Substances Control Act, §16, 15 U.S.C. §2615.

Recommendation No. 79-3, Agency Assessment and Mitigation of Civil Penalties, 1 CFR §305.79-3 (copy enclosed) reaffirmed its support of administrative imposition and welcomed the increased use of such procedures since its 1972 recommendation.

Part B, Paragraph 1 of the Conference recommendation lists some of the factors the presence of which argue for a system of administrative imposition. Among these factors, an anticipated large volume of cases, the relatively small penalties involved, the importance of speedy adjudication, and the unlikelihood that issues of law will arise calling for judicial resolution, all seem common to the range of cases covered by S. 1134. In addition, in many cases the availability of an effective and credible civil penalty remedy may enable an agency to forego a harsher remedy, such as debarment or disqualification from the program. Another factor cited in the recommendation is the availability of an impartial forum in which cases can be efficiently and fairly decided. We have confidence that the procedure provided in S. 1134, an on-the-record adjudicatory hearing before an administrative law judge, offers such a forum. Furthermore, we note that the procedural system provided in the bill (except that which would apply to the military departments, as to which we have reserved comment) fully complies with Paragraph 2 of Part B of our recommendation.

Accordingly, we believe that the general features of S. 1134 are consistent with Conference Recommendations 72-6 and 79-3 and that they merit the favorable consideration of Congress.

Sincerely yours,

Mark S. Fowler
Acting Chairman

Enclosures

Federal Bar Association
1815 H Street, N.W., Washington, D.C. 20006 • (202) 638-0252

District of Columbia Chapter
1985-1986

President
Lauren L. Fuller
Attorney at Law

President-Elect
Sarah Hertz
Department of Health and Human Services

First Vice President
Marsha A. Echols
Office of Max N. Berry

Second Vice President
Bonnie L. Gay
Department of Justice

Secretary
John F. Connolly
Federal Home Loan Bank Board

Recording Secretary
DaCosta V. Mason
Legal Aid Society of D.C.

Treasurer
Joan Seltz Pate
Judge
U.S. Tax Court

Delegate to National Council
Carlos Garza
Department of Energy Board of Contract Appeals

Alternate Delegate to National Council
Nicholas Allard
Office of Senator Edward M. Kennedy

1985 NOV 4 PM 1:17

NOV 4 1985

November 1, 1985

Senator William S. Cohen
Chairman
Senate Subcommittee on Oversight of
Government Management
Senate Hart Office Building
Room 322
Washington, DC 20510

Re: S. 1134

Dear Senator Cohen:

The D.C. Chapter of the Federal Bar Association through its Committee on the Administrative Judiciary has reviewed S. 1134, the Program Fraud Civil Remedies Act of 1985, and on behalf of the Chapter's 5,000 federal lawyers supports its enactment.

The provisions for selection, appointment, salary and tenure of the administrative adjudicators who will hear and decide civil fraud cases are in accord with longstanding safeguards of the status and decisional autonomy of administrative law judges under the Federal Administrative Procedure Act. Further, the guarantees of procedural due process spelled out in S. 1134 insure that constitutional requirements of fundamental fairness will be observed by the agencies engaged in its enforcement.

We appreciate the opportunity afforded us to participate in the formulation of one of the most important legislative initiatives of the 99th Congress. We believe this bill will significantly strengthen and reinforce the government's efforts to prevent waste, fraud and abuse in federal programs.

Sincerely yours,

Joseph B. Kennedy
Chairman
Committee on the Administrative
Judiciary
Federal Bar Association
District of Columbia Chapter

cc: Jeffrey A. Minsky

The Federal Administrative Law Judges Conference

424 NATIONAL LAWYERS CLUB
1815 H STREET, N. W.
WASHINGTON, D. C. 20006

November 25, 1985

Mr. Jeffrey A. Minsky
Subcommittee on Oversight of
Government Management,
Committee on Governmental
Affairs
326 Dirksen Senate Office Building
Washington, D.C. 20510

Subject: S. 1134-Program Fraud Civil Remedies Act of 1985

Dear Mr. Minsky:

I am pleased to inform you that, on November 22, 1985, the Executive Committee of the Federal Administrative Law Judges Conference(FALJC) formally voted to endorse and support S. 1134, the Program Fraud Civil Remedies Act of 1985, as it appears in the Committee print dated November 15, 1985.

The FALJC endorsement is embodied within the terms of the enclosed resolution which was adopted by this organization's Executive Committee on November 22.

Please continue to advise us of the Bill's progress. If we may assist you in any way to gain enactment, do not hesitate to call.

Very sincerely,

Judge Norman Zankel, Chairman
Legislative Committee

Encl.

cc: Hon. Glenn R. Lawrence
Pres., FALJC

Hon. Joseph B. Kennedy

Please direct written communications regarding this matter to the writer at:

7632 Coddle Harbor Lane
Potomac, MD 20854

Be it RESOLVED that:

The Federal Administrative Law Judges Conference endorses and supports S. 1134, the Program Fraud Civil Remedies Act of 1985, with the understanding that (as provided in the November 15, 1985 print of the Senate Subcommittee on Oversight of Government Management) the hearing officers who will conduct the administrative hearings are either Administrative Law Judges appointed pursuant to 5 USC 3105 or persons who possess Administrative Law Judge qualifications; and who will enjoy the safeguards of the status and decisional autonomy of Administrative Law Judges under the federal Administrative Procedure Act; and further provided that such administrative hearings will be conducted pursuant to the requirements of the federal Administrative Procedure Act to insure that constitutional requirements of procedural due process and fundamental fairness will be observed by the agencies and departments engaged in enforcement of program fraud legislation.

Mr. GLICKMAN. Tomorrow we hear testimony from Senator Grassley, Congressman Ireland, Congressman Bedell, and then private witnesses.

The hearing is adjourned.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned.]

Intentional Blank Page

FALSE CLAIMS ACT AMENDMENTS

THURSDAY, FEBRUARY 6, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in room 2237, Rayburn House Office Building, Hon. Dan Glickman (chairman of the subcommittee) presiding.

Present: Representatives Glickman, Berman, Kindness, and Brown.

Mr. GLICKMAN. The Subcommittee on Administrative Law and Governmental Relations will please come to order.

Today we start our second day of hearings on amendments to the False Claims Act, including the Program Fraud Civil Penalties Act. Yesterday we heard from Department witnesses, including the Department of Justice. We also heard from some industry witnesses.

Today we continue the hearings and we are honored to have our distinguished colleague from the Senate, Senator Grassley from Iowa, here.

Senator Grassley has become quite famous around the country for being an independent force and voice in connection with issues of procurement by the Pentagon and exposing fraud and trying to prevent that kind of thing from happening in the future.

Chuck, we are delighted to have you here. Why don't you take the witness chair and you may proceed as you wish.

You entire prepared statement will be inserted in the record, you may read it or submit it, however you wish.

TESTIMONY OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I have a shorter version which I will read but I have a longer version for the record. I appreciate very much your holding this hearing. This hearing, under your leadership, is to consider pragmatic reform of our fraud enforcement laws. I commend you and the members of the committee for pursuing this hearing and pursuing an appropriate legislative remedy for fraud against Government.

Also I need to apologize since I will probably have to rush out of here because of Judiciary and Finance Committee work, and also because Secretary Weinberger will be before the Budget Committee this afternoon.

So I have these things that I have to be prepared for.

Evidence of fraud against the Nation's taxpayers is on a steady rise. As with other types of crime and abuses in our society, fraud breeds a culture unto itself. It endures because the opportunity exists and because our ability to counter it is limited by inadequate resources, experience and laws.

Recent months have witnessed a proliferation of fraud cases, and yet so few victories by law enforcement officers on behalf of the taxpayers.

No one knows, of course, exactly how much public money is lost to fraud. Estimates from the General Accounting Office, Department of Justice, and Inspectors General range from hundreds of millions of dollars to more than $50 billion per year. Sadly, only a fraction of the fraud is reported, and an even smaller fraction of the funds recovered.

The False Claims Act has been the Government's primary weapon against fraud, yet is in desperate need of reform. A review of the current environment is sufficient proof that the Government needs help—lots of help—to adequately protect the Treasury against growing and increasingly sophisticated fraud. The solution calls for a solid partnership between public law enforcers and private taxpayers.

On December 12, the Senate Judiciary Committee voted without objection to favorably report to the full Senate S. 1562, the False Claims Reform Act. This bill, which I sponsored along with Senators DeConcini, Levin, Hatch, Metzenbaum, Cohen, and Leahy, will make necessary reforms in our No. 1 litigative tool against government fraud.

I know this subcommittee is considering several pieces of legislation today which contain various portions of what the Senate Judiciary Committee approved in S. 1562. I also understand, Mr. Chairman, that you have introduced a bill dealing with both false claims and program fraud, and I look forward to being of assistance to you in any way I can.

In hearings before the Administrative Practice and Procedure Subcommittee of the Senate Judiciary Committee, Government and non-government witnesses offered three general recommendations for more effective enforcement against fraud: One, increased penalties for more meaningful deterrence; two, enhanced investigative and litigative tools for better detection and monetary recoveries; and three, additional resources to staff the antifraud effort.

The False Claims Reform Act incorporates all these suggestions, but without appropriating new funds to any agency. Instead this legislation is intended to complement the Government's current resources by encouraging private individuals to become actively involved in the war against fraud.

S. 1562 promotes a concept first enacted into law by President Abraham Lincoln in 1863. Lincoln's law permits private individuals aware of fraud to bring suit on behalf of the Government and to receive a portion of the recovery in the action is successful.

Through testimony and interviews we have found that most individuals employed by Government contractors are honest and hard working. Many are also angry and discouraged because they witness and, in some cases, are directed to participate in fraudulent practices. Very few, however, are willing to risk their jobs by

"blowing the whistle." Still fewer believe their disclosures will lead to results of prosecution and conviction.

Pessimism about the likelihood of disclosures leading to results is not surprising in light of a 1981 General Accounting Office report which found among all Government fraud referrals, less than 40 percent were prosecuted. More recently, the Department of Defense Inspector General testified that in 1984 more than 2,000 fraud investigations were completed. Yet the Justice Department successfully prosecuted in that same year just 181 cases, including only one against one of the top 100 defense contractor.

In short, S. 1562 would shift the incentives for individuals to come forward by allowing them more involvement in the litigation process as well as increased portions of damage awards. Perhaps most important to persons considering "going public" with this knowledge of fraud are the added legal protections from retaliation due to their disclosures.

The False Claims Reform Act does not create any new Federal enforcement bureaucracy. Instead, it is consistent with other areas of law where the Government has inadequate resources to enforce the laws by itself. For example, with securities laws and regulations, the number of private civil enforcement actions far exceeds those brought by the Government.

Also, in the antitrust area, private citizens in recent years have been responsible for bringing over 90 percent of all civil enforcement actions.

Mr. Chairman, the public, the Congress and even the administration all recognize the magnitude of the fraud problem and its adverse impact on our Nation. The Congress must act because the public demands that we act. Our window of opportunity is a bill endorsed by such otherwise incompatibles on this issue as the Justice Department and myself and the bill's bipartisan sponsors. If we can all agree with the approach taken in S. 1562, then there must surely be hope to pass on to the taxpayers in the fight against fraud.

So, in closing, I urge this subcommittee, Mr. Chairman, to join us in an endorsement of what would truly be an effective step forward. I appreciate your invitation and this opportunity to testify on behalf of this bill and on behalf of the taxpaying citizens of our country.

Thank you to the committee.

[The statement of Senator Grassley follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear today before this subcommittee to discuss pragmatic reform of our fraud enforcement laws. I commend the Chairman for convening these hearings and for pursuing an appropriate legislative remedy to the growing problem of fraud against the government. I am sure the collective testimony you receive will contribute greatly to the efforts of both Houses to combat fraud and hold accountable those who purloin the Treasury.

Evidence of fraud against the nation's taxpayers is on a steady rise. As with other types of crime and abuses in our society, fraud breeds a culture unto itself. It endures because the opportunity exists and because our ability to counter it is limited by inadequate resources, experience and laws. Recent months have witnessed a proliferation of fraud cases, and yet so few victories by law enforcement officers on behalf of the taxpayers.

No one knows, of course, exactly how much public money is lost to fraud. Estimates from the General Accounting Office, Department of Justice and Inspectors General ran GE from hundreds of millions of dollars to more than 50 billion dollars per year! Sadly, only a fraction of the fraud is reported, and an even smaller fraction of the funds recovered.

The False Claims Act has been the Government's primary weapon against fraud, yet is in desperate need of reform. A review of the current environment is sufficient proof that the Government needs help—lots of help—to adequately protect the Treasury against growing and increasingly sophisticated fraud. The solution calls for a solid partnership between public law enforcers and private taxpayers.

On December 12, the Senate Judiciary Committee voted without objection to favorably report to the full Senate S. 1562, the False Claims Reform Act. This bill, which I sponsored along with Senators DeConcini, Levin, Hatch, Metzenbaum, Cohen, and Leahy, will make necessary reforms in our number one litigative tool against government fraud.

I know this subcommittee is considering several pieces of legislation today which contain various portions of what the Senate Judiciary Committee approved in S. 1562. I would like to submit with my written testimony a copy of S. 1562 as reported.

In hearings before the Administrative Practice and Procedure Subcommittee of the Senate Judiciary Committee, Government and non-Government witnesses offered three general recommendations for more effective enforcement against fraud: (1) increased penalties for more meaningful deterrence; (2) enhanced investigative and litigative tools for better detection and monetary recoveries, and; (3) additional resources to staff the anti-fraud effort.

The False Claims Reform Act incorporates all these suggestions, but without appropriating new funds to any agency. Instead this legislation is intended to complement the Government's current resources by encouraging private individuals to become actively involved in the war against fraud.

S. 1562 promotes a concept first enacted into law by President Abraham Lincoln in 1863. Lincoln's law permits private individuals aware of fraud to bring suit on behalf of the Government and to receive a portion of the recovery if the action is successful.

Through testimony and interviews we have found that most individuals employed by Government contractors are honest and hard-working. Many are also angry and discouraged because they witness and, in some cases, are directed to participate in fraudulent practices. Very few, however, are willing to risk their jobs by "blowing the whistle." Still few believe their disclosures will lead to results of prosecution and conviction.

Pessimism about the likelihood of disclosures leading to results is not surprising in light of a 1981 General Accounting Office report which found among all Government fraud referrals, less than 40 percent were prosecuted. More recently, the Department of Defense Inspector General testified that in 1984 more than 2000 fraud investigations were completed. Yet the Justice Department successfully prosecuted in that same year just 181 cases, including only one against one of the top 100 defense contractor.

In short, S. 1562 would shift the incentives for individuals to come forward by allowing them more involvement in the litigation process as well as increased portions of damage awards. Perhaps most important to persons considering "going public" with this knowledge of fraud are the added legal protections from retaliation due to their disclosures.

The False Claims Reform Act does not create any new federal enforcement bureaucracy. Instead, it is consistent with other areas of law where the Government has inadequate resources to enforce the laws by itself. For example, with securities laws and regulations, the number of private civil enforcement actions far exceeds those brought by the Government. Also, in the antitrust area, private citizens in recent years have been responsible for bringing over 90 percent of all civil enforcement actions.

Mr. Chairman, the public, the Congress and even the Administration all recognize the magnitude of the fraud problem and its adverse impact on our nation. The Congress must act because the public demands that we act. Our window of opportunity is a bill endorsed by such otherwise incompatibles on this issue as the Justice Department and myself and the bill's bipartisian sponsors. If we can all agree with the approach taken in S. 1562, then there must surely be hope to pass on to the taxpayers in the fight against fraud. So, in closing, I urge this Subcommittee, Mr. Chairman, to join us in an endorsement of what would truly be an effective step forward

I appreciate your invitation and this opportunity to testify on behalf of this bill and on behalf of the taxpaying citizens of our country.

Mr. GLICKMAN. Thank you, Chuck.

I know you have to leave. I would just make a couple quick points.

One, I have not dropped a bill in yet. I intend to. But I have not dropped it in yet largely because there were some issues raised in the hearing yesterday, and perhaps today dealing with the administrative side of my proposed bill that concern me a bit; that is relating to how the Administrative Procedure Act would apply to the Defense Department in administrative claims.

It worries me a bit about military folks issuing penalties against civilian volks in a civil fraud context, and I think we need to make sure that there are no problems with that in a legal sense, but I on the whole think that your proposal is excellent. I know that Mr. Berman would agree very strongly with the qui tam provisions of your proposal.

He has been the leader on that issue over here.

But we appreciate the fact that you came over and that you have offered the leadership in this area. I don't think any of this would have moved without you. I don't think there is any question about it.

The final point I would make, is that what you are aiming at is not just Defense—people who do business with the Defense Department, it is people who do business with the Government in general, whether it is the physician using the Medicare system, or a shuttle contractor using NASA, or a defense contractor doing business with the Pentagon because the problem is across the board throughout the whole system of Government.

We are delighted that you came here and we will work with your staff, too, in moving this legislation.

Senator GRASSLEY. Thank you.

Mr. GLICKMAN. I think he has to go, hut if any of my other colleagues want to say something?

Mr. BERMAN. I just join with everything the chairman said regarding your efforts. I think you have done a fabulous job of finally getting Congress to look at updating this law to make, give it some and make it meaningful. I commend you for that.

Senator GRASSLEY. Thank you.

Mr. GLICKMAN. Mr. Brown.

Mr. BROWN. No, thank you, Mr. Chairman.

Mr. GLICKMAN. Thank you, Chuck.

The next group of witnesses are two colleagues, Andy Ireland from Florida, and Berkley Bedell from Iowa.

Is Berk around?

Mr. BEDELL. Yes, I am here.

Mr. GLICKMAN. You are up.

It is a pleasure to welcome you both here. I know you are both members of the Small Business Committee and I also know that you both have been very actively involved in the whole issue of protecting the taxpayers from fraud by contractors to the Government, so we are just delighted to have you here.

Your entire statements, if you have prepared statements, will be included in the record. You may feel free to summarize or do whatever else you wish.

TESTIMONY OF HON. ANDY IRELAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. IRELAND. My statement is fairly short and I will just run through that and turn it over to Congressman Bedell.

Mr. GLICKMAN. OK.

Mr. IRELAND. Thank you, Mr. Chairman, members of the committee, for the opportunity to appear and discuss the False Claims Act.

Representative Bedell and I have brought this issue to the attention of the Congress as far back as 1983. I am pleased that we now see the matter moving towards a final legislative consideration in both bodies of the Congress, and delighted with the activity of Senator Grassley who just appeared before you.

It is time to recognize that President Abraham Lincoln was on the right track in 1863 when he initiated the process which led to the Federal False Claims Act, and that our predecessors in the Congress during World War II were wrong to have gutted that act.

Let me for the record put in a little history.

The Federal False Claims Act was passed during the Civil War at the behest of President Abraham Lincoln. This followed a congressional investigation which detailed a long list of military contracting horrors. Among them were:

Old and in many cases useless muskets being sold to the Government at eight times their value. The weapons, sold as new, were in fact already Government property; boxes of muskets were opened on the battlefield and were found to contain only sawdust; the same horses were sold to the cavalry twice and sometimes three times—the same was done with cattle and mules; other assorted problems in every area from tent poles to shoes to horse blankets.

The Government Contracts Committee report on the subject written in December 1981 makes for some remarkable reading. Faulty products, nonexistent deliveries and a lack of competitive bidding are often cited as major problems. Here we are 120 years later and we are still confronted with the same problems in military procurement. The problems are far worse now and permeate every area of military and civilian procurement. It truly galls me to see us inundated with expensive tiolet seats, screws, spare parts, coffee pots, et cetera.

This is a tragedy and a smokescreen. While we spin our wheels trying to control the small items at the front door, billion dollar procurements sneak out the back door on the "sole source highway." They are very, very expensive sole sources due to a forced absence of competition and a network of greedy profiteers. In this era of Gramm-Rudman priority setting and runaway deficits, we must get a handle on this problem.

Unfortunately, the teeth of the "Abraham Lincoln Law," as the act in question is referred to, were taken out by congressional amendment during World War II at the behest of military contractors. In any such case today the Justice Department must take over prosecution. I would refer to the problem there, as an aside, to

just say that our colleague, Mr. Gonzalez, in March 1982 called the Congress' attention in the Congressional Record to a 60 Minutes report, a public report that in the construction of the shuttle, the Government was being billed for fixed-cost work on the sbuttle and for Air Force contracts, the same amount, in other words, being paid for twice.

This was called in a public way to tbe attention of the public and to my knowledge, I have been unable to find that any followup took place, the Justice Department being the only one who can prosecute under the Abraham Lincoln Law, tbat could not have gone forward to resolution one way or tbe other without the Justice Department.

The act requires that the Government must be unaware of any wrongdoing if a prosecution is to be brought. In addition, the amount of award to a private citizen who initially roots out the corruption was severely reduced.

It is obvious that various changes were made in the law to the detriment of the public. The solution is to restore the original Abraham Lincoln Law, with modifications to protect whistleblowers.

In a moment Congressman Bedell will outline what our legislation, H.R. 3828, does. First, I would like to recount a bit of tbe legislative history of our efforts.

Mr. Bedell and I reintroduced our 1983 bill this Congress and called it the Abraham Lincoln Act Amendments of 1985, H.R. 112. Later we were approached by a member of your distinguished subcommittee—Congressman Berman. He informed us that he bad been working with a group, the Los Angeles based Center for Law in the Public Interest. He told us that while he liked our approach, they felt we had overlooked something in our efforts—the risk of the individual who came forward to reveal fraud against the Government. We concurred with their view and the result is H.R. 3828.

We now feel that H.R. 3828 meets our goals in this fashion.

One, it restores the letter and spirit of the original law.

Two, it gives the Government flexibility it does not now have.

And three, it affords needed protection for those with the courage to seek out and expose fraud.

Mr. Chairman, I would be happy with enthusiasm to turn the rest of our performance here over to Congressman Bedell.

Mr. GLICKMAN. I am very delighted to see Congressman Bedell. I see Congressman Bedell an awful lot anyway, but it is a pleasure to see him again.

Berkley, it is a pleasure to have you here.

TESTIMONY OF THE HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM TIIE STATE OF IOWA

Mr. BEDELL. Thank you, Mr. Chairman.

I must apologize for my lateness, I have been to the National Prayer Breakfast and when you are praying for the U.S. Government today, you better spend quite a little time at it.

Mr. GLICKMAN. I was just informed the three-judge panel will in fact rule on Gramm-Rudman so maybe your prayers accelerated that court decision.

Mr. BEDELL. Thank you.

Mr. GLICKMAN. I am not telling you which way I am praying for, however.

Mr. BEDELL. Well, I want to thank you for the opportunity to be before this panel. I don't know of three people I would rather testify before than all three of you, who really are so sincere in your efforts to do what you can.

I particularly want to thank Mr. Berman for the work he has done, and my friend, Andy Ireland, whose leadership has been of help.

Let me start off by saying that this bill is not perfect. Few pieces of legislation are. We believe the basis that we have here is something that is certainly justified and needs to be done at this time. At least as far as I am concerned, I feel we would like to work with you in whatever way we could to address any problems that you may find as you try to work on the issue.

During the last Congress as many of you know, because of my involvement on the Small Business Committee, I was deeply involved in legislation to do something about Government procurement practice. At least in my opinion, those laws which we succeeded not only in passing but getting signed into law make some very significant contributions toward correcting in some of the problems we have in procurement.

As you know, I am a small businessman and I think I have an opportunity, therefore, to be somewhat aware of how business operates and what business concerns are.

I anticipate that you will probably find some various objections to this rather broad bill. I don't need to tell you, Dan, because I work with you on the Agriculture Committee and you do listen and you do consider those sorts of things. But I hope you objectively look at those objections and be sure they have some relevance.

We heard there are worries of people bringing actions on student loans, but who will bring an action to get only 25 percent of what is recovered, for example? So, look at the reality of the objections that may come forth. Be sure the objections apply to this bill. There is other legislation around. Be sure that objections apply to the bill that we have.

I guess we have to ask why we need to fix anything, what is wrong with the current law?

First, if an individual brings information to the Government and the Government doesn't do anything about it, that individual under current law frequently is just out of luck, and nothing is to be done.

My experience is that there is no part of our Federal Government which we can feel sure that will always do the right thing. At least I believe we need some type of a guarantee, so that if there are problems and if people are aware of them, and the Justice Department refuses to do anything about them, there should be some opportunity for the people of our country to see that something is done. That is really the purpose of this legislation.

I don't want to get into the details, but I have to tell you I have been extremely disappointed with the Justice Department in their refusal to do anything about some major oil companies who in my opinion, are ripping off the Government for billions of dollars on

the Alaska pipeline. I have just hit a stone wall and the Justice Department in my opinion refused to look at the issue.

I don't believe any agency necessarily is always going to do the right thing, and this is the purpose of this legislation.

Specifically, what this bill does is it reduces from 6 months to 60 days the time the Government has to decide whether or not to proceed with a suit. The bill contains an out in that, if the court feels the Government should be given extra time, the Government can be given extra time but the Government cannot delay on and on and on. The bill increases the percentage of total damages recovered that is given to the person that brought forth the information that enabled the correction to be made.

It enables the plaintiff, if the Government doesn't act, to go ahead and proceed on his own. I think that is the most important thing of all in this bill. As it is now, if the government doesn't proceed, that is frequently the end of it and tough luck, the person is prevented from taking any action on his own.

The bill also protects plaintiffs or witnesses from being fired or suspended or demoted.

I believe you have to have some protection for whistleblowers, particularly from what we have seen in the past. I think there are some things in the Grassley bill that we probably should look at. As a businessman, I would be greatly concerned if in any way this bill made it possible for disgruntled employees to cause unwarranted difficulty for an employer. I believe that this issue is well addressed by the provisions in the Grassley bill that says that, if a plaintiff brings a suit that is later judged to be frivolous, the plaintiff is stuck with the legal costs. As an individual, I believe that would be a good addition to our legislation.

Thank you.

[The statement of Mr. Bedell follows:]

BEDELL

STATEMENT OF

HON. BERKLEY BEDELL

BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

FEBRUARY 6, 1986

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to be with you here today and discuss our efforts to amend the Federal False Claims Act. It's fitting that we are here just a few days before the birthday of Abraham Lincoln, the man who first sought to use informer suits to control government contracting fraud.

I would also like to commend you, Mr. Chairman, for your interest in this legislation and the revolving door legislation on which you held hearings last week. I particularly appeciate your responsible and balanced approach, and I would like to work with you in the same spirit. I would also like to commend Congressman Andy Ireland, who orginally introduced the bill, Congressman Howard Berman, who has made several useful suggestions

in the latest version, and Senator Charles Grassley, who has pushed his version through the Senate Judiciary Committee.

Our bill, H.R. 3828, is not perfect. I believe I know generally what needs to be done, but I am not a lawyer and I hope that this subcommittee can use its expertise to help us improve this bill and resolve legitimate concerns. I would be pleased to work with you in this effort.

I think that my background causes me to have a generally balanced approach to this problem. During the last Congress, my Small Business Subcommittee was very involved in the passage of two procurement reform laws, the Procurement Reform Act (PL 98-525) and the Small Business and Federal Procurement Competition Enhancement Act (PL 98-577). I believe that these two laws, and some recent others, go a long way to improving the details of federal procurement procedures. However, my experience leads me to conclude that we cannot legislate common sense or integrity. We must have vigorous enforcement of existing laws. It is apparent that, as in Abraham Lincoln's time, the Justice Department does not have the resources or willpower to do the job. We need a mechanism that encourages informers to come forward.

I am also a small businessman, and understand the dangers in the other direction. We must be careful not to add to the legal burdens of the vast majority of honest business persons who give the government the best product they can at the best price. I hope that provisions can be included in the bill that will discourage frivolous or nuisance suits. Provisions were added during mark-up of the Senate bill that seem to address this problem by putting the burden of legal costs on the plaintiff, in cases where the court rules against the person who brought the suit and also finds that the suit was brought in bad faith.

I might also mention that I think you will two kinds of objections to

this rather broad bill. I urge you to listen to the legitimate objections and attempt to modify the bill to meet them. However, if large defense contractors object to the bill on the grounds that informers suits will be brought over student loans, I urge you stick to the bill as it is.

Congress first enacted the False Claims Act in 1863. Few private actions under the False Claims Act were reported prior to the 1940's, and it remained essentially unchanged until 1943. In 1943, the Supreme Court, in U.S. ex rel. Marcus v. Hess, 317 U.S. 537, approved a plaintiff's suit based upon the Act. Shortly afterward, at the urging of the Attorney General, Congress gutted the law by removing its teeth, and placing almost all power with the Justice Department. Most of the objections at the time were not valid. The legitimate objection raised at the time was that the law might allow unwanted suits by professional "bounty hunters." Our bill would address this problem by clarifying the original law as passed in 1863.

What is wrong with the present law? First, when a citizen files a suit alleging fraud, all of his evidence is presented to the government. The government then has 60 days to enter an appearance and then 6 months more to decide whether to proceed. If the government decides to proceed, the citizen is then out of the case and the government can proceed (or not proceed) as it sees fit.

Second, if the government decides not to proceed, the court can still dismiss an action brought by a private citizen if the case is based upon "evidence or information the government had when the action was brought." Clearly, it would be difficult to find a case where evidence is not somewhere in the hands of some government official, even if the government did not have the evidence in organized form or even know it had it.

Third, the amount of awards for a private citizen are now 10 percent of

the total damages recovered if the government proceeds and wins, and 25 percent of the total if the citizen proceeds and wins. The amounts used to be 25 percent and 50 percent.

Fourth, in every case, the law provides that the citizen "may" collect a reward, and leaves the decision completely to the court. Obviously, this greatly discourages persons from coming forward.

Our bill addresses these problems by--

--reducing from 6 months to 60 days the time the government has to decide whether to proceed with a suit;

--changing the law to say that the successful plaintiff "shall" collect a reward (not "may");

--increasing the percentages of total damages recovered that would be given to the informer bringing the suit;

--allowing the plaintiff to maintain his or her involvement in a suit after the government enters the case, to make sure that the case is effectively prosecuted;

--prevents a suit from being dismissed soley on the government's assertion that it already had the information brought forward by the plaintiff (although our bill does require that a private citizen cannot simply come forward with information that the government has already used in a public proceeding); and

--protects plaintiffs and witnesses from being fired, harassed, suspended or demoted.

Regarding protection for whistleblowers, we feel strongly that we must have some protection for these people who courageously risk their livelihoods. In combination with the provisions discouraging harassment suits by citizens, this should ensure that we get the information we need without burdening businesses.

Mr. GLICKMAN. I want to thank you both for your discussion. Certainly most of the provisions in your legislation will be included in bill that I will introduce myself. It is my judgment, it is—if we move ahead with the bill through markup, will try to move ahead with the bill that is more comprehensive than just the issues you raise in your legislation, including consideration of the whole program fraud civil penalties proposal and other things as well.

But I sense that there is momentum to move in this area and it has largely been through your efforts here on the House floor that the issue has gone this far. We want to do a reasonably balanced job but we want to do a job that is effective so people have confidence that their Government is not getting ripped off, as you say most people are not ripping the Government off but there are a few that are, and we need to deal with those.

So, we will proceed to go into some greater detail as to the specifics as we get later witnesses today. You probably ought to look at the Justice Department testimony if you have not seen that, because it goes into a little depth. They support most of the things except they don't support the qui tam provisions that you have talked about in your testimony.

But I think we are going to move forward here, and I appreciate your testifying before us.

Mr. BEDELL. We would be wrong if we didn't give credit to Howard Berman in what he has done in getting this thing moving.

Mr. IRELAND. Absolutely, yes.

Mr. GLICKMAN. Surely.

Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

I apologize for not being here earlier. I left another hearing in which Mr. Ireland testified earlier, so we are following each other around.

Mr. IRELAND. Absolutely, yes.

Mr. KINDNESS. I will have to return to that one, too, but would like to thank both of you gentlemen for your interest and concern in this area.

I would ask you to think about one thing and I would be interested to know your responses if you have them now, but later, perhaps, if you need to do some checking.

Mr. KINDNESS. I wonder if either of you have had, as I have had, a local housing authority, which is a quasi-governmental body, experience a difference of opinion with the Department of Housing and Urban Development over how much rent subsidies they were entitled to during the period of years when interest rates went up and they had higher income from the interest on their investment of idle funds during that period of time than they had projected, and then in some cases, perhaps, costs were projected higher than they turned out to be.

And I know I have one case like this, and if some of the ideas that are incorporated in bills before us now had been in force at the time, I think it is conceivable that HUD could have brought their claims under this type of legislation to recover moneys that

had been paid to quite a number of local housing authorities like this around the country.

It was a common problem and in fact those housing authorities had tended to rely in most cases upon clearing their budgets with the local front offices but then later HUD was claiming in effect that they practically fraudulently had submitted budgets that didn't project their income from interest on idle funds as high as it should have been and so on.

I know Mr. Bedell was talking about not expecting the qui tam provisions involving student loan cases and so on, but I submit to you there could be cases like this where the qui tam provisions could perhaps come into play. And I am not sure of whether it would be a good thing to have it apply in cases like that where you have a local governmental or quasi-governmental body.

Consider also cities receiving grants of one sort or another from the Federal Government, representations made, statements made in writing in applying for grants or loans and the potential for parties to be made defendants in such actions.

I would invite any response you have at this point but I am wondering is there some kind of carve-out that ought to be considered so you don't include local governments or quasi-governmental bodies in the coverage of such legislation?

Mr. BEDELL. My opinion is that the purpose of this legislation is, as far as I am concerned, to see there is not major fraud perpetrated against the Government. I think your question concerns organizations that serve the Government, not the Government itself.

Now, I assume that, neither of us would approve of fraud by a local governmental entity as it works with the Federal Government. But that is not really the primary issue, at least as far as I am concerned, that we are trying to get at in this bill.

Mr. IRELAND. No.

Mr. BEDELL. At least I for one would have no objection in considering changes in the bill that addressed the legitimate concerns of governmental In fact, I think the bill does this to a great extent. It ought to be intentional fraud that we are after.

Mr. KINDNESS. That is the problem you see. It is not requiring intentional fraud. These bills generally go in the direction of removing the need for the prosecutor to prove intent or any state of mind.

Mr. BEDELL. That was not my understanding. My understanding is that your bill merely clarifies the definition of "knowingly" to be used in these civil actions. The penalties of the False Claims Act are civil, and the standards of proof should reflect this. Certainly, what we are looking for is the case where people supplying the Government are ripping off the Federal Government.

I don't need to tell you, Tom, that that is occurring. I think there has been a lot of awareness of the problem think as you bring awareness, you have less of the problem. I do not think that we want to get into a situation where local governments are being sued as they try to do their job as best they can, if that is your question.

Mr. IRELAND. I concur in that.

Mr. BEDELL. I am just speaking for myself on that.

Mr. IRELAND. The point is to get to the real fraud that is intentional and separate that from it.

I think Mr. Bedell and I are very strongly behind that thrust and that is why we are here today, to want to work for making the legislation do that without bringing in the unintentional parties.

Mr. KINDNESS. I would just urge consideration of—in fact, the language in H.R. 3828, your bill, Mr. Ireland, defining the term "knowing" and "knowingly," for purposes of this section, the terms "knowing" and "knowingly" mean the defendant, *A* had actual knowledge, or, *B* had constructive knowledge in that the defendant acted in reckless disregard of the truth and no proof of intent to defraud or proof of any other element of a claim for fraud at common law is required.

I am wondering whether we really have been talking about our general concept of common law fraud in discussing this subject. When you get to specifics like the local governmental unit, for example, I'm sure you do want to eliminate actual fraud but perhaps not with the kind of definition of knowledge or knowingly that we have here.

Mr. IRELAND. At the same time we can't leave an open door in our willingness to do that and certainly we are willing to work along that line in the legislation. But to leave it open so they drive the truck of the out-and-out fraud that we know goes on through it. So that we have to address and find the balance to that.

Mr. KINDNESS. Of course, we have ways of recovering. In the cases I was just talking about, HUD has recovered through lowering the amount of payments for rent subsidies that those housing authorities would otherwise be entitled to under the law over a period of 2, 3, 4 years, in some cases.

There is no fraud involved in the common law sense. Not at all. But estimates are estimates and they are always inaccurate to some degree.

After the fact you can reassess them and that is the kind of case we don't seem to want to get at in this legislation.

Mr. IRELAND. That is right.

Mr. BEDELL. Would the gentleman yield?

Mr. KINDNESS. Sure.

Mr. BEDELL. I am not a lawyer, but it seems to me knowingly is knowingly and knowingly says you knew it. It seems to me that the bill's language defines what knowingly means. That is our intent.

If you knowingly do something, you did it because you knew it. Now, it does not mean that you had to do it with this in mind or that in mind. This is the definition.

I don't think that is really the critical issue. The critical issue is what we are trying to do. What we are really trying to do here is to say that, if the government does not properly protect the people in the way it enforces the laws, there will be a chance in civil court for individuals to see that justice is done.

It seems to me that if we control it properly, this mechanism is a heck of a good thing, particularly in view, if I might be so bold as to say, of some of the experiences I have had as I have tried to deal with some people in the Justice Department. I don't think that they are greatly different from people in any other department.

I think they are not always going to do their job the way it ought to be done. If we can have some system that will let the people know that there is a stopgap, it seems to me that that is a good thing for us to do.

Mr. IRELAND. If I may interject.

Mr. BEDELL. Sure.

Mr. IRELAND. This turns loose a resource in this country that needs to be turned loose and that is the American people and——

Mr. KINDNESS. I don't disagree with that concept at all.

Mr. IRELAND. It can do the job.

Mr. BEDELL. I think you can find a million reasons why you shouldn't do it. I don't think anything was ever proposed where people couldn't find a million reasons why you shouldn't do it.

I think the issue is, what are the things we ought to change in order to do it right as we do it?

Mr. KINDNESS. Yes, and that is the reason I wanted to explore these things with you.

I am harboring the concern, for example, that we ought not to pass such legislation out of this subcommittee that affects applicants for grants, even individuals perhaps, and loans. Perhaps there is a good bit we ought to carve out of it because what brings this to a head is we are talking about government contracts primarily; this is where all the emotion is centered. That seems to be what we are kind of trying to fix and maybe we ought to center it on just that.

I encourage any comments along those lines.

Mr. BEDELL. We do not disagree.

Mr. IRELAND. We don't disagree basically.

Mr. KINDNESS. Thank you.

Mr. GLICKMAN. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. No questions.

Mr. GLICKMAN. We thank you both for being here and we will keep in touch with you and your staffs as this issue progresses, as I am sure it will.

Mr. BEDELL. Thank you.

Mr. IRELAND. Thank you, Mr. Chairman.

Mr. GLICKMAN. Thanks a lot.

OK, the next witness is Mr. John Michael Gravitt, who is accompanied by his attorney, Mr. James B. Helmer.

TESTIMONY OF JOHN M. GRAVITT, ACCOMPANIED BY JAMES B. HELMER

Mr. GLICKMAN. We are most appreciative, Mr. Gravitt, that you are here today.

I must warn you in advance that the House goes in at 11 so it is possible we may have votes right away and we are not being intentionally rude, only institutionally rude in that we may have to leave for a few moments to go out and vote.

Why don't you go ahead and proceed. Your entire statements of both of you will appear in the record. You may proceed as you wish.

We would like to give you as much time for questions so we hope you can govern your formal presentation accordingly. Thank you very much.

Mr. GRAVITT. My name is John Michael Gravitt, and I am a 46-year-old tool room machinist foreman employed by the Ford Motor Co. in Batavia, OH, near Cincinnati.

I am here today to talk to you about my experiences with the False Claims Act, including the lawsuit which I have brought alleging a multimillion dollar fraud scheme by General Electric Co.

I was formerly employed at the General Electric Co., Aircraft Engine Business Group, Evandale plant, in Evendale, OH 45215. This plant is located in the suburbs of Cincinnati, OH, in Hamilton County, and employs approximately 17,000 people. I worked for General Electric from June 23, 1980, until June 30, 1983.

I was first employedas a machinist, but because of my skills and many years of prior experience as a machinist, I was soon promoted to a machinist foreman in developmental manufacturing operations, then called DMO and later changed to component manufacturing operations.

As a machinist, I set up and operated various machine tools. After promotion to the foreman position, I supervised 18 to 30 machinists. Also, I supervised some inspectors, laborers, and toolmakers.

My work as a supervisor was to assign jobs to each employee, determine that time cards and vouchers were accurate and correct, and to try and expedite work by making sure that the proper tools, fixtures, and gauges, et cetera, were available and in working order so that my employees were productively occupied.

General Electric used vouchers to charge the work performed by each employee to the proper account or customer. In my sbop, we worked on both commercial and U.S. Government defense contracts.

In my work as a foreman, 1 was instructed, along with at least one other foreman and probably otbers, to alter my hourly employees' time vouchers. The changed vouchers were supposed to reflect that all time spent by employees under my supervision on their 8-hour shifts was time spent on specific Government jobs, regardless of whether the machinist had been idle because he was waiting for an engineer, waiting for parts, or did not have work to be done.

As a result, the Government was being charged for time that was not being spent by employees on Government contract work.

I was also instructed, usually on a weekly basis, by means of a hot sheet that certain commercial jobs and fixed-cost Government jobs were already in a cost overrun situation, and that no employee time was to be charged to these hot-sheet jobs.

As it turned out, the only jobs that this time could be charged to were developmental U.S. Government defense contracts. These contacts, to the best of my knowledge, were all cost-plus contracts.

So the more time that was billed to these cost-plus contracts, the more money General Electric made as a result of the false vouchers.

Eventually, I think I finally figured out the system that was being used to defraud the Government. I talked with my supervisors about what I had observed, but I received no response.

I continued to refuse to falsify and change vouchers. I discovered, however, that if I did not change the vouchers, my supervisors would. My opposition to the voucher falsification was well known by my supervisors, other members of management, and hourly personnel. In fact, I believe I was fired from GE because of my objections to falsifying vouchers.

In the spring of 1983, I was told I was going to be laid off due to so-called lack of work. This lack of work period was the same time that General Electric received the B-1B bomber contract.

In late June 1983, about the same time as my last day of work, with my wife's assistance, I wrote to Brian H. Rowe, executive vice president of the General Electric Co., the top GE executive at Evendale, to report the false vouchers.

Eventually, Mr. Rowe's office, not Mr. Rowe himself, but his secretary, put me in contact with an internal company auditor. This was a Mr. Duroucher, who within the last 6 months has been elected vice president of General Electric.

He put me in contact with a Mr. R.G. Gavigan. After his internal investigation, Mr. Gavigan told me 80 percent of my allegations had been proven true, and the remaining 20 percent could not be disproven. That was the last I heard from General Electric regarding the falsified vouchers until my lawsuit was filed.

Based upon what my wife, who is still employed at General Electric, and other current GE employees tell me, I have observed not any real change in the vouchering procedures, nor am I aware of any meaningful disciplinary action taken against anyone involved.

In fact, my former supervisor , Mr. William Taylor, who was one of the persons who told me to falsify vouchers, has recently been promoted. Mr. Taylor's current job requires him to answer a special telephone voucher hotline. Any employees who have questions on how to properly complete their vouchers are now encouraged by GE to call Mr. Bill Taylor and obtain proper instructions. The phone number is area code 513-243-2011.

I brought my False Claims Act lawsuit because I was not satisfied that General Electric had corrected its false vouchering practices. I did not take on this litigation lightly, and it is extremely risky for me. As you know, I am here testifying today at my own expense. Under the statute as it now exists, I can only obtain a maximum of 10 percent of the amount recovered for the government as a result of my lawsuit, because the U.S. attorney has entered an appearance in my case, and claims to have taken it over. The Government's attorneys, however, have done little but ask for extensions of time in this case.

My wife has also risked her job, and except that she is represented by a union, GE probably would have fired her, because of her relationship to me, and her assistance to me in bringing this lawsuit and this matter to the government's attention. There is no law which would prohibit General Electric from firing her for these reasons. Thus, I believe it is important that whistle-blowing employees like myself have lawful protection against being fired by contractors who are defrauding the Government. While such a law would be too late for me, it would certainly help other employees.

My main purpose in bringing this lawsuit was to force GE to stop overcharging the taxpayers. I am very concerned that my case does

not seem to be moving along. The Justice Department has done no civil investigation in my case, and the Justice Department lawyers who are responsible for it have not looked at any of the evidence involved in the criminal investigation which occurred.

The Justice Department has just taken GE at its word that while there was some inaccurate vouchering, it did not involve much, if any, of a net dollar loss to the government, so I strongly support any changes in the law that would allow me and my attorney to be actively involved to fully investigate this case, to bring it to trial, and put an end to this multimillion-dollar fraud scheme.

I thank you very much for inviting me here today. My wife, Marlene Gravitt, also took time off from work to be here today. We offer whatever assistance you think appropriate in your further considerations of amendments to the False Claims Act.

[The statement of Mr. Gravitt follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE
LAW AND GOVERNMENTAL RELATIONS

TESTIMONY OF JOHN MICHAEL GRAVITT
FEBRUARY 6, 1986

My name is John Michael Gravitt and I reside at 6305 Orchard Lane, Cincinnati, Ohio 45213. I am 45 years old and am currently employed as a foreman by the Ford Motor Company. I am married and have two children.

I am here today to talk to you about my experiences with the False Claims Act, including the lawsuit which I have brought alleging a multi-million dollar fraud scheme by General Electric Company. My lawsuit is currently pending before Chief Judge Carl B. Rubin in the United States District Court for the Southern District of Ohio. Part of my lawsuit is also before the United States Court of Appeals for the Sixth Circuit, as my lawyer, James B. Helmer, Jr., who is here with me today and will also give testimony, will explain more fully to you.

I was formerly employed at the General Electric Company, Aircraft Engine Business Group, Evendale Plant, Interstate 75 and Newman Way, Evendale, Ohio 45215. This Plant is located in the suburbs of Cincinnati, Ohio in Hamilton County and employs approximately 17,000 people. I worked for General Electric from June 23, 1980 until June 30, 1983.

I was first employed as a machinist, but because of my skills and many years of prior experience as a machinist, I was soon promoted to a machinist foreman in Developmental Manufacturing Operations, then called "DMO" and later changed to Component Manufacturing Operations.

As a machinist, I set up and operated various machine tools. After promotion to the foreman position, I supervised 18 - 30 machinists. Also, I supervised some inspectors, laborers, and tool makers. My work as a supervisor was to assign jobs to each employee, determine that time cards and vouchers were accurate and correct, and to try and expedite work by making sure that the proper tools, fixtures, and gauges, etc. were available and in working order so that my employees were productively occupied.

General Electric used vouchers to charge the work performed by each employee to the proper account or customer. In my shop, we worked on both commercial and United States Government defense contracts. Particularly, we worked on engine parts for the B-1 bomber, the NASA "E^{3}" energy efficient engine, the nozzle of the F-404 aircraft engine, and other United States Government contracts. In my work as a foreman, I was instructed, along with at least one other foreman and probably others, to alter my hourly employees' time vouchers. The changed vouchers were supposed to reflect that all time spent by the employees under my supervision on their eight-hour shifts was time spent on specific Government jobs, regardless of whether the machinist had been idle because he was waiting for an engineer, waiting for parts, or did not have work to be done. As a result, the Government was being charged for time that was <u>not</u> being spent by employees on Government contract work.

I was also instructed, usually on a weekly basis, by means of a "hot sheet" that certain commercial jobs and fixed-cost Government jobs were already in a cost overrun situation. My

supervisore did not want us to charge any employee time to these jobs that were in cost overrun situations as indicated on the "hot sheet."

Tha vouchers were not supposed to show "idle" time and were not supposed to show time charged to jobs that were in a cost overrun situation and that were on the "hot sheet" and were, of course, not to show time charged to other commercial contracts. Practically the only category of job left upon which time could be charged in the vouchers for these cost overrun contracts were "re-work and modification" jobs which were basically developmental United States governmental defense contracts. These contracts, to the best of my knowledge, were all "cost-plus contracts" so that the more time that was billed to them, the more money General Electric made as a result of these contracts.

I also observed further fraud and waste at General Electric relating to defense contract work because often too many employees were working in my department, so that there was not enough work to keep everyone busy. So, I would have to put two machinists on one machine, but their time was charged to the Government as if work was actually being done by two men on two separate machines.

After a period of time observing how things worked, I believe I finally figured out the system and the method that wae being used to defraud the Government. I talked with my supervisors, with other foremen on the job, and others. I received no response. I refused to falsify and change vouchers. But, I discovered that even if I did not change the vouchare, my supervisor would so that Government was charged improperly for

time. Sometimes my supervisor completely substituted vouchers in order to charge time to the Government. Occasionally I would be told that vouchers had turned up "missing." Rather than let me go back and review the records for those days to try and reconstruct what work had been done, my supervisors ordered me to fill in certain job numbers -- I think that they were always Government job numbers.

My opposition to the voucher falsification was well known by my supervisors. But, I got no meaningful response from them when I complained about this fraud. Instead, I believe that G.E. fired me because of my objections to the false vouchers. In the spring of 1983, I was told I was going to be laid off due to a so-called "lack of work." About the same time, my wife, also employed as a machinist at General Electric, and I began putting together the information regarding falsification and changing vouchers. In late June 1983, about the same time as my last day of work, I wrote to Brian H. Rowe, Executive Vice President of General Electric Company, the top G.E. executive at Evendale, reporting the false vouchers. I tried to talk with Mr. Rowe and after a number of telephone calls, his secretary told me he had read my letter and that an internal auditor would investigate it. I eventually met with the company auditor, Mr. R. G. Gavigan. He suggested a meeting at a restaurant not on G.E. property. After the end of the investigation in September 1983, Mr. Gavigan called me and told me that 80% of my allegations had been proven to be true and the other 20% could not be disproven. That was the last time I heard from General Electric regarding the falsified vouchers until my lawsuit was filed.

As my wife remains employed at G.E., I am aware of the current vouchering system. Based upon what my wife has told me and what other current G.E. employees tell me, I believe that no real change in the voucher procedures have resulted from that investigation, nor or am I aware of any real disciplinary action against anyone involved.

In fact, my former supervisor, Mr. William Taylor, who was one of the persons who told me to faleify vouchers, subsequently has been promoted since my lawsuit was filed. One of Mr. Taylor's newest job duties is to answer a special G.E. telephone, a voucher "hotline". Any employees who have questions on how to complete vouchers are now encouraged by G.E. to call Mr. Taylor and get all the "explanation" they need.

Because I was not satisfied by Mr. Gavigan's investigation and because it appeared that G.E. had not done anything to correct the false vouchering practices, I consulted an attorney about what I had seen at General Electric Company. As a taxpayer, I thought something should be done so that the Government did not continus to be overcharged millions of dollars by G.E. My attorney, Mr. James B. Helmer, Jr., who is here with me today, shared my concern. Eventually, after considering several optione and thinking about the impact such a lawsuit would have on my personal life, I filed my False Acts Claims case in October 1984.

This case is an extremely risky proposition for me. In order for me to even have the expenses of the court case paid, my case must be successful. As you probably know, I am here teetifying today at my own expense.

The Federal District Court in Cincinnati and Chief Judge Carl B. Rubin have complete discretion to determine how much, if any, compensation I receive for bringing this matter to the United States Government's attention. Right now, the statute provides that I can only obtain a maximum of ten percent of the amount recovered for the Government because the United States has entered an appearance in the case and claims to have taken it over. As my lawyer will explain to you, the United States Government has done very little, if anything, to investigate the fraud I have alleged in my lawsuit. Out of any money I recover in bringing this case to the Government's attention, I have an obligation to pay my lawyer for his services. In addition, my out-of-pocket expenses have been about a hundred dollars a month, but Mr. Helmer tells me that if the Justice Department or Chief Judge Rubin allows me to be more actively involved in the case, my expenses could easily be thousands of dollars a month. That figure only represents the costs of this case. It will not pay my attorney for his time and efforts.

Personally, I have invested hundred of hours of time in this case. My wife has been very involved in this case also, even though it could jeopardize her job at G.E. In fact, except for the fact that she is represented by a union, General Electric could have fired her because of her relationship to me and her assistance in bringing this matter to the Government's attention, without fear of any legal penalty.

My wife Marlene and I have received many phone calls and other inquiries from present and former G.E. employees who have

reported similar experiences. While I am the only one who has brought False Claims Act case against General Electric Company, it appears to me that a lot of other people who worked at G.E. have been very concerned about the fraudulent practices they observed.

It is important that the United States Government make the False Claim Act law stronger. If the law was stronger, it would be used more and more lawyers and employees of Government contractors would be aware of it. "Whistle-blowers" like myself would also have protection from losing their jobs. While this protection would be too late to help me, it would protect the other employees who have reported fraudulent practices to me and my lawyer.

I also support the proposed changes that help make sure that if my lawsuit is successful, that I would receive some compensation for my efforts for sticking my neck out. If it was not for the fact that my wife and I are both employed with steady work, we could not have taken on the financial and time demands of this lawsuit. As it is, we have taken on a considerable financial risk with no assurance that our efforts will be compensated. Also, I believe it is good that the proposed legislation creates a minimum compensation for whistleblowers who bring fraud False Claims Act cases and gives the Judge more discretion to determine the appropriate amount of compensation for False Claims Act plaintiffs, depending upon the contribution that has been made. This seems to be a fair provision that insures that no one will be overly compensated, but that each False Claims Act plaintiff will be fairly compensated.

59-415 O - 86 - 12

My main purpose in bringing thie lawsuit was to force G.E. to stop overcharging ths taxpayers and the United States Govsrnment. I am very concerned that my case ie not now moving forward. Ths current law prohibits me and my attorney from being activaly involved in the case. The Department of Justice has done no civil investigation of my case. The civil Department of Justice lawyers have not looked at any of the evidence involved in the criminal investigation. They have just taken G.E.'s "word" that while thsre was some inaccurate vouchering, it did not involve much, if any, of a net loss to ths Government. So, I strongly support changes in the law that would allow me and my attorney to be actively involvsd to fully investigate this case, bring it to trial, and put an end to this multi-million dollar fraud scheme.

I thank you very much for inviting me here today to testify and I offer whatever assistance you think is appropriate in your further consideration of amendments to the False Claims Act.

Mr. GLICKMAN. Mr. Gravitt, I want to thank you very much. I not only appreciate the importance of your saving the taxpayers dollars for fraudulent expenses, but also your willingness to travel here today at your own expense. I want to state for the record that under ordinary circumstances this committee would have paid your expenses here today, but because of the uncertainty regarding the current budget situation as it affects the Gramm-Rudman amendment, we were put on freeze and on hold to pay any travel expenses at all.

That may be lifted, it may not be lifted, we don't know right now, so tbe fact that you would come up here when you would have to pay for this out of your own pocket is extraordinary, and it is something tbat you deserve special recognition for. I think your attorney is with you, Mr. Helmer.

Mr. Helmer, I think you also have a statement.

Mr. HELMER. Thank you, Mr. Chairman. I appreciate the opportunity to address this panel this morning. My name is Jim Helmer. I am an attorney licensed to practice in Ohio and in the District of Columbia, and I specialize in federal litigation, which means that I spend most of my time trying to define the intent of this hody and the U.S. Senate in carrying out the laws that have been enacted, in trying to enforce those laws.

I want to echo the comments that Mr. Gravitt has made to a large extent, and I would like to, if I may, point out to you what exactly has happened with Mr. Gravitt's qui tam action and the position taken in that case by the U.S. Justice Department, because I think you will find it to he 180 degrees from the position espoused to this panel in testimony delivered by the Justice Department representatives yesterday.

Before I do that, I would just like to point out a couple of additional items about Mr. Gravitt's background. He is not only a concerned citizen, hut he is a combat veteran of Vietnam, decorated in that conflict, served two tours there. He is very concerned about the defense industry and about the problems that face it.

As he said, he has not taken on this litigation lightly. This is not a bounty-hunter's lawsuit. It is not a parasitical lawsuit. It is not a lawsuit involving student loans. It is a case against the third largest corporation in the United States, and one of this country's largest defense contractors.

Part of my work as an attorney, and the reason that Mr. Gravitt came to see me in the first place, is because I specialize in representing employees who have been wrongfully discharged from their employment. That involves using the Federal age discrimination statutes, title 7 of the Civil Rights Act and various other statutes that have been passed in Ohio to protect employees that are in certain categories.

When we first met with Mr. Gravitt and talked with him, we learned that there is no statute either in the United States or in the State of Ohio that protects a whistle-blower from doing what Mr. Gravitt has done. Ohio, like many states, recognizes the employment-at-will doctrine, which permits an employer to discharge an employee at any time for any reason.

Accordingly, we think that it is imperative that this body give consideration to protecting a citizen, an employee wh comes forward and brings information either to the authorities, to the company management, or to the courts, or even to this body, from discharge from their employment. As I say, there is no such protection anywhere now, and unless this False Claims Act is amended, you are not going to encourage the support that I believe you need from the citizens to ferret out defense contracting fraud.

Mr. Gravitt's case was brought in October 1984. With the complaint, we filed massive discovery requests. We noticed the depositions of Mr. Brian Rowe, the vice president of General Electric who is in charge of the 17,000 employees at General Electric in Evandale, along with noticing the deposition of the investigator. Prior to the time that those depositions were to go forward, and prior to the time that the discovery responses were to be answered, the Justice Department intervened in Mr. Gravitt's case, pursuant to the qui tam provisions and took the case over.

The first thing the Justice Department did on the very day that it intervened was to stay all discovery. They put a stop on all discovery that had been started. They immediately asked Judge Carl Rubin, who had been assigned the case, to provide them with the stay from conducting any other discovery, which the judge did grant them for a period of 90 days. At the end of the 90 days the Justice Department asked for a second stay of 90 days, which it also received. At the end of that 90-day period, the Justice Department asked for a third stay of all proceedings in the civil case, and this time Judge Rubin said no, the case is going to go to trial.

In the interim while the stays were asked for, the civil side of the Justice Department did no investigation. Instead the criminal side, which is separated by essentially a Chinese wall, they are not permitted to discuss cases with each other or share information, because of the Federal Rules of Criminal Procedure dealing with the sharing of criminal investigative material, the criminal side did conduct an investigation, and we have been informed of the results of that investigation by members of the FBI and the Justice Department.

What the investigation showed was exactly what Mr. Gravitt has said: that his allegations were proven. They did, in fact, occur. Tbe falsified vouchers were not on a small scale, but involved thousands and thousands of time voucbers over a 3-year period.

The Justice Department's criminal investigators took a sampling of 6 months of the 3-year period that Mr. Gravitt worked at General Electric, and looked at just the vouchers in the one department that he worked at. In that 3-year period, there were 75,000 time vouchers produced by employees at General Electric in that one department. The Government investigators looked at approximately 10,000 of the time vouchers. They concluded that 3,000 to 4,000 of the 10,000 vouchers they looked at had, in fact, been altered, had, in fact, been falsified.

I have brought some of those vouchers with me today that I would like to attach to my testimony, because, I think, you will see that there was nothing subtle about the altering. They just took the numbers that had been written by the employees who did the work, and simply took a darker pen and wrote new numbers over the top of the old numbers. You can still read the numbers underneath. You can still read the numbers on top, and if you understand the contracting process, you can see the change from commercial work to Government contract work. This happened, according to the investigation, to some 3,000 or 4,000 of the 10,000 vouchers looked at.

Now, if you extrapolate that over the 3-year period, and the Justice Department tells us this study was a good study and you can do that, you get some 18,000 or so falsified vouchers in this three-year period.

Tbe Justice Department decided not to criminally prosecute General Electric, principally because—at least this is my understanding—they did not believe they could prove any damages resulting from this fraudulent scheme. The civil side, having been instructed by Judge Rubin to go forward with Mr. Gravitt's qui tam suit, then sat down with General Electric and worked out a settlement of the qui tam action.

Now, the civil side, you must remember, took no depositions, interviewed no witnesses, did not talk with Mr. Rowe or any of tbe investigators, did not have access to the information that the criminal side had, because of this Chinese wall created by the rules. There is a way to get that information. The civil side can get it. They have to file a motion asking the district court to release that information, which was never filed.

Despite the fact that the civil side had no information to base its conclusion concerning Mr. Gravitt's qui tam action, it entered into a settlement with General Electric for the sum of $234,000, concerning his claims.

I received a telephone call in early November from representatives of the Justice Department here in Washington, to explain this settlement to me. During tbat call, I was informed that Mr. Gravitt, as a person who brought this action to the United States' attention, would be entitled to receive $23,400 for his efforts under the present qui tam action, and I was told that the Justice Department would make sure that happened, unless Mr. Gravitt objected in any fashion to the appropriateness of the settlement itself, and I

was then told that if he did so object, that the Justice Department would make sure that he never saw a nickel for his efforts in this case.

When I informed the representatives of the Justice Department that that threat would have to be reported to Judge Rubin who was hearing the civil case, I was then informed that if I did so, I would be sanctioned by the Justice Department. There was a face-to-face meeting 2 days later with the representatives of the Justice Department. Mr. Gravitt and his wife and another attorney in my office, a special investigator from the FBI and an auditor from the Defense Contract Auditing Agency were presented where those threats were again repeated, this time to the entire group. The threats were, in fact, made known to Judge Rubin 2 days later at a chambers conference, and they have been submitted on the record.

Thereafter, the Justice Department carried out its threat, and took the position despite what they told you yesterday, that a citizen who brings one of these suits is not a proper relator when the Government gets involved if the Government can point to anything that it knew about prior to the relator bringing the suit, and that, therefore, not only does Mr. Gravitt have no right to participate in the qui tam action, but that Judge Rubin himself has no right to consider the fairness of the settlement.

Now, the result of that position, and the attack on the jurisdiction of the U.S. district court, is that the Justice Department is saying once we get involved in a case, there is to be no court supervision of a settlement; whether it is a good settlement, a bad settlement, it is not to concern anybody but the U.S. Justice Department.

Mr. GLICKMAN. All of this is happening this past November, right?

Mr. HELMER. This has all happened in November and December 1985, that is correct.

Mr. GLICKMAN. Just a couple of months ago.

Mr. HELMER. Yes.

Now, the problem with that position—and, I think, it is a problem that is addressed in the bill that Mr. Berman is cosponsoring—is that it allows a sweetheart deal to be worked out between the Government and the contractor, with no participation in this case by the whistleblower, the man who knows the most about the fraud, who, by the way, was never called to testify before a grand jury, has never been deposed himself, or the other foremen who support his testimony.

Why is the $234,000 amount inadequate? Under the present law, for every false voucher that has been submitted, whether you can show any damage or not, the statute says that there is a $2,000 forfeiture or penalty that can be imposed. Now, if you have 3,000 false vouchers, that is $6 million in penalties. If you have 18,000 false vouchers, which the study would indicate you have had in this particular case, you have a $36 million forfeiture, as compared with the $234,000 that the Government is attempting to settle this claim for.

Now, before you say, well, that is farfetched, that is exactly the formula that the U.S. Justice Department applied in Philadelphia in the late spring of 1985 against the identical defense contractor.

General Electric, for the identical type of claims, misvouchering of timecards. The Government applied a $2,000 per misvouchered timecard penalty.

Mr. GLICKMAN. How many were there in that case?

Mr. HELMER. In that case the indictment that was returned included, I think, 104 timecards, so the penalty was not quite $1 million, but it was a very suhstantial penalty.

My point is that the law has not changed in that 6-month period from when the General Electric Co. misvouchered timecards in Philadelphia, and when they were caught doing it in Cincinnnati, but I will tell you what the big difference between the two cases is, and the only difference. In Philadelphia the Justice Department brought the case by themselves. In Cincinnati, a citizen through the qui tam provisions, brought the matter to the Justice Department's attention.

Now one more point on this I would like to make about the Justice Department's role. They told you yesterday that it is their view that a qui tam plaintiff's proper role would be to present an objection to any settlement that is made that the qui tam plaintiff doesn't believe is appropriate. That position, despite you having been told that yesterday, is not the position that the Justice Department is taking in Cincinnati, OH, and in the U.S. Court of Appeals for the Sixth Circuit concerning Mr. Gravitt's case right today.

The Justice Department is taking the position in Cincinnati that Mr. Gravitt should not he permitted to be heard or participate in any manner in this settlement, and further, that the U.S. district court should not be permitted to be heard or to participate in any manner in this settlement.

Judge Rubin's view, simply stated, was who guards the guardians. The Justice Department is the guardian of the Treasury. Fine. Well, who guards the guardians? And if a citizen has information, if a citizen has evidence to suhmit that a settlement is not fair and not in the interest of all of the taxpayers, how can that citizen present that information.

The reason I have gone into the detail to explain to you these procedural problems that have come up is hecause, I think, all of these are specifically addressed in the bill that Mr. Berman is cosponsoring, and that if that bill were, in fact, the law today, none of these problems would exist. We would have protection for Mr. Gravitt losing his joh. We would have a role to play for the qui tam plaintiff, even though the Justice Department has intervened in the case. We would have the opportunity for the qui tam plaintiff to make his views known to the Federal court. Is it a fair settlement or is it not.

It is not our role to decide that. That is the judge's role, but he ought to at least be informed. He ought to at least have as much information as can be brought to him before that decision is made.

We think that if the version of Senator Grassley's bill that has been presented to this committee is looked at, it would address all of those concerns that we have.

Let me just add in closing that if you have your staff take a look at the number of qui tam actions that have been litigated in this country, and you pick the time period, the last 5 years, the last 10

years, the last 15 years, they are going to have a difficult time finding any such cases, and the reason for that is because of the procedural hurdles that exist in the statute as it was amended in 1943 at the request of the Justice Department. It is not because there is not any fraud going on or there are no citizens that are concerned enough to step forward like Mr. Gravitt has.

That is not the reason, and I think that it is imperative that you gentlemen give full consideration to passing this bill out of committee and joining with the Senate in getting these amendments made, so that citizens and the taxpayers can have a role to play, can serve as another check and balance on the system that has been set up, to make sure that there isn't collusion between the executive branch of government and these defense contractors.

That is all I have to say at this time.

[The statement of Mr. Helmer follows:]

UNITED STATES HOOSE DF REPRESENTATIVES
COMMITTEE ON THE JUOICIARY
SUBCOMMITTEE ON ADMINISTRATIVE
LAW AND GOVERNMENTAL RELATIONS

TESTIMONY OF JAMES B. HEIMER, JR.
FEBRUARY 6, 1986

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 Defendant General Electric Company.

I would like to echo the comments of Mr. Gravitt and the prior speakers in support of H.R. 3828 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 case 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 challenge 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 Vietnam war veteran, a former Sergeant

in the United States Marine Corp., wounded in battle and a recipient of the 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, the General Electric Company 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 Ohio. As such, I am very familiar with the impact that procedural changes can have upon substantive laws. Procedure can often prevent Congressional 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 much 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 the 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, the Ohio Supreme Court has recently ruled that a whistleblower has no rights under Ohio 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 the General Electric Company.

Thus, the amendmente proposed which would provide protection from retaliation for those who oppose and bring to light false claims ie critical. A job in our eociety is one of the main determinant factors of an individual'e worth and ability to provide for his family. Unfortunately, few individuale 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 improprietiee.

The amendments to the Act which provide for attorneye fees, would also greatly etrengthen the Act and make it more viable. Attorneys fees can vary greatly from caee to case, depending upon the complexity of the case, the number of documente involved, the ferocity of the opposition, whether or not the Department of Juetice is actively involved and doee a thorough investigation, and upon numeroue other variables euch ae the number of witneesee, the length of time involved, the number of procedural hurdlee to overcome, etc. A provieion allowing compensation for False Claims Act plaintiffe to requeet attorneye feee, in addition to their percentage recovery, would further encourage individuals to bring illegal practices to the United Statee Government's attention.

I further eupport the amendments which allow the Falee Claime Act plaintiff, by and through hie couneel, to remain in the action as a full party even though the United Statee Department of Juetice intervenes in the caee. In Mr. Gravitt's action, for example, hie participation has been limited to filing the initial action, eerving diecovery 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 requeeted any diecovery and its main activity hae been to request that Chief Judge Rubin postpone the case until a later date and to request that the Court approve a "sweetheart deal" settlement. Fortunately, Chief Judge Carl B. Rubin operates an extremely efficient Court in the Southern Dietrict of Ohio, attempts to bring cases to trial within approximately one year of their filing, and will not permit a second fraud upon the Government to occur in his courtroom. Thus, he has denied the Department of Justice's latest requests for a postponement and hae refused to approve the "sweetheart" settlement entered into by the Department of Justice and the General Electric Company. However, so long as Mr. Gravitt is not involved, the United States Department of Justice and the General Electric Company may well be able to "eettle" this case for a nominal amount to avoid adveree publicity concerning defense procurement efforts. That issue, whether the Department of Justice can settle Mr. Gravitt's case, without his approval or that of Chief Judge Rubin is now before the United States Court of Appeals for the Sixth Circuit. Such a "sweetheart" settlement took place in a Falee Claims Act suit brought in 1982 against Litton Systeme, Inc. involving Navy Contracts and may occur in this case, as well.

Plaintiff Gravitt's False Claime Act Caee

Qui Tam Plaintiff John Michael Gravitt filed his action against Defendant General Electric Company (G.E.) on September 26,

1984, alleging extensive, willful falsification of G.E. employee time cards used to calculate charges to the United States Government pursuant to defense contracts. The United States Government, through the Department of Justice and the United States Attorney for the Southern District of Ohio, intervened in the action in December 1984 to proceed with the action and represent the Government's interest. Upon intervening, the Department of Justice simultaneously moved for a stay of the civil proceeding pending a criminal investigation of Mr. Gravitt's allegations. Thereafter, the United States Department of Justice filed two additional motions seeking additional delay in the civil proceeding. The first such motion was granted; the second motion was denied. As the trial date approached, the Department of Justice still had conducted no formal discovery in this civil action.

When his action was filed, Mr. Gravitt served his First Set of Interrogatories and First Request for Production of Documents on Defendant G.E. simultaneously with the Complaint. Approximately forty days later, Mr. Gravitt noticed the depositions of Brian Rowe, Senior GE Vice President and Group Executive, and R. G. Gavigan, G.E.'s Internal Auditor, who previously informed Qui Tam Plaintiff Gravitt that substantially all of Mr. Gravitt's allegations had been proven as true and that the remainder could not be disproven. However, when the Department of Justice intervened in this action and secured a stay of this action, all discovery initiated by Qui Tam Plaintiff Gravitt ceased. Thereafter, the United States Department of

Justice conducted its criminal investigation led by Special FBI Agent John Ryan, who was, by his own admission, distracted by his simultaneous responsibility for the investigation of the Home Stats Savings Bank failure case. Consequently, the Department of Justice's investigation of this case consists solely of the criminal investigation.

The Department of Justice has no actual accounting of the time spent on the criminal investigation, yet it estimates that 5,000 man hours were expended. There has been no formal civil discovery, no collection of any testimony under oath, and no accounting of the hours expended by the Department of Justice in this civil proceeding. Furthermore, ths United States attorneys and Departmsnt of Justice attorneys handling this civil proceeding have never moved for disclosure of the rssults of the Grand Jury's investigation, as requirsd by Rule 6(e) Fed.R. Crim. P. See also United States v. Sells Engineering, Inc., 463 U.S. 418 (1983) (held grand jury materials generated through tax fraud prosecution not available to Department of Justics Civil Division attorneys absent a showing of particularized need pursuant to Rule 6(s)(3)(c)(i), Fed. R. Crim. P.). Therefore, the attornsys for the Department of Justics who negotiated the proposed settlement do not possess ths information generated by the Grand Jury's investigation nor any information from formal discovery. It is on this basis that the proposed settlement rests.

Following Chief Judge Rubin's denial of the Department of Justice's Second Motion for Enlargement of Time, Qui Tam Plaintiff's counsel appeared for the Final Prstrial Conferencs

scheduled for November 15, 1985. Neither G.E.'s counsel nor counsel for the Department of Justice appeared. Chief Judge Rubin conveyed to Qui Tam Plaintiff's counsel the message he had received that the case was settled. This was the first time Qui Tam Plaintiff's counsel heard of any proposed settlement. Subsequently, Chief Judge Rubin rescheduled the Final Pretrial Conference as a Status Conference which took place on November 26, 1985 in the Judge'e chambers.

At the November 26, 1985 Status Conference, Chief Judge Rubin established the following procedure for disposition of this case. First, Chief Judge Rubin echeduled a hearing on the issue of whether the District Court had jurisdiction to superviee and approve the proposed settlement, with oral argument to be based upon an assumption, in no way a proven fact, that the Government had knowledge of the information on which Mr. Gravitt's suit was based prior to the time Mr. Gravitt filed suit. Second, the Court determined that if it lacked jurisdiction over the matter if the Government had such prior knowledge, the Court would hold a second hearing to actually determine the factual issue of whether the Government possessed all knowledge on which Qui Tam Plaintiff Gravitt's suit was baeed prior to his bringing this action. Finally, if the Court found that ite jurisdiction survived these two hearings, the Court would proceed to determine the adequacy of the proposed settlement. In accordance with this procedure, Chief Judge Rubin scheduled a hearing on the jurieidictional iesue for December 13, 1985.

Immediately prior to the December 13, 1985 hearing, G.E. and the Department of Juetice filed an executed Stipulation of Dismissal of thie action. Chief Judge Rubin refueed to accept ths Stipulation of Diemissal and proceeded to hear argumente on the juriedictional iseue. In addition, all parties filed briefs with the Court in anticipation of the jurisdictional hearing.

During the hearing on the jurisdictional issue, the parties' positions emerged as follows: Qui Tam Plaintiff Gravitt contended that ths District Court has jurisdiction over this action and must approve any settlsment of ths action even if the Government had the information on which hie action was baeed at the time he filed suit. Defendant G.E. acknowledgsd that the Dietrict Court hae jurisdiction because the Government proceeded with the action and hae jurisdiction to approvs the eettlement, but contends that Qui Tam Plaintiff Gravitt cannot be heard on the ieeue of the adequacy of the settlement. Finally, the Department of Justice contended that the Dietrict Court has no jurisdiction to approve ths proposed settlement of this action, but only has jurisdiction to hear the case if the Department of Justice chooses to proceed. No factual evidsncs wae preeented by any party during the hearing.

Dn January 8, 1986 the District Court issued an Order vacating the Stipulation of Dismiseal and certifying the jurisdictional issue as one appropriate for an interlocutory appeal pursuant to 28 U.S.C. §1292(b). Chief Judge Rubin axpreesly statsd that his vacating of the Stipulation of Diemiesal wae "not an appealable Drder pursuant to 28 U.S.C. §1292(b)."

Subeequently, Qui Tam Plaintiff Gravitt and both GE and the Department of Justice filed Petitione for Permission to Appeal on January 21, 1986 with the United States Court of Appeals for the Sixth Circuit. All parties have filed briefs with that Court.

The issue certified by the District Court as appropriate for interlocutory appeal pureuant to 28 U.S.C. §1292 ie whether the District Court hae jurisdiction to pass on the adequacy of the propoeed eettlement in a Qui Tam False Claime Act proceeding in which the Government has proceeded, even if the information on which the euit is baeed wae known to ths Government prior to the filing of the action. Thie ie the only issue which is properly subject to any parties' Petition for Leave to Appeal.

There hae been no concession by Qui Tam Plaintiff Gravitt or his counsel and no factual determination made that ths information on which thie action is based was known to the Government prior to the filing of thie action. Further, Chief Judge Rubin's Order of January 8, 1986 does not constitute a factual determination that the Government had the information on which Gravitt's suit was baeed prior to the time it was filed.

Nonetheless, G.E. and the Department of Justice erroneously have euggeeted that the United States Court of Appeals for the Sixth Circuit can dispose of this case on interlocutory appeal. The Court of Appeals hae refueed to do so.

Qui Tam Plaintiff Gravitt wae and is prepared to prosecute this action on behalf of the United Statee Government. Because the Department of Justice hae intervened, Qui Tam Plaintiff Gravitt has been relegated to the eidelines. From the sidelines,

he has watched the Department of Juetice repeatedly möve to delay this action, and then attempt to eettle the action without conducting any formal discovery, without eecuring any formal teetimony under oath and without even obtaining the fruits of the Grand Jury investigation. Furthermore, Qui Tam Plaintiff Gravitt has seen G.E. plead guilty to criminal chargee and submit to the maximum penalties baeed on virtually identical allegations of misvouchering in the case of United Statee v. General Electric, C-1-85-112 (E.D. Pa. 1985). From hie perspective, Qui Tam Plaintiff Gravitt is convinced that the proposed eettlement of this ection is a "sweetheart deal" negotiated between Defendant G.E. and the Department of Justice.

During the pendency of this action, Qui Tam Plaintiff haa been offered a portion of the proposed settlement, and has been threatened should he decline it. Baeed upon both moral and civic obligatione to bring to the Court'a attention hie knowledge of the inadequacy of the proposed settlement, Qui Tam Plaintiff Gravitt declined the money and withstood the threats.

In short, Qui Tam Plaintiff Gravitt is entitled to be heard, as a proper relator, on the adequacy of the proposed settlement. Furthermore, as the motivating force in this litigation, Qui Tam Plaintiff Gravitt is uniquely qualified to aeeiet the Court in making an informed determination as to the adequacy of any propoaed eettlement. Finally, Qui Tam Plaintiff Gravitt haa undergone considerable personal sacrifice in bringing thie action. Public policy considerations demand that the qui tam provieions of the False Claime Act be given their intended purpose of providing qui tam plaintiffe the opportunity to participate maaningfully in the

disposition of such actions. Defendant G.E.'s protestations that any participation by Qui Tam Plaintiff Gravitt in the factual determination of the adequacy of the proposed settlement will inconvenience the parties by rendering such a determination closely akin to an adversarial proceeding or trial should not be accepted. Mere inconvenience does not outweigh the public interest of maintaining the vitality of the qui tam provisions of the False Claims Act and having an informed District Court perform its statutory and constitutional duty of reviewing the adequacy of any proposed settlement in this defense contractor fraud action.

Qui Tam Plaintiff Gravitt can demonstrate the inadequacy of the proposed settlement. As noted in the Department of Justice's Memorandum Regarding Jurisdiction and Standing of the Relator, filed with the District Court and attached to the Department of Justice's Petition for Leave to Appeal, the Department of Justice took a representative sample of 10,000 time vouchers as the basis for its investigation. Through conversations with counsel for the Department of Justice and several individuals involved with the investigation, Qui Tam Plaintiff has learned that 3,000 - 4,000 of these 10,000 vouchers had been falsified. Furthermore, according to the Department of Justice's application of the criminal counterpart to the False Claims Act, 29 U.S.C. § 1001, in United States v. General Electric, CR-1-85-112 (E.D. Pa. 1985) each falsified time voucher represents a false claim for which a $2,000.00 forfeiture is recoverable. The False Claims Act imposes the same $2,000.00 penalty for each false claim. See 31 U.S.C.

§3729. Aesuming the six month sampls selected by the Department of Justice is repreeentative of ths three ysar period Qui Tam Plaintiff was employed by Defendant GE, tha number of false claims ranges from 18,000 to 24,000. As aach false claim carriee a forfeiture of $2,000.00 which is racoverable without demonstration of any damages to the government, the potential recovary by tha United States is betwaen $36,000,000.00 and $48,000,000.00. Certainly, the proposed settlement of $234,000.00 ie woefully inadequate. Discounting the amount recoverable bscause of the hazards of litigation, Qui Tam Plaintiff belisves that an appropriate eettlament figure is in the neighborhood of $24,000,000.00.

HR 3753

In ragards to HR 3753, I would whole-heartedly support a change in Title 31 to increase the liability of any person who violates §3729 of that title by making the amount of panalty assessed three times, rather than two times, the amount of damages the Unitad Statea Government suatains as a result of each such violation.

HR 3828

Likewise, as to HR 3828, I would support the provisions therein making the amount of the penalty per false claim submitted to be $10,000.00 rather than $2,000.00; making the damage penalty a treble damage provision, rather than merely a doubla damagee provieion; and providing for conaequential

damages. In addition, I support the amsndmsnts to §3730(b) set forth in HR 3828 which continus to give ths Govsrnmsnt sixty (60) days in which to detsrmine whsther or not to enter a False Claims action, but provides that the psrson bringing the action, such as my client, whistlsblower John Gravitt, shall have a right to continus in ths action as a full party on his own behalf. Likewise, I support ths change clarifying ths situations in which the Court may dismiss actions. The proposed amendments limit such dismissals to actions based on the specific evidence or information that the Government previously disclosed in administrative, civil or criminal proceedings or to actions based on specific information disclosed during congresional investigations or disseminatsd by news media. Further, the Act, as amended, specifically permits Qui Tam plaintiffs, such as Mr. Gravitt, to file civil actions where the Government, although aware of false claims, does not, within six (6) months of becoming aware, initiate a False Claims Act proceeding.

I also support ths provisions which provids that the psrcentage of the proceeds of the action or settlement of the claim to be awarded to the Qui Tam plaintiff may range from at least 15% to as much as 30%, according to the contribution of the Qui Tam plaintiff. As ths statute is now worded, a District Court could absolutsly deny the Qui Tam plaintiff any procssds of ths judgmsnt or settlsment, regardless of ths amount of contribution of the Qui Tam plaintiff.

I would also like to add some comments regarding §3730's proposed amendmsnts providing rslisf for discrimination for

employees who report violations. Approximately half of my law firm's practice involves federal litigation of employss discrimination claims. Primarily, I represent employees who have bsen discriminated against, but I have also represented employers. I completely support the provisions providing for protsction for such "whistlsblowers." As Mr. Gravitt has told you, he lost his job with ths General Elsctric Company as a rssult of his refusal to falsify time vouchers. There is currently no legal remedy which can assure him re-employment with his former employer. Moreover, I support the mandatory requirement that whistleblowers be reinstated with full seniority rights, receive back pay with intsrest, and receive compsnsation for any special damages suffered, including attornsys fses.

The only way to signal to a discriminating employsr and to an intimidated work force that submission of false claims shall not be condoned, is to return ths employee who brings changes against his employer back to work. Without such a remedy, other employees will conclude that it is not in their own self-interest to report false claims, and, worse, conclude that the United States Government does not support them in bringing false claims to the Government's attention. Further, it is necessary to provide for attorneys fees in such casss, because othsrwise the attorneys fees entailed would be virtually impossible for any private litigant to pay. I would imagine that many of you sitting hsrs today could not afford to pay the $50,000.00 to $150,000.00 in legal fees and costs neceesary to win such a lawsuit.

Likewise, the provision of double damagee for backpay and punitive damages makes it more likely that discriminating employers will not be able to discriminate against conscientious, "whistleblowing" employees with impunity. Without the provieions enabling employee discrimination victims to recover substantial damages, it would be in an employer's best interest to go ahead and discriminate and risk the possibility of a lawsuit, since the amount of damages recoverable could otherwise be quite small. In short, for the anti-retaliation provisions of the False Claims Act to amount to more than a mere "paper tiger," an employer must fear substantial damages in the form of double damages, interest on back pay amounts, attorneys fees, special damages, and punitive damages, as well as reinstatement of the employee.

HR 3317

I would like to make ths following comments regarding HR 3334 entitled "The False Claims Act Amendments of 1985." I generally support all of the proposed amendments to 31 U.S.C. §3729 set forth as I believe they make the present act a stronger anti-fraud statute.

As regards HR 3334's amendments to 31 U.S.C. §3730, I would like to make the following comments. While I support the provisions which clarify the jurisdiction for such actions, generally, I do not believe that the remaining provisions in HR 3334 will greatly assist the Government in prosecuting criminally or civilly persons who submit false claims for payment to the Government. The False Claims Act and the Federal Rules of Civil

Procsdure and Criminal Procsdure, not to mention the specific statutes and regulations governing particular governmentsl programs, already provide the Attorney General and the Government with the ability to collect the necessary materisls and information to determine whether falee vouchere hsve been submitted. There is no need to set up an alternative or duplicative system.

Further, HR 3334 does not address the inadequacies of ths False Claime Act that have come to light as a result of the litigation of John Gravitt's False Claims Act case against defense contrsctor General Electric Company. That is, HR 3334 does not clsrify the appropriate role for a Qui Tam plaintiff such as whietleblower John Gravitt. Likewiee, it does not assist the Federal District Court in determining its jurisdiction to handle cases where there ie sn allegation thst the information was previously known to the Government or where there is a proposed settlement, such as ths "sweethesrt" eettlement which the United States Department of Justice has tried to force upon the Federal District Court of the United States District Court for the Southern District of Ohio. Nor does HR 3334 provide any "whistleblower" anti-retaliation provisions for employees. In short, HR 3334 does not address the glaring inadequaciess of the False Claims Act that the United States District Court for the Southern District of Ohio has encountered.

HR 2264

I would like to make the following comments regarding HR 2264, the proposed "Program Fraud Civil Penalties Act of 1985." While the purpose of this proposed amendment is laudable, I believe that there are a number of problems in the proposed legislation. First of all, I believe that it is inappropriate and inconsistent with the "separation of powers" principles upon which our form of government is based to have the judicial power to determine whether false claims have been submitted to be entrusted to persons under the control of the Executive branch of Government. Further, this legislation does not require or insure that the "authority head" charged with conducting "impartial hearings" have any training or experience in the law or in conducting administrative procedures. Further, the standard of review by the United States Court of Appeals, that the decision below must be "supported by substantial evidence on the record considered as a whole" is a standard inconsistent with appellate review and can only benefit the perpetrator of the fraud by delaying the outcome or overturning the findings that fraud has occurred. Moreover, I question the ability of any department to determine, in most cases, prior to initiating the proceeding under this Act, if the amount of the false claim or the amount of the damages is less than $100,000.00. Further, our Government should be spending most of its time investigating fraud in excess of $100,000.00, not wasting time on $500.00 cases.

HR 3335

I would also like to make the following comments regarding HR 3335, entitled "Program Fraud Civil Penalties Act of 1985." This bill wisely provides for an independent hearing examiner or administrative law judge to make determinations regarding the submission of false claims. This proposed bill, however, permits the Attorney General to either stay or absolutely stop investigations of alleged false claims. I see no purpose in such a provision, except for the Executive Branch to hide what it believes is politically embarrassing fraud and, worse, to allow "friends" of the then current Administration to escape punishment.

Closing Remarks

In short, I heartily support HR 3828's amendments to the False Claims Act. The amendments strengthen and clarify the Act and make it a more viable anti-fraud statute. If the Committee would like any additional information from me or my client, John Gravitt, regarding his False Claims Act case, we stand ready to assist you. Thank you for the invitation to address you today.

Mr. GLICKMAN. I want to thank you also for an excellent statement.

Mr. Gravitt, I would like to ask you, before we get into the qui tam issues, to get a little for the record of the committee, a little better understanding of the chronology when you first found out or discovered timewise that the vouchers were being improperly modified and the time length between that and your discussions when you filed suit, because I want to try to get a feeling for the facts.

Mr. GRAVITT. There was a progression over somewhere in the neighborhood of about 3 years of putting it all together. The first instance that I knew something was wrong was about my second week at General Electric, and they wanted to know what I thought about GE, and I asked them how they were staying in business with the amount of work that was being done.

They smiled and said, "We will explain to you how to do it."

About 3 months later we were having difficulty with the training program, a very elaborate training program. We were on afternoon shift. We got the junior people out of 50 machinists, we had somewhere in the neighborhood of 30, in the trianing mode, but if we charged the time to training, nonproductive time, it came out of a budget which they said we were running overbudget on training. We tried to nail it down. How much budget do we have. The end result was we don't have any budget, so while you are training people, you charge them all to the job.

Now, this creates two problems. You put two people on the same job while you are in training. One man is teaching, one man is learning. If you get 50 percent productivity you are doing well. Instead of one man doing 4 hours working at $50 an hour, you have one man training another man, and you are working 8 hours at $100 an hour, you are putting $1,600 into the job, and you are only getting $200 worth of work accomplished. But we were told there is no budget for the training. Don't charge it to nonproductive time. Charge it off to the job.

This progressed into other areas. Then one afternoon the foreman and myself were called into my supervisor's office, and we were told that there are certain jobs and cost overrun situations, and you will not charge time to that. You will change the numbers.

He and I both refused to do it. The question of budget is one thing, but falsifying company records is another thing. That is when we first discovered the real problem.

Mr. GLICKMAN. The fellow who asked you to falsify the records, did he ever tell you that this was coming down from on high? Did you ever get the clear feeling that his supervisor——

Mr. GRAVITT. At that point in time, no. We thought, gosh darn, we have just got a boss that is not doing things correctly. After that, we had a meeting with a member of management and other members three or four levels high to discuss the budget on training, and we were—then on down the road I was in a training session in school, and the subject of vouchers came up, and in this group we had foremen from all over General Electric, and managers from all over General Electric, and vouchers came up, and I stood and told them the vouchers that were going into the office were not the same vouchers that were coming out of the office.

One of the foremen tried to pull me down in my chair. He said, "Shut up, you are going to get fired." In the meantime, other foremen started talking about their problems with vouchers, and it almost turned into a riot, because the foremen were upset. They thought like we thought, we are the only ones who have this problem, but it appeared that it was throughout General Electric. The class was cut off. That was it. That was it for the remainder of the day.

It was at this point in time when things were bad, and that particular night I was put into the hospital for emergency surgery. I was off work for about 6 months. During that period of time, my fringe benefits were canceled. The salary continuance program was canceled on me. A month before I returned to work I was notified that I was going to be laid off, that if I could find a job out there somewhere find a job. Don't bother to come back to GE because you are in trouble.

Well, I reported back to GE, and 2 weeks later I was put back in the same foreman's position.

Mr. GLICKMAN. Let me ask this question to your attorney:

The status of any criminal investigation in this case, you stated that but I lost it somewhere. What happened?

Mr. HELMER. The U.S. attorney's office elected not to indict anyone and stop the criminal investigation. This would have been around the end of September 1985. Now, interestingly, at the same time that that decision was made, Brian Rowe issued a memorandum to all General Electric employees, which I brought a copy with me, in which he admits that intentional—not mistakes—intentional mis-vouchering, false vouchering, was going on at General Electric, and this was uncovered in the investigation.

We learned that the Justice Department's criminal lawyers were not aware of that, nor were the Justice Department lawyers on the civil side when they made their decision not to go forward. This is I think what most lawyers refer to as an admission against interest. It was published and distributed to all General Electric employees. The Government did not have it.

Mr. KINDNESS. Mr. Chairman, might a copy of that be submitted as a part of the record?

Mr. GLICKMAN. Of course. Why don't you bring a copy up here so we can look at it and then put it in the record.

[The memorandum follows:]

From the front office, General Electric Aircraft Engine Business Group, September 1985

DON'T YOU BELIEVE IT!

(By Brian H. Rowe)

B.H. ROWE REFLECTS ON SOME MYTHS AND MISCONCEPTIONS AND DOWNRIGHT ERRORS

"It's all military business. It doesn't make any difference how we voucher."

Some few naive people thought that it was OK to voucher hours from a military contract being overrun to one that was underrun because in the end the Government paid all the bills. This is not so! It is illegal and a bad way to run any business, military or commercial. We are not only required by Contract and Law to voucher accurately but we need to know our actual cost performance to help correct waste and estimate further contracts.

"It's OK to get rid of 'missing time' by charging to process pools or other 'creative accounting' techniques."

We are concerned about "missing time" and want it fixed! However, we want it fixed by correcting system problems, processing transfers promptly, updating planning, attention to detail at all levels and all the other actions needed to fix the problem. To fix it with the "Stroke of the Pen" is misvouchering and would invite disaster for the individual doing so and the AEBG as well.

"It's OK to dump excess costs or job overruns into overhead."

This is a clear violation of our Instruction and Federal Law. We don't like cost overruns but want them kept minimal by careful planning in quoting and close control of costs as they are being incurred. Let's profit by our mistakes and learn how to do the job better the next time. When you attempt to cover up an overrun you risk severe discipline and hurt AEBG's Cost Superiority program.

"The efficiency measurements are what's important. Meet product cost bogeys even if you have to fiddle the books."

We must ship quality products at competitive costs. But we have to do it with absolute honesty and integrity! The military expects us to be absolutely scrupulous in the accounting of costs. Our Corporate Office expects this! I expect this! You must call the shots with integrity. Follow the rules! We will be better off in the end.

"Ownership means letting go once you set the goals and schedules."

Don't you believe it! Delegation is fine but abdication is not. Managers and supervisors have to satisfy themselves that corners are not being cut; how the job is done is as important nowadays as the end result and managers have to satisfy themselves that work is being done properly - according to the rules - with top quality!

"It's OK to help a friend meet his efficiency by letting him voucher your work."

This is also a violation of our work rules and Government Contract Requirements. Good team work is highly desirable, but help your buddy with coaching and explaining better ways to get the job done. Both of you will be in trouble with misvouchering.

"Let's take people who belong in overhead and make them applied so we can meet our head count."

Head count and overhead rates are very real problems. Don't solve them by misclassifying people and instructing them to voucher illegally. Everyone should look at themselves and their organization and be comfortable that no one is being forced to do "creative" vouchering. If you feel your supervisor or manager is putting you in such a position, make sure you express your concerns to him, and if no action is taken to correct the situation you should contact your Ombudsperson or Legal.

"We're not going to have idle time in this place!"

This statement is simply not realistic. It is the kind of thing that causes people to do dumb things. We want complete honesty, complete integrity in all of our record keeping. Concealing and hiding problems helps none of us, and the act of hiding and concealing puts the individual and the Company in legal jeopardy.

A FINAL NOTE

As you know, we have been conducting a large number of labor voucher audits. While we have found a number of procedural errors and practices, and we have set about to correct these deficiencies, we have also found a few instances of conscious mischarging. I cannot overemphasize the seriousness of this practice. That kind of stupidity could bring the business to its knees! - and I mean it!

Also we still find inexcusable administrative laxity. Some people haven't yet gotten the message. Some still put the Company and themselves in jeopardy by cutting corners, by not thinking, by innocent errors-and some think "looking good" is more important than their personal honesty, integrity, or jobs.

Ignorance is no excuse! In a court of law not knowing any better is a hollow defense. The worst part is, our collective reputation, which we cherish, suffers when one of us makes a mistake. I ask that you do your part to enhance and uphold our reputation and if you see others compromise us I ask that you call it to our attention. I thank you for reading this! I will thank you more for paying heed, for speaking up, for protecting our Company and for our jobs and for defending our integrity with all your energy.

Please remember, we are not out to get anyone. We are trying to correct a bad situation, and we need all of your help.

Mr. GLICKMAN. Mr. Brown.

Mr. BROWN. Mr. Chairman, as I have listened to the testimony, it seems to me that the Justice Department may well be guilty of possible misconduct themselves. There is certainly an indication here of some possible misconduct in the Justice Department itself. I

would ask that this committee take a copy of this testimony, forward it to the Attorney General, ask him to investigate. I would also hope that this committee would be willing to have the Attorney General come and answer.

Mr. GLICKMAN. I think your request to alert the Attorney General as to the contents of this testimony is a good suggestion. I would suggest that what we do is once the hearing is finished that majority and minority staff draft a letter to the Attorney General doing that.

Let me go back to the basic subject of the hearing. It is clear, Mr. Gravitt, that your involvement started the entire proceedings, that is your initial investigation, but that didn't seem to do very much. Your qui tam proceedings brought the Justice Department in. They were not in on this case at all beforehand; is that correct?

Mr. GRAVITT. That is correct.

Mr. HELMER. Could I clarify that?

Mr. GLICKMAN. Yes.

Mr. HELMER. Mr. Gravitt sent an eight-page single-spaced typed letter to Mr. Rowe prior to his discharge. As a result of that letter, there was some investigation done at General Electric, and there was another letter sent from a man named Krall at General Electric to a Colonel Lynch of the U.S. Air Force. It is a four-paragraph-long letter, in which General Electric states that their investigation, which was prompted by a foreman from DMO, which was Mr. Gravitt, has uncovered I believe at that time they said misapplication of the vouchering procedures. That letter, which as I say is only four paragraphs long, is what the Justice Department is now pointing to and saying, "Well, we knew about this all along, therefore Mr. Gravitt cannot properly bring a lawsuit."

Mr. Gravitt when he filed his complaint in October 1984, supplied the Justice Department with a 20-page affidavit setting forth names, dates, phone numbers and places of his evidence. That 20-page affidavit is I believe in stark contrast to the 4-paragraph letter that the Justice Department is refering to from Mr. Crawl to Colonel Lynch.

Mr. GLICKMAN. This four-page letter, again, when was it written?

Mr. HELMER. Four-paragraph letter.

Mr. GLICKMAN. Four-paragraph letter. When was it written?

Mr. HELMER. It was written sometime in 1983.

Mr. GRAVITT. I believe it was——

Mr. HELMER. Mr. Gravitt's suit was broght 1 year later.

Mr. GLICKMAN. Have you seen that letter?

Mr. HELMER. Yes, I have. I have a copy of it. I don't believe I brought it with me, though.

Mr. GLICKMAN. Could you get a copy of that letter for our record also?

Mr. HELMER. Yes, sir.

[The information follows:]

GENERAL ELECTRIC NOV 2 3 1984

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 parsonnel under the direction of Evandale 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 mada 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 meat 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. Tha 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

Mr. GRAVITT. It might be interesting, the letter to Colonel Lynch. Colonel Lynch was relieved and quietly replaced with another officer, put in charge of aircraft unit at General Electric, and as we understand it, Colonel Lynch is no longer with the Air Force anymore. He is in private industry somewhere, but we don't know with whom.

Mr. GLICKMAN. Referring to him, were there military procurement officers in and around the GE plant where you were working at the time?

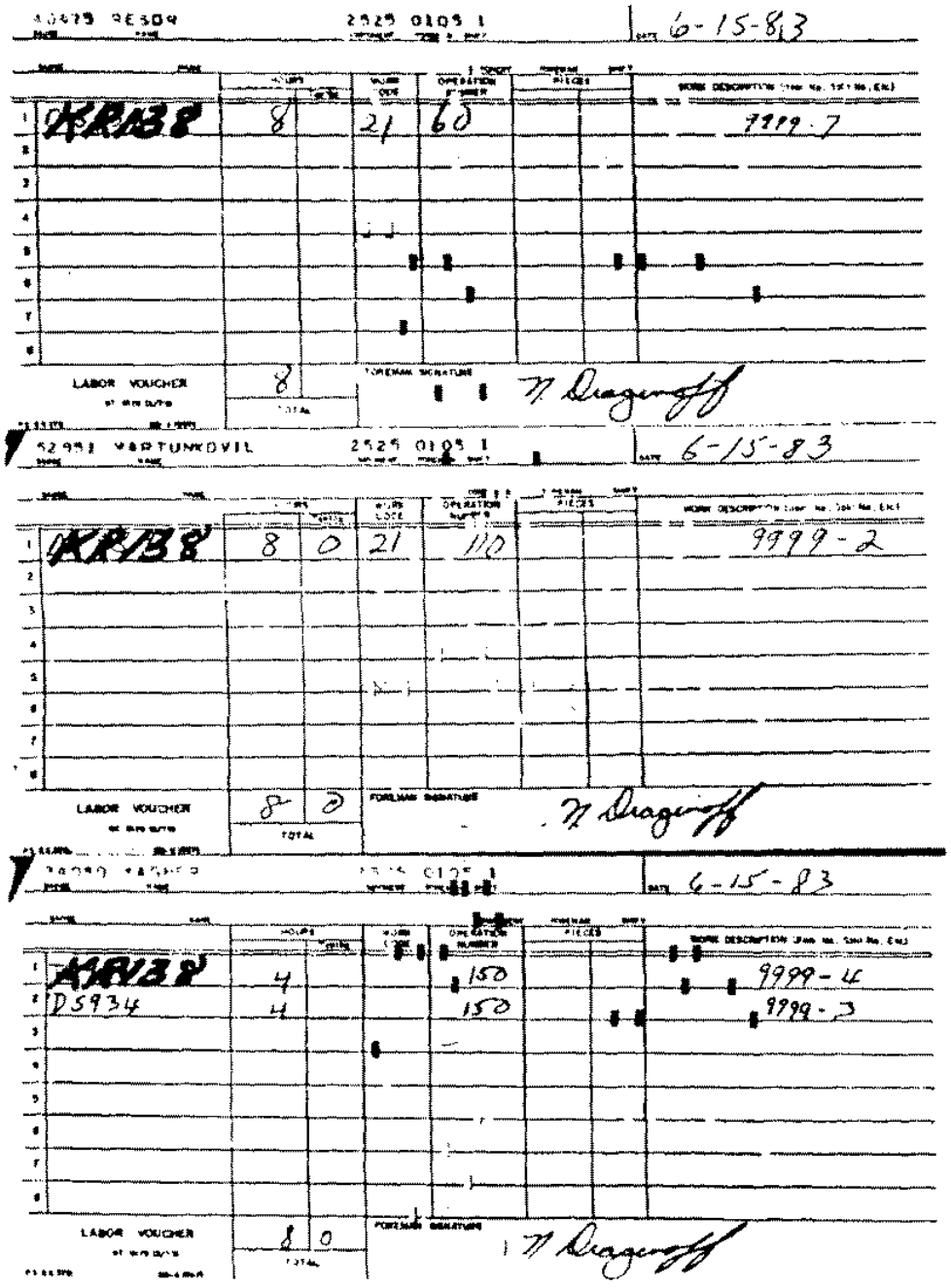
Mr. GRAVITT. I saw several Air Force officers almost daily. As far as them coming into the departments or looking at anything or what their actual positions were, I couldn't tell you.

Mr. GLICKMAN. Do you know if the Defense Contract Audit Agency was auditing these vouchers or any of the contracts at the time?

Mr. GRAVITT. I asked Mr. Morehouse that same question. He said that they periodically went out and audited different units, and I asked him how the Department, with 75 people in it and 3 out of 8,000 vouchers in 6 months were visibly falsified, how come that the Defense Contract Agency auditors office didn't catch it when a 3-year-old could have sorted them out for you, he could not answer that question, nor could the Justice Department answer approximately 100 questions that we asked them when we saw them a few months ago.

Mr. GLICKMAN. You say you have copies of the vouchers. I would like to have those as well for the record, if we could.

[The vouchers follow:]



40479 RESOM 2525 0105 1 DATE 6-15-83

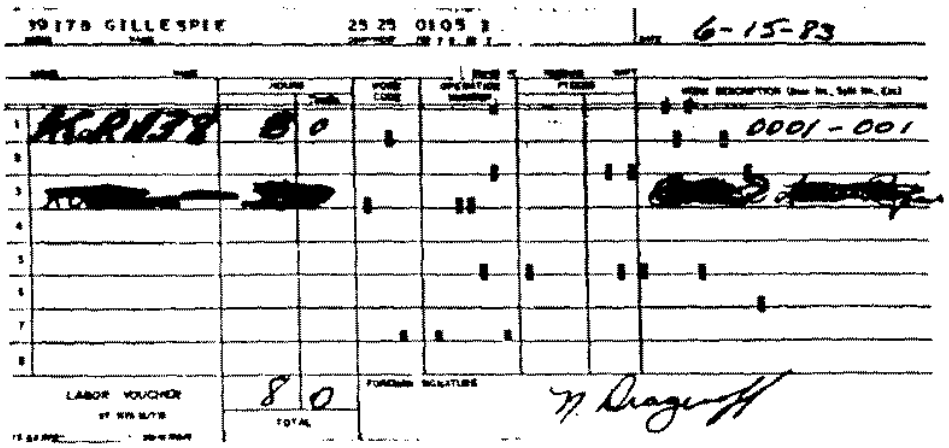
		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	KR38	8		21	60			9999-7
2								
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8			FOREMAN SIGNATURE			N Dragieff
		TOTAL						

52991 VARTUNKOVIL 2525 0105 1 DATE 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

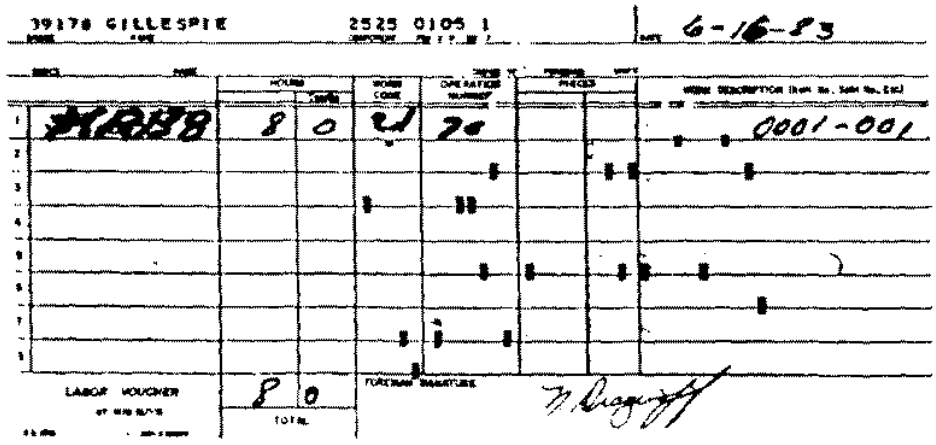
		HOURS		WORK CODE	OPERATION NUMBER	PIECES		WORK DESCRIPTION
1	KR38	4			150			9999-4
2	D5934	4			150			9999-3
3								
4								
5								
6								
7								
8								
	LABOR VOUCHER	8	0		FOREMAN SIGNATURE			N Dragieff
		TOTAL						


39178 GILLESPIE 2525 0105 1 6-15-83

1 [redacted] 8 0 0001-001

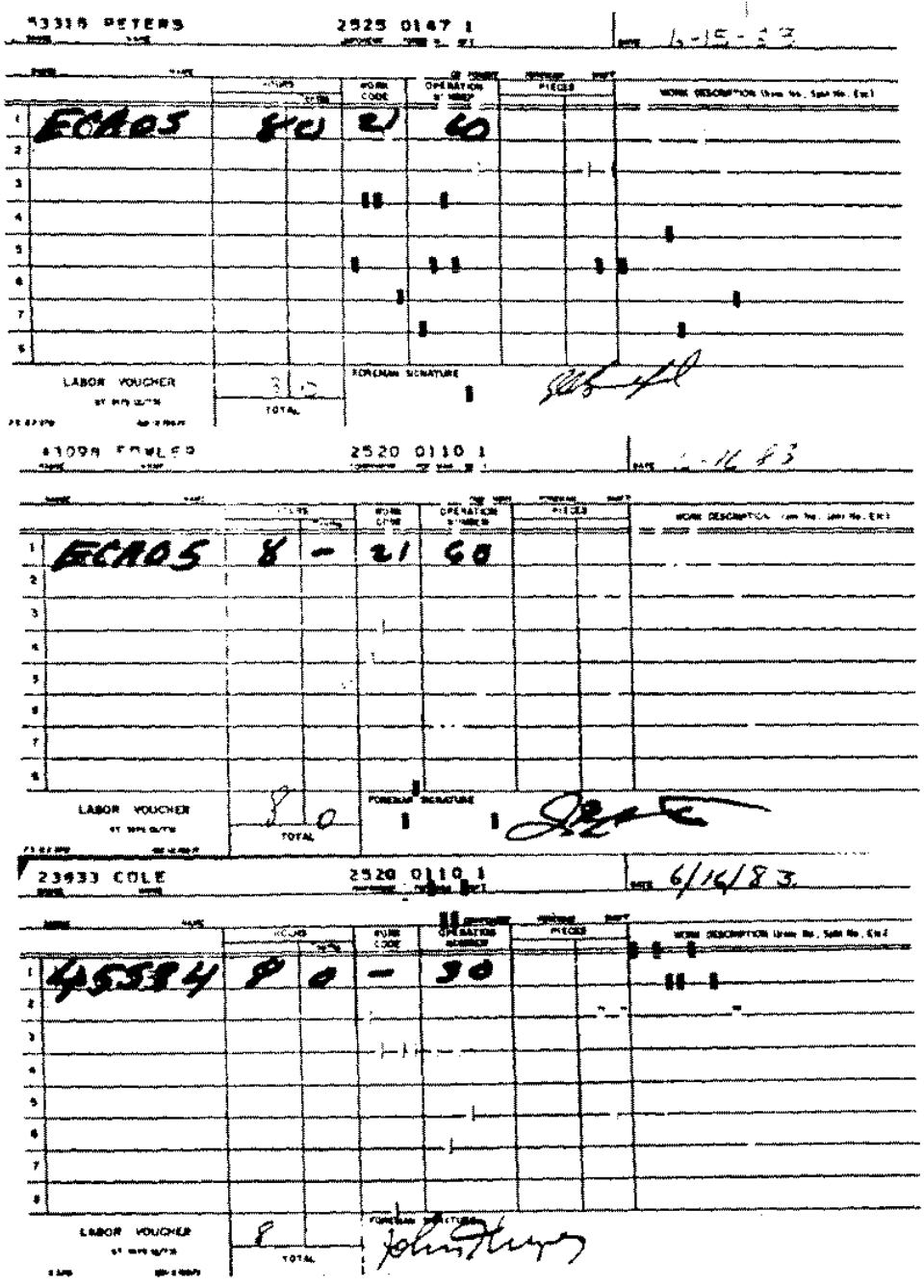
3 [redacted]

LABOR VOUCHER 8 0 TOTAL


39178 GILLESPIE 2525 0105 1 6-16-83

1 [redacted] 8 0 J 20 0001-001

LABOR VOUCHER 8 0 TOTAL



93315 PETERS 2525 0147 1 6-15-83

1	EC405	8	2	60		
2						
3						
4						
5						
6						
7						
8						

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE

81098 FOWLER 2520 0110 1 6-16-83

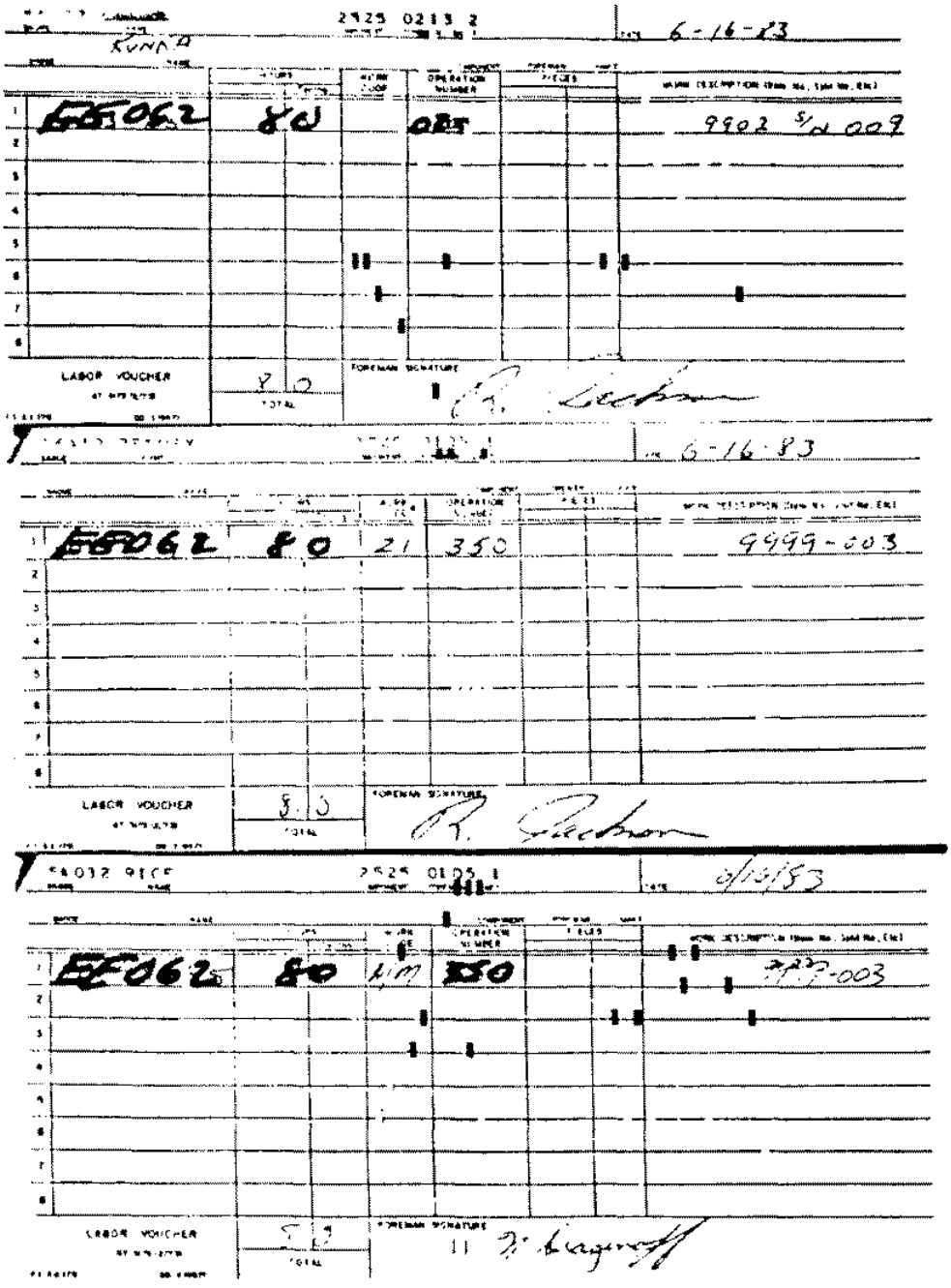
1	EC405	8	-	21	60	
2						
3						
4						
5						
6						
7						
8						

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE

23933 COLE 2520 0110 1 6/16/83

1	45584	8	0	-	30	
2						
3						
4						
5						
6						
7						
8						

LABOR VOUCHER — TOTAL 8 — FOREMAN SIGNATURE



2925 0213 2

6-16-83

1	68062	80		021	9902 S/A 009
2					
3					
4					
5					
6					
7					
8					

LABOR VOUCHER — 80 TOTAL — FOREMAN SIGNATURE

6-16-83

1	68062	80	21	350	9999-003
2					
3					
4					
5					
6					
7					
8					

LABOR VOUCHER — 80 TOTAL — FOREMAN SIGNATURE

2925 0105 1

6/16/83

1	68062	80	21	350	999-003
2					
3					
4					
5					
6					
7					
8					

LABOR VOUCHER — 80 TOTAL — FOREMAN SIGNATURE

Mr. HELMER. I would just like to point out these are just by way of illustration. We have many, many others, and apparently the Government looked at additional thousands, although they do not have the originals. The originals have been kept by General Electric.

Mr. GLICKMAN. Are these extra copies for us?

Mr. HELMER. Yes, sir.

Mr. GLICKMAN. One final question before I go on, because we could talk forever. Going back to the qui tam provisions, Mr. Gravitt, you stated that you thought that citizen plaintiffs should be fairly but not overly compensated. Do you think it would be necessary for tbe private citizen to know that he will make money by filing such an action in order to go through with the action, or should the reimbursement be for money and time spent as well as attorneys fees and nothing more?

Mr. GRAVITT. I think the primary issue there, sir, is that a citizen who brings the action will be protected. We have received many, many, many phone calls concerning this, and one important facet of this is all of the phone calls and the letters have been supportive. Not one call has been negative, but even the people that have additional information at this time want to remain anonymous. They won't give us their names. They will call in and tell us things but they won't give us their names, because there is no protection for them.

Mr. GLICKMAN. Thank you. Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Gravitt, Mr. Helmer, I certainly want to thank you for your testimony and for particularly being here at your own expense, Mr. Gravitt. I can't help being quite a bit concerned about the role of the Department of Justice as described in the testimony this morning in the handling of this case. If I understand correctly what was presented by way of testimony, Mr. Gravitt's qui tam action was not handled by the U.S. attorney's office of the Southern District of Ohio, but by the Justice Department out of Washington, through personnel assigned from Washington probably, or do you have any knowledge about that?

Mr. HELMER. Yes, sir, you are correct. There were two assistant U.S. attorneys from the Southern District of Ohio's U.S. attorney's office involved, but they were simply there as local counsel. The qui tam part was handled by an assistant attorney general from the Justice Department here in Washington. This gentleman informed me that it was his responsibility to handle all qui tam actions brought in the United States, and that in fact he had done so for the last 4 or 5 years.

Mr. KINDNESS. Could we get his name?

Mr. HELMER. His name is Vincent Terlep. Mr. Terlep was asked by me as to how many of those qui tam actions he had tried in the last five years, and I was told none.

Mr. KINDNESS. There are a lot of questions to be asked, but I hardly know where to start. I think, Mr. Chairman, I would suggest that the record remain open for inquiries, questions to be presented by way of follow-up on this testimony this morning, and the responses to it.

Mr. Helmer, I would appreciate it if you might help us with the responses to such further questions as the subcommittee feels we need to ursue.

Mr. Chairman, like Mr. Brown, I feel that we really need some explanation from the Department to Justice about the handling of this case, and it really ought to come from fairly high up. If I am not mistaken, the Attorney General might feel that it is his responsibility to respond to those questions.

Mr. HELMER. Representative Kindness, I know personally about your reputation for looking out for your constituents, and although neither Mr. Gravitt nor I are constituents of yours, we know that you are very familiar with the Cincinnati area, and the fact that there are thousands of General Electric employees who live in Cincinnati and in your district, and we appreciate your concern for this matter.

All that Mr. Gravitt has ever asked is an opportunity for somebody, some government official, who is concerned, to listen to his complaints, and to listen to his charges. He has been prevented so far from doing that in the courts, through the efforts of the Justice Department. He has been prevented from doing that to the Justice Department. Those are two branches that he has gone to. You are the third, and we do appreciate your willingness to listen to his particular complaints.

Mr. KINDNESS. Was the criminal case ever presented to a grand jury to your knowledge?

Mr. HELMER. It is my understanding that there was testimony taken by a grand jury concerning this matter. I do not know who testified but I do know who did not testify. Mr. Gravitt and the other foremen who were instructed to alter vouchers were never called to testify.

Mr. KINDNESS. Do you know the approximate time of that grand jury proceeding?

Mr. HELMER. Yes, sir. I believe it was taking place in the late summer months of 1985, August-September, in that neighborhood.

Mr. KINDNESS. Thank you. Thank you, Mr. Chairman.

Mr. GLICKMAN. Thank you.

I think that during the time that we are on break, I think if staffs are not similarly on break they ought to pursue this matter, so that when we come back the following week we may feel compelled to have an additional hearing on bringing the Justice Department to talk about your particular case with everybody else as well. Mr. Berman.

Mr. BERMAN. There are, as Mr. Kindness said, a number of questions that I would be interested in asking, but for purposes of getting through this hearing I won't ask any at this time.

Mr. GLICKMAN. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. Helmer, help me understand, if you would. Did I understand you to say that when the civil side of the Justice Department got involved in this, that their first action was to request not just a delay but to request that the effort to obtain evidence not go forward?

Mr. HELMER. That is correct. We filed the complaint. It is my practice to file discovery requests with the complaint, which is per-

missible to do, and we served massive interrogatories, document requests, and notices for depositions which were in essence a blueprint telling you where the bodies were buried, and we did serve those with the complaint. The Justice Department's first actions were to request that the court instruct General Electric that it did not have to respond to any of those discovery requests.

Mr. BROWN. Did the Justice Department offer any explanation as to why the discovery process should not go ahead, or they didn't want it?

Mr. HELMER. Yes, they did. It is my understanding that their belief was that if discovery was going ahead on the civil side, that that would permit General Electric's attorneys to discover what the Government was doing on the criminal side, and that that was the reason they gave as to why no discovery should go forward until after the criminal investigation was completed.

Mr. BROWN. What are the consequences if you find out, if the civil side finds out evidence that the criminal side may have found out? Does this prejudice the case in some way?

Mr. HELMER. Not at all, but it may give General Electric's employees or officials some advance warning of indictments or criminal proceedings that the Government may wish to take. Now, as it turns out, no such indictments were returned, so that the whole matter was sort of academic. My main problem and concern was that no civil discovery was ever conducted. No witnesses were ever put under oath and asked some very tough questions, as to how far up the chain of command this fraudulent scheme went, and further, that the Justice Department made no effort to even obtain the fruits of the criminal investigation, which they are by statute prohibited from having unless they make a specific request to the court, which they did not do.

Mr. BROWN. If I understand what you have said, the criminal side of the Justice Department decided not to proceed, or has not gone ahead with the criminal side. Once that decision was made, did the civil side then want to proceed with the discovery?

Mr. HELMER. No, the civil side then solicited from General Electric a settlement proposal. The settlement proposal was for General Electric to pay $234,000 to the Treasury of the United States. There was no further negotiation. There was no counter offer from the Justice Department. That was GE's offer that the Justice Department took.

Mr. BROWN. Let me summarize this so I have got it clear ly in mind. The Justice Department stopped the discovery process, did not try and obtain under proper channels the evidence that the criminal side had developed, proceeded to settlement without ever developing the evidence, even though the criminal side had now closed its efforts, and has actively tried to coerce your client into not pursuing this?

Mr. HELMER. It has threatened Mr. Gravitt and his counsel that if they pursue this matter, consequences—sanctions were the words that were used—will be taken.

Mr. BROWN. I am not a criminal specialist, but is this anything less than an effort to cover up on the part of the Justice Department?

Mr. HELMER. I think your question answers itself.

Mr. GLICKMAN. Would you yield to me?
Mr. BROWN. Certainly.
Mr. GLICKMAN. The Philadelphia case where GE pled guilty, when did that occur?
Mr. GRAVITT. I think it was about 7 months after I filed my case, sir.
Mr. HELMER. He means when the indictments——
Mr. GLICKMAN. When were the indictments?
Mr. HELMER. The indictments were about 7 months after the qui tam action by Mr. Gravitt was brought, and that complaint, by the way, alleges the identical scheme to defraud the Government that is set forth in Mr. Gravitt's complaint.
Mr. GLICKMAN. Do you know when the investigation began in the Philadelphia case?
Mr. HELMER. I do not.
Mr. GLICKMAN. Do you know if the investigation could have been precipitated in some way in the Philadelphia case by Mr. Gravitt's qui tam action in Cincinnati?
Mr. HELMER. I do not know that.
Mr. GLICKMAN. Do you know in the criminal settlement—well, it wasn't a criminal settlement but there was a guilty plea, wasn't there?
Mr. HELMER. Yes, and there were severe fines and penalies levied which GE agreed to and paid approximately $2 million.
Mr. GLICKMAN. In that plea bargain, do you know if there was or could have been any relationship between that particular plea and any other investigations then being undertaken by the Department of Justice?
Mr. HELMER. I was informed by Mr. Terlep that he was involved in that action also, and that is the extent of my knowledge.
Mr. GLICKMAN. The Philadelphia action?
Mr. HELMER. Yes sir. That is the extent of my knowledge of any connection.
Mr. GLICKMAN. But there was no separate civil action in the Philadelphia action as far as you are aware?
Mr. HELMER. I do not believe there was.
Mr. GLICKMAN. But I thought this Mr. Terlep was the qui tam man at the Department of Justice?
Mr. HELMER. That is correct.
Mr. GLICKMAN. That is the civil man, right?
Mr. HELMER. That is also correct.
Mr. GLICKMAN. But this is a criminal investigation. I thought they didn't have anything to do with each other?
Mr. HELMER. All I know is that he told me that he was involved in the Philadelphia matter. When I asked why is a false voucher in Philadelphia worth $2,000, and in Cincinnati it is worth zero, his answer, if you are interested in his answer, was that General Electric has gotten a lot smarter since Philadelphia.
Mr. GLICKMAN. Mr. Brown, do you have any more questions?
Mr. BROWN. No, thank you.
Mr. GLICKMAN. Mr. Boucher.
Mr. BOUCHER. Mr. Chairman, I don't have any questions, but based on what we have heard here today, it would seem to me to be very appropriate for this subcommittee to have hearings focus-

ing on the Justice Department's action in this case, in delaying the qui tam litigation, and also in attempting to settle the case for about one-tenth of what the penalty otherwise could have been. I would hope the committee would do that.

Mr. GLICKMAN. I think that is what our intention is right now. When do you expect the sixth circuit to rule on the issue of the proposition of your client's interest in the qui tam settlement?

Mr. HELMER. The answer is a little complicated, but let me see how well I can do.

Judge Rubin ruled that he would not accept the Government and GE's dismissal of Mr. Gravitt's qui tam action. He vacated that. However, he said he was not sure of the extent of his jurisdiction to hold hearings on the fairness of the settlement and he, through a procedure called a 1292(b) appeal, certified that for an interlocutory or special appeal to the sixth circuit court of appeals. So, in other words, Mr. Gravitt's case is still pending before Judge Rubin, but this one issue of Judge Rubin's jurisdiction over determining the fairness of the settlement he has asked the sixth circuit to look at.

Mr. Gravitt and I have filed a brief with the sixth circuit asking them to entertain the special appeal as has General Electric and the Government. We have all taken very different positions but we essentially all asked the sixth circuit to look at it. All of the briefs were filed as of yesterday, and the sixth circuit's staff has informed me that it will take approximately 2 months for the court to determine if they will even accept the appeal. The appeals court must first determine if it will accept the appeal. If the appeal is accepted, the court will then set up a briefing schedule.

Mr. GLICKMAN. But, again, that is just strictly a jurisdictional issue will be decided?

Mr. HELMER. Yes, sir.

Mr. GLICKMAN. And if it is decided that Judge Rubin doesn't have the jurisdiction, then what happens?

Mr. HELMER. If he doesn't have the jurisdiction, the General Electric Co. and the Government can go off somewhere and do whatever they please. It is Judge Rubin's view, I believe, that that would not be in the best interests of the citizens of the United States, but because this is the first time this issue has come up, even though the statute has been around since 1863, it is the first time this issue has come up, he has asked for guidance from the court of appeals.

Mr. GLICKMAN. I want to tell you how much we appreciate your testimony. I would appreciate it if possible that you, Mr. Helmer, keep in contact with majority and minority staff on this as they will be working on this issue during the next 10 days, and they will contact you, I am sure.

Mr. Gravitt, I think you have performed a great service for your country, and you may in fact prevent future things like this from happening ever again, in light of the fact that perhaps Congress will pass legislation dealing with the issue. And even if we don't for some reason, the oversight that we have and will continue to do I think will be of immense benefit. But I think that we can legislatively take some steps to prevent this thing from happening, and the committee appreciates very much your being here.

Mr. GRAVITT. Thank you, sir. It is an honor.

Mr. GLICKMAN. Let me just ask you one question. Have you testified before the Senate committee?

Mr. GRAVITT. Yes, sir.

Mr. HELMER. We testified before the Senate, though much earlier in 1985, before 90 percent of the developments that we have revealed to you occurred.

Mr. GLICKMAN. So the settlement information was not an issue?

Mr. HELMER. Not before the Senate. Nor was the Government's position concerning qui tam actions. It was just simply the need for protection for a whistle-blower.

Mr. GLICKMAN. Thank you both very much.

Our next witness is John Phillips, Executive Director, Center for Law in the Public Interest.

TESTIMONY OF JOHN PHILLIPS, EXECUTIVE DIRECTOR, CENTER FOR LAW IN THE PUBLIC INTEREST

Mr. PHILLIPS. Thank you, Mr. Chairman.

Mr. GLICKMAN. Mr. Phillips, it is a pleasure to have you here. Why don't you proceed.

Mr. PHILLIPS. Thank you, Mr. Chairman.

I have submitted a fairly extensive testimony commenting on the details of the proposed amendments to the False Claims Act, and I will not belabor those points with this Committee today.

I would just like to summarize some of the points that I did make in that testimony, and provide some background of our involvement.

We became interested in the False Claims Act about two years ago, in fact I think Mr. Gravitt and his counsel, Mr. Helmer, learned of existence of the law in part partly through our efforts to locate counsel for a person in Ohio—not Mr. Gravitt—who needed a lawyer to advise him of his rights.

This law is a very obscure one. Most people, most lawyers are unaware of it. We became aware of it approximately two years ago when many of the disclosures were being made about fraud against the Government by various people, some of whom were anonymous, in southern California, many of whom worked for defense contractors. They were troubled over what they personally saw taking place within these defense industries, and wanted to know what remedy if any was available to them. As a result of those inquiries made of us and our organization, I began to do research about two years ago, and discovered this act. This research was done to enable us to advise them of what they may be able to do to protect themselves.

In doing that research, I think we had read every case, critiqued every point of contention contained in the False Claims Act, tried to look at its weaknesses and see how it could be strengthened. It is clear to us that the law in its initial purpose is simply not being fulfilled today, and the fact that virtually no actions have been brought in the last several decades is the strongest evidence of that. As others have testified before, the act was really viscerated in 1943 by amendments made that were well intentioned, but had

the effect of undercutting the law substantially, and creating major hurdles in the way.

Before those 1943 amendments you had the situation that could occur where a person simply piggy-backed on a criminal investigation conducted by the Government, rushed to the court house, filed a civil lawsuit under the False Claims Act, providing no new or different information and claiming that under the act they had a right to keep a percentage of the recovery.

Now, nobody really wishes to encourage that kind of litigation. The amendments enacted in 1943 put a provision in there that stated that the action, when filed, must be based on information not in the possession of the Government at the time of filing. Court cases subsequent to that amendment have construed that provision all over the board, and it has essentially become a major deterrent to filing actions at all.

You heard Mr. Gravitt's testimony and his counsel how a short four-paragraph letter sent by someone else before Mr. Gravitt containing no specifics is being relied upon now by the Government as an absolute bar to Mr. Gravitt being able to pursue the case where he has provided extensive and detailed information.

When I advise people and others as to whether they should pursue the claim I must in good conscience tell them of all the major hurdles they will face especially the risk of retailiatory action by employees.

There are not many Mr. Gravitts out there who are willing to risk their jobs and their livelihood, because that is really what is at stake here when they step forward and claim that their employer is engaged in fraud against the Government.

As astounding as it may seem, there is absolutely no protection in Federal law that would provide any relief or remedy for a person like Mr. Gravitt who says he can prove and demonstrate that the company he is employed by has engaged in fraud against the Government and that his employer has tried to make him an active participant in that fraud.

There is a law on the books on the Federal side that protects Federal employees, but not people like Mr. Gravitt who work for private industry. That is the absolute minimum guarantee that must be provided in this legislation. Of course, the first thing they are concerned about is what is going to happen to them. All I can tell them is that they may suffer the same fate as a Mr. Gravitt. That is not very comforting to know they are likely to be fired because that has been the history in this country of people within the industries who have pointed the finger of fraud and abuse against their employers.

So, the amendments contained in your bill deal with that issue, and I think are an absolute necessity to encourage somebody to take those personal and professional risks.

The problem of fraud against the Government has been discussed a lot, especially in the defense industry, but this law, of course, applies across the board. Based on our experience, fraud of this type appears to be widespread and institutionalized and this act can only work if it gets the active knowledge and in many cases, participation of the people who work within these industries.

There is a conspiracy of silence that exists and you talk to them and they say, what has come forth so far is so small compared to the real problem out there. They are the people who are on the front lines, who know about the mischarging, and which is a common practice, especially among defense contractors, but they will not take the personal and professional risks of bringing that to the attention of Government agencies or their superiors within the company for obvious reasons.

Only if you are able to enlist the support of those people who don't like being placed in that position, who don't like really being unpatriotic, because that is essentially what they are being forced to do to participate in stealing against their Government. Unless some tools are created by this law to give them the proper incentives to step forward and some protections once they do so that they don't suffer the same consequences of Mr. Gravitt, this law will never really be effective.

It needs to be updated and brought into the 20th century and 21st century as we look ahead.

The four points which I would summarize that are important features of your bill that must be dealt with is first this question about the Government having the knowledge already or possessing the information at the time the lawsuit is filed. That has got to be narrowed, more specifically defined; yes, you want to deal with the situation where the person is bringing nothing to the table, is advancing no new information but you don't want to have a law that would allow the Government or the contractor who is typically the person that raises this defense, say, well, in fact back in the bowels of the bureaucracy certain documents were filed that if these documents were analyzed they would find evidence of fraud are contained in those files.

No one knows about it, it just exists.

That is the defense that has been used successfully in the past. That language must be changed in your bill, and the language contained in the bill now will correct that.

It will keep pressure on the Government. We have heard stories about the Justice Department and their failure to proceed.

That is not an uncommon practice for a variety of reasons. The Government lawyers are typically overworked, they have many matters pressing, it is a matter of priorities, they simply don't have the resources to handle many cases. They have the same budgetary constraints of all Government agencies.

Unless there is pressure on the side of bringing these actions, many of them don't get the priority they should.

I think historically within the Justice Department in Washington until perhaps recently, those who pursued a career handling these types of cases found themselves in the backwater of the Justice Department. It was never a place that was an opportunity for real career advancement. They say that is changing today but I am not so sure.

The other thing that must be done is to permit the person bringing the action to play an active role in pursuing the case to keep the pressure on the Justice Department. We have heard very graphic and dramatic testimony today of exactly why that is needed. If Mr. Gravitt and his counsel had been permitted to go

forward and engage in discovery, none of what he described would have happened.

Much would have come to the surface that otherwise would stay beneath the surface. Once that information is before the court, there is no sell-out settlement that can be presented to a court to be approved with that information available and developed where people are put under oath to get to the bottom of it.

You should permit the party to have a role. If the Justice Department comes in and takes the case over, of course they are going to have the major role in pursuing the case. They will be in the driver's seat. But the law as currently drafted says if the Government takes over the case, you are virtually completely pushed out of the case. You have no available role to play whatever.

That should be changed to permit, participation similar to intervention today under the Federal rules, to allow that person to play an active role. Not an intrusive role. And if for any reason that person interferes with tbe Government's investigation, there are opportunities available for the Justice Department to go to court to limit their participation.

The fourth item, I think, necessary is to provide some minimum guarantee of recovery for a person who brings the action. Right now the law gives no such guarantee. It says you can provide up to a percentage, 10 percent, in Mr. Gravitt's case, of the recovery. You should provide a minimum guarantee and you should provide for attorney's fees paid by the defendant if a successful conclusion is brought to that litigation.

Offer the incentive to the lawyers to go out and bring these cases. They are only going to pursue good cases that have strong evidence that suggest fraud.

The good thing about this bill that it contains marketplace incentives, it encourages people because they want to do their patriotic duty first, but they also have a substantial stake in the recovery. Those incentives are important to get people to take the risk, to step forward and put the pressure on the government and on the defense contractors or any other contractors doing business with the Government, to be accountable for their conduct.

The objections I have read, some by the Justice Department, I think can be easily dealt with. I do not believe they have a serious problem there. The question of litigation by committee was raised yesterday by the Department. They want to be totally in the driver's seat. Well, I don't think they should be totally in the driver's seat, because we will get too many results similar to what we have heard today from Mr. Gravitt.

There should be an ongoing role for that party to play that brings the action initially.

Frivolous lawsuits is something you always hear any time you create a law that gives a party the right to go to court.

There are already enough rules and powers that courts have operating under the Federal rules that would penalize lawyers and litigants invoking athe judiciary machinery in a frivolous way. I can tell you based on my experience in Federal court, that lawyers would be most reluctant to bring a case before a Federal court where they cannot substantiate or have some reasonable grounds to back up their allegation.

If it is a frivolous case brought for harassment purposes, they are only inviting sanctions, fines and penalties against themselves. Courts and judges have shown in recent years a willingness to level such fines, in fact Chief Justice Burger just recently announced or stated that the analysis recently in the last several years has shown judges to be willing to take on lawyers and litigants who improperly invoke Federal machinery.

We have heard complaints by Justice that criminal investigations could be interfered with. There are ways of handling that to protect their right to go forward on a criminal basis. One approach is in the existing Senate version you may look at. I don't believe it to be a serious problem based on my knowledge of the practice. But if that is the Justice's concern there is a way of dealing with that, so their investigation in no way would be compromised.

The Justice Department needs all the help it can get. It is understandable they don't want pressure brought from outside to intrude into what they consider their prerogatives. But they ought to welcome this. This is a partnership. People want to participate and see that this fraud is stopped.

Only if you get that participation will you have a real effective disincentive for the contractors not to do it in the future.

The good thing about this law is it is action forcing and it is self-executing. It does not create a new bureaucracy, not one person is added to the payroll. If a case is brought successfully, everybody benefits. There is no downside to this. The only party against this is the party engaging in fraud.

I am sure we will see a lot of heavy lobbying on the other side, because they should fear this. This will do more done if there is publicity surrounding passage of this law and people understand the rights available to them within these industries, I think you will see more to ferret out fraud in such a way that it will act as such a major deterrent to these contractors to know they can simply not expect their employees to participate in this conspiracy of silence again in the future.

They will be exposed. They better not take the risks. Right now those disincentives are not there. It is business as usual and the same mischarging you heard about today goes on day in and day out. There is no way for the auditors to check it. The auditors are looking for a paper trail. If the trail is there, they are satisfied. They don't go in and interview and investigate and find out and ask Mr. Gravitt or the other foremen in his shop, did you engage in mischarging? That simply doesn't occur.

That is why you need the support of these people like Mr. Gravitt and others, and there are many out there who would be very anxious to step forward and feel they are doing a patriotic duty of exposing fraud.

Thank you.

[The statement of Mr. Phillips follows:]