



# Project On Government Oversight

## **Survey of Defense Contractor Signatories of The “Position Paper: Reform of the Federal Civil False Claims Act”:**

A Partial Listing of the Fines and  
Settlements Paid for Fraud, Waste, and  
Abuse in Government Contracting

From FY 1990 to February 1994

Revised January 1995

## Foreword

The Project on Government Oversight is a non-partisan, non-profit organization that, for over fourteen years, has investigated and exposed waste and fraud in government spending. Our goal is to change the way the government works by revealing examples of systemic problems and offering possible solutions.

Our methods include networking with government investigators and auditors whose findings have received little attention, working with whistleblowers inside the system who risk retaliation for exposing waste and fraud themselves, and performing independent investigations into areas we suspect are problematic.

This survey is by necessity only a partial listing of cases. Most examples of fraud against the government are never detected and prosecuted. Of those that are, though, many qui tam cases are still under seal and voluntary disclosures are protected from public scrutiny. All other active government investigations are not made public. Due to the amount of fraudulent activity, the Project on Government Oversight has limited the time frame of this survey to those cases resolved since fiscal year 1990 until February 1994.

This research has been drawn from several sources. As a result, the type of information listed for each case has varied by source. Numbers in brackets denote references to sources listed on page eight. The most recent cases are listed first. The Project on Government Oversight has made every attempt to avoid duplicate listings of cases.

A few voluntary disclosures have been made public and they have been noted as such. Qui tam actions with public settlements have also been noted.

Appendix A is the first page of the "Position Paper: Reform of the Federal Civil False Claims Act." The list of signatories is at the bottom of that page in alphabetical order.

This report was originally released in February 1994. In this updated version we have included the rebuttal sent to the Senate Judiciary Committee by Alan Yuspeh, who represents the signatories (Appendix B). Also, in Appendix B is the Project's response to Mr. Yuspeh's assertions.

## Findings

It is worth repeating that this is only a partial listing. Many qui tam cases are still under seal and voluntary disclosures are protected from public scrutiny. All other active government investigations are not made public.

- Out of the 22 signatory companies - 20 (over 90%) have been involved in fraud, waste and abuse in government contracting practices.
- The total amount of the penalties and settlements paid by these companies is over half a billion dollars (\$566,630,483).
- There were a total of 83 examples of fraudulent activity identified in the survey of 22 companies.
- 64% of the penalties or settlements paid by these companies were over one million dollars.
- 17 out of the 22 signatory companies were multiple offenders.
- One company, General Electric, had 15 examples of fraudulent activity.
- While only 11 of these examples were False Claims cases, they collected over \$125 million dollars (\$125,522,306).

1. The Boeing Company

- A. Mischarging --- Paid \$3.8 Million (M) Voluntary Disclosure. [2]
- B. Cost Mischarging --- \$900,000 settlement. [4]
- C. Defective Pricing --- \$13 M settlement. [8]
- D. Conspiracy/Conversion of Classified Documents --- \$20,000 fine, \$4 M restitution, \$1 M reimbursement of investigation, \$200,000 removal of overhead claims. Former Marketing Analyst --- 39 count conviction, in jail for civil contempt. [8]

2. Eaton Corporation

- A. Cost Mischarging/Conspiracy --- \$4 M civil settlement. [3]
- B. Kickbacks --- Buyer, 3 months jail, 5 years probation, 100 hours community service, back taxes exceeding \$9,000. [6]

3. FMC Corporation

No Cases Found.

4. General Electric

- A. Misrepresentation --- \$2.7 M settlement. [1]
- B. Money Laundering --- Purchasing agent --- 39 months incarceration, 3 years probation, \$325,222 fine, \$1,950 court fees and \$324,450 in restitutions. [1]
- C. Defective Pricing-- \$3.3 M reimbursement. [2]
- D. Mischarging --- \$576,215 reimbursement. Voluntary Disclosure. [11/9/92 FCR]
- E. Foreign Corrupt Practices Act violation --- \$69 M in fines, penalties and civil damages. Qui Tam. [3]

- F. Cost Mischarging --- \$6.4 M settlement. [5]
- G. False Claims --- \$1.1 M settlement. [5]
- H. Defective Pricing --- \$8.3 M settlement, a \$10 M fine, and an additional \$11.7 M in related civil matters. One official received 10 months in jail and a fine \$15,000. A Second official received 5 months in jail and a \$10,000 fine. [7]
- I. Cost Mischarging --- \$24.6 M settlement. Voluntary Disclosure. [7]
- J. Defective Pricing --- \$900,000 settlement. (Division since sold to Martin Marietta) [8]
- K. Product Substitution --- \$1.1 M settlement. [8]
- L. Conspiracy/Conversion of Classified Documents --- \$2.5 M civil settlement and a \$20,000 criminal fine. [8]
- M. Procurement Fraud/Mail Fraud --- Found guilty, criminal fine of \$10 M and \$2.2 M in restitutions. [9]
- N. Procurement Fraud --- Pled guilty, \$20,000 in criminal fines. [9]
- O. Fraud --- \$41,200 settlement. Voluntary Disclosure. [9]

5. Grumman Corporation

- A. Kickbacks --- Former president --- 1 year in jail (suspended), fined \$25,000, and ordered to pay restitution of \$33,900. [2]
- B. False Shipping and Billing Receipts --- Shipping Manager --- 3 years jail (suspended), 3 years probation, \$50,000 fine, 500 hrs community service. [7]
- C. Conspiracy/Conversion of Classified Documents --- \$20,000 criminal fine, \$2.5 M civil settlement and a court assessment of \$100. [8]
- D. Procurement Fraud --- Pled guilty, criminal fine of \$20,000. [9]
- E. Fraud --- \$2.48 M settlement. [9]

6. GTE Government Systems Corporation

No Cases Found.

7. Honeywell, Inc.

- A. Fraud --- \$700,000 settlement. Voluntary Disclosure. [9]
- B. Fraud --- \$2 M settlement. Voluntary Disclosure. [9]
- C. False Claims --- \$2 M settlement. Qui Tam. [10]

8. Hughes Aircraft Company

- A. False Statement --- \$3.5 M criminal fine. [2]
- B. Mischarging --- \$275,000 settlement. Qui Tam. [8/30/93 FCR]
- C. Product Substitution --- Found Guilty and facing a maximum \$500,000 fine. [3]
- D. Defective Pricing --- \$11 M settlement. Qui Tam. [4]
- E. Obstruction of Justice --- Vice President --- 10 yrs in prison and \$250,000 fine. [1/13/92 FCR]
- F. Kickbacks --- Engineer fined \$5,000 and 3 years probation. [1/13/92 FCR]
- G. Conspiracy/Conversion of Classified Documents --- \$3.6 M criminal and civil settlement, \$50,000 reimbursement of investigation, \$50,000 removal of overhead claims. [8]
- H. Procurement Fraud --- Pled guilty, criminal fine of \$20,000. [9]
- I. Procurement Fraud --- Found guilty, fines unknown. [9]

9. Litton Industries

- A. Fraud --- \$1.5 M in criminal fines, \$1.3 civil, \$1.1 reimbursement.  
[1/24/94 FCR]
- B. Conspiracy --- Two officials face 35 years in prison and a \$350,000 fine.  
[7/1/91 FCR]
- C. Cost Mischarging --- \$2.4 M settlement. [5]
- D. Defective Pricing --- \$1 M settlement. [6]

10. Magnavox Electronics Systems Company

- A. Defective Pricing --- \$1.63 M settlement. [5]
- B. Proprietary Information --- fined \$1.5 M. [7]
- C. Procurement Fraud --- Pled guilty, criminal fine of \$150,000. [9]

11. Martin Marietta Corporation

- A. Money Laundering --- \$179,614 fine. [1]
- B. Labor Mischarging --- \$1.1 M settlement. [1]
- C. Cost Mischarging --- \$2.6 M and \$898,000 settlements. [7]
- D. Cost Mischarging --- \$3.6 M settlement. Voluntary Disclosure [7]
- E. Procurement Fraud --- \$752,000 settlement. [9]

12. McDonnell Douglas

- A. Defective Pricing --- \$1.38 settlement. [1]
- B. Defective Pricing --- \$1 M settlement. [3]

C. Defective Pricing --- \$7.5 M settlement. [6]

D. Defective Pricing --- \$12.2 M settlement. [8]

13. Newport News Shipbuilding

A. False Claims --- \$180,000 settlement and \$10,000 to relator for wrongful termination. Qui Tam. [10]

14. Northrop Corporation

A. False Statements --- \$2.2 M civil recovery. [4]

B. False Claims/False Statements --- Civil settlements of \$8 M, \$750,000 for investigative and administrative costs and will perform about \$20 M worth of corrective measures. Qui Tam. [5]

C. Production Substitution/False Statement --- \$17 M fine. [8]

D. False Claims --- \$525,000 settlement. Qui Tam. [9]

15. Raytheon Company

A. Mischarging --- \$3.7 M settlement. [10/18/93 FCR]

B. Defective Pricing --- \$2.7 M settlement. [3]

C. Conspiracy/Conversion of Classified Documents --- \$1 M civil and criminal settlement. [8]

D. Procurement Fraud --- Pled guilty, \$10,000 in criminal fines. [9]

16. Rockwell International Corporation

A. Mischarging --- \$450,000 settlement and \$800,000 in fees and reimbursements. Qui Tam. [1993 FCR p.74] [10]

B. Defective Pricing --- \$5.1 M settlement. [3]



C. Cost Mischarging --- \$1.4 M settlement. Manager to perform 100 hrs community service. [3]

D. Conspiracy/Mail Fraud --- Purchasing Manager --- 4 years jail, \$12,000 fine, 3 years probation after release from jail. [6]

17. Sundstrand Corporation

A. False Claim --- \$42,306 settlement and \$250,000 to relator for wrongful termination. Qui Tam.

18. Teledyne Corporation

A. False Testing --- \$5 M settlement and \$5 M reparations. [1]

B. False Claims --- \$1.5 M criminal fine. [1]

C. Product Substitution --- \$17.5 M criminal fine and \$2.15 M settlement. [2]

D. Defective Pricing --- \$1.8 M settlement. [3]

E. Conspiracy --- Controller --- 5 years probation, \$15,000 fine; Second Controller 2 years jail, 18 month suspended, 5 years probation, \$10,000 fine. [6]

19. Texas Instruments

A. Product Substitution --- \$550,000 settlement. Voluntary Disclosure. [3]

B. False Claims --- \$586,526 settlement. [8/31/92 FCR]

C. Fraud --- \$230,000 settlement. [9]

20. TRW Inc.

A. Inflating Prices/False Certification --- \$2.5 M settlement. Qui Tam. [10/11/93 FCR]

21. Unisys Corporation

A. ILLWIND --- \$4 M criminal fines, \$4 M restitutions, \$155 M civil fines, \$27 M to settle 3 other actions. [5]

B. False Claims --- \$10 M settlement. Qui Tam. [10]

22. United Technologies

A. Environmental violations --- Penalties of \$3.7 M for hazardous waste and \$1.6 M for water pollution. [8/17/93 FCR]

B. Kickbacks --- Former Purchasing Agent --- 48 months confinement, 3 years supervised probation, 300 hours community service. [2]

C. Conspiracy to Defraud --- \$6 M in fines. [8/31/92 FCR]

Additionally: McDonnell Douglas Corporation; General Motors Company; Hughes Aircraft Company (These corporations were tried together).

A. Fraud --- combined \$1.1 settlement. [9]

Sources:

- [1] Department of Defense Inspector General (DOD IG) Semiannual Report to the Congress April 1 to September 30, 1993.
- [2] DOD IG Semiannual Report to the Congress October 1, 1992 to March 31, 1993.
- [3] DOD IG Semiannual Report to the Congress April 1, 1992 to September 30, 1992.
- [4] DOD IG Semiannual Report to the Congress October 1, 1991 to March 31, 1992.
- [5] DOD IG Semiannual Report to the Congress April 1, 1991 to September 30, 1991.
- [6] DOD IG Semiannual Report to the Congress October 1, 1990 to March 31, 1991.
- [7] DOD IG Semiannual Report to the Congress April 1, 1990 to September 30, 1990.
- [8] DOD IG Semiannual Report to the Congress October 1, 1989 to March 31, 1990.
- [9] United States General Accounting Office, GAO/GGD-92-135FS, September 1992.
- [10] Justice Department Database.
- [ / / / FCR] Federal Contracts Report.

## Appendix A

## POSITION PAPER

### REFORM OF THE FEDERAL CIVIL FALSE CLAIMS ACT<sup>1</sup>

#### **BACKGROUND**

The Civil False Claims Act (31 U.S.C. §§ 3729-33) provides for the payment of treble damages and civil penalties for the knowing submission of false claims to the United States. Under the Act, private citizens may bring a civil action on behalf of the United States, called a qui tam suit. The initiator of a qui tam action is called a "relator." If the suit should result in a recovery for the Government, the relator is entitled to a percentage of the recovery as a reward. The Department of Justice (DOJ) has the authority to intervene in a qui tam suit, but the relator may continue the suit even if DOJ declines to intervene. The amount of reward the relator receives is dependent upon whether DOJ intervenes, the relator's culpability (if any), and the relator's assistance in pursuing the case.

Congress enacted the False Claims Act in 1863 because of concerns regarding fraud committed by Civil War defense contractors. The Act allowed the Government to recover double the damages resulting from a false claim. The Act also contained a qui tam provision which entitled a successful relator to half of the Government's recovery. Under the original Act, however, if a private party initiated a qui tam suit, the Government could not intervene or otherwise interfere with the lawsuit.

During World War II, several qui tam actions were filed based solely on information in publicly available criminal indictments. In these instances, the relators possessed no knowledge of their cases other than that contained in the indictments.

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<sup>1</sup> This position paper has been developed by the following companies: The Boeing Company, Eaton Corporation, FMC Corporation, General Electric, Grumman Corporation, GTE Government Systems Corporation, Honeywell, Inc., Hughes Aircraft Company, Litton Industries, Magnavox Electronic Systems Company, Martin Marietta Corporation, McDonnell Douglas, Newport News Shipbuilding, Northrop Corporation, Raytheon Company, Rockwell International Corporation, Sundstrand Corporation, Teledyne Corporation, Texas Instruments, TRW Inc., Unisys Corporation, and United Technologies.

## Appendix B

# HOWREY & SIMON

Attorneys at Law  
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Alan R. Yuspeh  
(202) 303 6745

March 3, 1994

[REDACTED]  
Senate Judiciary Committee  
[REDACTED] Senate Office Building  
Washington, D.C. 20510

Dear [REDACTED]

A group called the Project on Government Oversight has recently distributed a paper which purports to respond to the position paper of an informal coalition of 22 defense contractors on the False Claims Act. This diatribe is partially inaccurate and fully misleading, and I am writing to try to set the record straight.

We would make the following points:

1. The paper states that defense contractors ask Congress to prefer voluntary disclosures to qui tam suits. (An earlier letter that I sent you discusses the details of the DODIG Voluntary Disclosure Program.) This is not correct. The fact is that there are numerous ways in the which fraud can be discovered and remedied. Companies may discover the fraud themselves and disclose it through a voluntary disclosure program. Governmental authorities through normal audits and investigations may discover fraud and prosecute it. Qui tam suits are another tool to cause the disclosure and remedy of fraud. But it is important to recognize that it is not the only tool, it is not a perfect tool, and in many ways it is not the most desirable tool.

We simply suggest that once a voluntary disclosure under a formal government program has been made, then there is no purpose to permitting a subsequent qui tam suit. We have suggested that permitting a relator to siphon off 25% of the government's recovery under these circumstances simply makes no sense. In addition, a principal incentive for a contractor to disclose possible fraud is the prospect of resolving the matter in a negotiated settlement that covers all issues. Permitting subsequent qui tam suits creates substantial uncertainty about reaching such a settlement and thus undermines a major incentive for making the disclosure. We have not proposed nor do we propose that somehow "self-policing" be substituted for False Claims Act cases when the government or qui tam relators bring

suit before a voluntary disclosure has been made. Elmer Staats, a highly regarded former Comptroller General of the United States, has, I am told, written to Senator Biden also endorsing the position. The Section 800 Panel endorsed this position. The American Bar Association endorsed the position. The Department of Defense Inspector General, who runs the DOD Voluntary Disclosure Program, supports this position.

2. The Project on Government Oversight paper attributes the provisions in S. 841 on government employees to the defense industry, and thus is hostile to them. These, of course, were Senator Grassley's proposals.

3. The Project mentions generally defense contractor concerns about culpable and dilatory relators, though never states what is wrong with our proposal that the court have discretion to reduce rewards for relators who participate in frauds or unreasonably delay the disclosure of the fraud. To our thinking, the relator who has not been involved with the allegedly fraudulent scheme he discloses, and who makes a prompt disclosure, is entitled to a larger reward than the relator who participated in the fraud or unreasonably delays the disclosure of it.

4. Much of the Project letter is a discussion of circumstances related to suits brought by Chester Walsh and Paul Biddle. To my knowledge, the informal defense industry coalition that developed the position paper on this issue has said nothing about Paul Biddle. (Paul Biddle is the government contracting officer who has pending a qui tam suit against Stanford University alleging fraud in Stanford's accounting practices; the Government has declined to intervene in the case.) It is true that the reported decision in the Chester Walsh case is cited in our position paper. That Walsh decision confirms the undisputed fact that Mr. Walsh did not file litigation until 5 1/2 years after he was aware of a fraudulent scheme and 3 years after he retained experienced qui tam counsel. There are some who say this was an excusable delay. Interestingly, the defense contractor proposal is to let the court sort out such things, not to have any automatic reduction in reward. Under our proposal, any relator who participated in a fraud or unreasonably delayed bringing suit could explain his reasons to the court. Perhaps there will be no reduction in reward. But as a matter of principle, courts should at least have discretion in aggravated circumstances to consider this issue.

5. The Project letter includes a listing of various settlements of government contract disputes -- some apparently administrative, some civil, and some criminal -- for companies in this informal coalition. It appears from the cryptic information provided that some of these are routine adjustments with contracting officers, some are voluntary disclosures, and some are Justice Department actions or qui tam suits. Interestingly, it appears that of the 83 matters listed, only 10 are qui tam suits. Thus, the data provided by the Project documents that qui



## HOWREY & SIMON

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It is not a panacea nor the only effective way to detect and remedy government contract irregularities.

The other point that is lost in the Project's listing is that any freelancing or non-compliance by a lower level defense industry employee can result in vicarious criminal liability for the company. Thus, for example, if a low level quality assurance employee for some reason improvises on a test, his action may constitute a false statement, the company may have filed a false claim, and there will be some remedy when the conduct is discovered. The problems among larger defense contractors are almost always these unauthorized acts by lower level employees. This does not excuse the conduct, but it does suggest that a giant corporation of perhaps 100,000 or more employees may as an entity be far less culpable than the Project list would lead you to believe. To suggest that these organizations as a whole, many of which are routinely regarded as among the most respected businesses in the United States, are generally or systemically corrupt is simply without foundation. In any case, resorting to this list really indicates that the best the Project can do for a rebuttal to our positions is to try an ad hominem attack on the defense industry rather than a true debate on the limited points being made.

Should you have any questions, I would be glad to try to answer them.

Sincerely,



Alan R. Yuspeh

## PROJECT ON GOVERNMENT OVERSIGHT

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March 10, 1994

Alan R. Yuspeh  
Howrey and Simon  
1200 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Alan,

I am responding to your March 3 letter critiquing our February 23 package that we sent to the Senate Judiciary Committee. I wanted to respond to you directly. My tone was and remains impassioned when discussing the proposed amendments to the False Claims Act, and with good reason. The anti-fraud coalition of public interest groups recognizes that the "reforms" proposed by your clients will effectively make useless a very powerful tool in combatting fraud against the government.

It is understandable that you would consider our survey stinging, yet you must acknowledge that we did not even mention the survey or its contents until the bottom of the third page of our letter. Until then, I was refuting the allegations presented by your coalition to the members of the Senate Judiciary Committee, by relying on facts rather than amorphous hypotheticals.

Your letter, on the other hand, continues to set up straw men. You create the false impression that the Act has resulted in unfair settlements against your clients. We both know there are no examples of parasitic lawsuits filed by relators after a voluntary disclosure, where a judge was "forced" to award the relator an unfair percentage of the settlement.

As you also know, there have been no examples when a relator has "participated in a fraud or unreasonably delayed bringing suit" and the judge has been forced to award the relator an unfair portion of the settlement. As I cited in my earlier letter to the Senate Judiciary Committee, in the Walsh case, to the contrary, Judge Rubin felt quite strongly that Chester Walsh deserved the reward he was awarded for his efforts to return GE's ill-gotten gains to the U.S. government.

In fact, no judge in any false claims suit has been unable to reduce the size of a relator's share, if the relator was not deemed worthy of receiving it. The Act already gives the courts discretion to reduce awards when appropriate.

As I also mentioned in my earlier letter, two provisions already exist that ensure that a "culpable or dilatory relator" will not gain from filing a lawsuit. Furthermore, 18 USC 1001 imposes criminal penalties to anyone who knowingly conceals fraudulent activity. What, then, would be the incentive for a relator to blow the whistle on himself?

We never suggested that False Claims Act suits are a "panacea" -- there is far too much fraud to rely on one method of oversight. We are simply suggesting that it is in the public's best interest to allow the law to remain vigorous. We do not intend to inhibit the voluntary disclosure program, but continue to bolster its effectiveness with the incentive provided by the False Claims Act for contractors to "come clean."

Moreover, none of the examples cited in our survey referred to "routine adjustments with contracting officers." Each example was drawn from government listings of fines, penalties and settlements paid by the contractors you represent for criminal or civil fraudulent acts against the government.

The new phrase you have coined -- "vicariously responsible" -- is an interesting attempt to absolve management from responsibility for the line employees of your clients. If an employee is "freelancing", and the false claim is, in fact, minor, then the penalties paid by the contractor will reflect that fact. Your own example of the "low level" employee who falsifies tests on weapons components raises the very real specter of the weapon system failing in combat, thus endangering the lives of our troops.

If the defense contractor is genuinely concerned about the quality of the product delivered to the government as well as being sensitive to the danger of wasting tax dollars, that contractor should be pleased to know a process to catch this freelancer exists. Sadly, far more common is the case where the employee suffers significant damage to his career and general well-being for trying to expose the wrongdoings of superiors.

Our real concern with your recommended reforms is the practical impact, as we do not believe any of your purported scenarios have or will become a serious challenge to the fairness or effectiveness of the law. The truth is:

- No judges have been forced to give unreasonable portions of settlements to relators;
- No relators have successfully filed parasitic lawsuits after they heard of voluntary disclosures;
- No relators have successfully perpetrated or concealed a crime and then reaped rewards from it.

We believe that these straw men are not your genuine motivation. The added restrictions on possible qui tam actions that you are recommending will discourage lawyers from being willing to take these very expensive and risky lawsuits on a contingency basis. I suspect this is exactly what your coalition has in mind.

Sincerely,



Danielle Brian  
Director

cc: Senate Judiciary Committee Members

## PROJECT ON GOVERNMENT OVERSIGHT

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February 23, 1994

Senator Joseph Biden  
Chair  
U.S. Senate Judiciary Committee  
Washington, DC 20510

Dear Senator Biden,

I am writing to you as the Director of a non-partisan, non-profit organization that has worked towards government accountability over the last thirteen years. We have extensive experience helping whistleblowers through the land-mined terrain that inevitably lies before them when they expose corruption in the system. It has been our experience that no whistleblower, not even the handful that have profited from lawsuits, has been glad to have endured their experience.

I understand your staff, and possibly you, have been lobbied by representatives of industry, particularly the defense contracting industry, regarding "reforms" to the qui tam provisions of the False Claims Act. These provisions allow an individual to sue a contractor on behalf of the government. The lobbyists are pushing you to believe their analysis regarding three primary issues:

- the value of "self-policing" and the voluntary disclosure program as an alternative to the Act;
- the danger of the government employee who files suit without having first disclosed the fraud to superiors; and
- the threat of the culpable relator, who either perpetrates or hides the fraud, and then files suit after waiting for the fraud to build up in order to increase the possible amount of damages.

There are many proposed amendments to this Act that are based on this analysis. They all reflect a lack of understanding of the principal behind the False Claims Act, as well as of the facts behind the oft-cited "Walsh" and "Biddle" cases -- the supposed examples of the culpable relator and government employee run amuck.

This Act was originally created by President Lincoln in order to protect federal coffers, as well as our military personnel who depend on weapons to function in combat. Lincoln had watched Union troops nearly overrun by Confederate soldiers at the Battle of Little Roundtop because they had run out of ammunition. Crates of ammunition delivered to the troops at the time were opened, only to reveal that they were filled with sawdust. The primary goal of the Act was to prevent such an outrage from happening again. Sadly, nearly a century later, Senator Grassley discovered that these outrages were still relatively commonplace. He strengthened the Act to create an incentive for an individual (the relator), who would be risking their livelihood (and often much more), to come forward to alert the government to such crimes. These simple facts seem to have been forgotten in the current debate.

Judge Rubin went on to write in his decision that:

"There has never been an assertion in this proceeding that Mr. Walsh personally profited from the fraud. The most that the Department of Justice can assert is that he "should have" revealed this information earlier. It is very easy to fall into the trap of "should have." Lawyers particularly are prone to use that argument when after the benefit of excellent hindsight a different method of procedure can be devised. . . . Whether he moved as expeditiously as possible, whether he should have shared his information earlier, whether he was disloyal to General Electric, really is not before this Court. It is instead the very concept of "whistleblowers" that is at issue. . . . In view of their widespread use, it is worthy of note that the Department of Justice considered such individuals as adversaries rather than allies. . . Mr. Walsh performed a service to the United States. Whistleblowers in general perform services to the United States. It is at least naive to believe that an appeal to "patriotism" alone will cause disclosures of fraud. The Congress of the United States has determined that whistleblowing should be encouraged by monetary rewards. This case is a classic example. . . ."

In the other "landmark" case, the whistleblower Paul Biddle has been accused of investigating the fraud in his capacity as a government employee, and then hiding the fraud from his superiors until he filed suit. In fact, within weeks after beginning his job, he notified his superiors at the Office of Naval Research of fraudulent billing practices at Stanford University. Despite threats from both his and Stanford University officials, he continued to report the fraud up the chain of command in the Navy to no avail. After that, he tried to initiate a Defense Contract Audit Agency audit, contacted Health and Human Services Agency investigators, the NASA Inspector General and the Air Force about the misuse of their agency's funds. No one did anything. After all this, he began working with Congress. It was only after a year and a half of working with Congress, when he discovered that the Navy was about to limit their investigation into Stanford University to a two year period (rather than ten years), that he filed a False Claims suit. It is telling if these two cases are the best examples the defense contracting lobby can come up with as examples of exploitation of the False Claims law.

I have enclosed a survey of the 22 defense contractors who are signatories of the "Reform of the Federal Civil False Claims Act Position Paper" circulated to your office. Twenty of the 22 have themselves plead guilty or paid penalties or settlements totalling over half a billion dollars (\$566,630,483) for having defrauded the government --- and this study only includes instances since 1990 which have settled and been reported. There are over 80 cases listed in the enclosed survey. As of August 1992, there were 28 active qui tam cases that were not under seal filed against the signatories according to the Justice Department.

I hope the bias with which this "coalition" of defense contractors is speaking is not forgotten during this debate. Please do not champion their self-serving recommendations and weaken the False Claims Act.

Sincerely,



Danielle Brian  
Director