S. HRG. 98-899

ROLE OF WHISTLEBLOWERS IN ADMINISTRATIVE PROCEEDINGS

HEARING

BEFORE THE

SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

EXAMINING THE ROLE OF WHISTLEBLOWERS IN THE ADMINISTRATIVE PROCESS

NOVEMBER 14, 1983

Serial No. J-98-83

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MONDAY, NOVEMBER 14, 1983

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

The subcommittee met, pursuant to notice, at 10:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the subcommittee) presiding.

Also present: Senator Heflin.

Staff present: Lynda Nersesian, chief counsel and staff director; Edwin A. Buckham and Veronica N. Gonzales, professional staff; Arthur B. Briskman, minority chief counsel, Subcommittee on Administrative Practice and Procedure; and Kris Kolesnik, legislative assistant to Senator Grassley.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I would like to call this hearing of the Subcommittee on Administrative Practice and Procedure to order.

Our hearing today examines the role of whistleblowers in the administrative process. There is no area of government of more fundamental importance than the process of administering government. The goals of Federal service must be supported. We must reward those who do well and punish those who are deviant. Congress has determined that one's Federal service must be guided by the code of ethics for Government service.

Is the administrative process of our Government driven by the code of ethics, and is it serving useful goals, or is the process at variance with the code and supportive of nonuseful service?

Today, we take a brief look at whether Federal employees in the administrative context who speak out against waste and mismanagement are adequately protected. We examine a particular instance to see where it falls in this framework; to see if the code of ethics is being pursued in this instance; to see if there is a breakdown in the process. Law unsupported by ethics can be the tool of unscrupulous people, and high-minded ethical codes unsupported by well-thought-out laws is a prescription for administrative disaster.

This particular instance examined today is not an isolated case. There are precedents. We will hear later in this hearing from one who has experienced this kind of situation first hand. It is there-

fore useful to examine broader applications of this problem of so-called whistleblowing. It is unreasonable to assume that how the system functions in this particular case is somehow unique, since there is precedence. And in a hypothetical way, there are implications for others, given the system as it now operates.

Although there is only 1 day of hearings scheduled for this issue of whistleblowers in the administrative process it is not to be a flash in the pan. This topic will continue to occupy the attention of this subcommittee as we, in our areas of responsibility, try to come to grips with a challenge—a challenge confronted by all free people in their act of self-government.

I welcome to our subcommittee this morning Mr. George Spanton, the resident auditor of the defense contract audit agency's Pratt & Whitney Plant in West Palm Beach, Fla.; Mr. David Cooke, Deputy Assistant Secretary for Administration in the Department of Defense; Mr. Ernest Fitzgerald, Management Systems Deputy in the U.S. Air Force, and Mr. William O'Connor, Special Counsel for the U.S. Merit Systems Protection Board.

Before I call the first panel, I want to now turn to opening remarks by my friend and colleague, the ranking minority member of this subcommittee, Senator Heflin from the State of Alabama, and I want to say to everybody here how helpful and considerate Senator Heflin has been, not only in this particular instance that we are investigating here, but throughout the 12 months that he and I have had an opportunity to work together in our respective capacities on this subcommittee.

I thank you very much, and particularly thank you for taking time out of your busy schedule to come to this meeting, Senator Heflin.

STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Well, thank you, Mr. Chairman.

Today, we hear the testimony relative to whistleblowers. And I suppose that term, whistleblowers, is a catchy phrase, but it is certainly something that is needed: civil servants who disclose wrongdoing or mismanagement in Government agencies. I commend Senator Grassley for holding hearings on this important and very timely subject.

Senator Grassley has been the most active chairman of the Subcommittee on Administrative Practice and Procedure since I have been in the Senate, and has done a remarkable job dealing with matters like regulatory reform, legislative veto, and other matters that are very important today, but I believe this issue of whistleblowers especially has a great deal of merit and has a great deal of potential.

It is my hope that these hearings will reveal whether there is a problem with current whistleblower protections, and if so, what can be done to correct that problem. According to a U.S. Merit Systems Protection Board survey, nearly half the Federal employees surveyed said they had seen waste or fraud in their agency during the past year. Government employees also reported seeing more serious crime, such as embezzlement. Less serious, but more commonly reported, and often ongoing instances of ineptitude and misman-

agement have also been reported. We have found that this wastes millions of dollars of taxpayers' money. In this area of budget cutbacks and increased demand for governmental services, we cannot afford to overlook our inherent Government resources in honest Federal employees who will expose waste and fraud if they can be assured that they will not lose their jobs in return for their candor in speaking out. Although portions of the Civil Service Reform Act were designed to protect whistleblowers, we still hear of instances in which whistleblowers have been sent to do-nothing jobs in undesirable locations, or have been demoted or fired. Rumors of these reprisals, whether well-founded or otherwise, undoubtedly have the effect of inhibiting Government employees who would like to see their offices managed more efficiently from coming forward.

I hope that these oversight hearings will reveal how well the protections Congress designed are working, and I look forward to receiving the testimony of our distinguished and knowledgeable witnesses.

Thank you.

Senator GRASSLEY. Thank you, Senator Heflin. I appreciate that very much.

Let me make a couple of administrative announcements, first. The record will stay open for 15 days. That gives anybody who was not invited to testify an opportunity to submit anything in writing, if they want to. It also gives members of the subcommittee who are not here, or even those of us who are here who might have additional questions an opportunity to submit questions in writing. We would appreciate it if the witnesses would respond to those questions within the 15-day period of time. And it also gives ample opportunity, then, for any correction of the record that needs to be made as a result of anything said here today or any questions asked.

I go now to our first panel, consisting of Mr. Spanton, who I have already introduced, followed by Mr. Cooke. I would ask you, Mr. Spanton, to please proceed.

STATEMENT OF GEORGE R. SPANTON, RESIDENT AUDITOR, DEFENSE CONTRACT AUDIT AGENCY, PRATT & WHITNEY AIRCRAFT GROUP, DEPARTMENT OF DEFENSE, WEST PALM BEACH, FLA.; AND DAVID O. COOKE, DEPUTY ASSISTANT SECRETARY, ADMINISTRATION, DEPARTMENT OF DEFENSE

Mr. SPANTON. Good morning, Mr. Chairman and members of the subcommittee.

My name is George Spanton, and I am pleased to have this opportunity to appear before you today.

I have been employed by the Defense Contract Audit Agency since 1966, and I am presently resident auditor, with a staff of 20, at the Pratt & Whitney aircraft engine plant in West Palm Beach, Fla.

Throughout my career as a Government auditor, I have tried to fulfill my responsibility to represent the Government's and taxpayers' interests by preventing defense contractors from overcharging for the vital materials and services they provide for our national defense.

I believe that we must maintain a strong military posture. I also strongly believe that the only way we can do this is by getting what we pay for at a reasonable price. Saving money means there will be more money to invest in the equipment our servicemen will need to defend themselves in time of war.

I am here to tell you about my attempts to expose not the millions, not hundreds of millions, but the billions of defense dollars that should go to our Armed Forces but which are being wasted through the mismanagement, inefficiency, and greed of our major defense suppliers.

I want to tell you about the failures of the Defense Contract Audit Agency to carry out its mission as the watchdog of the defense dollar. The failure of my agency to do its job was most disturbing, because it gave the Congress and the taxpayer a false sense of security—that a professional audit agency was protecting the Government's interests.

In the past 2 years, I have attempted to disclose waste and abuse of tax dollars by major defense contractors so that measures could be taken to eliminate these conditions. Initially, my attempts were made by seeking corrective action through the normal channels of my agency and the defense procurement organization. These attempts proved futile. I then proceeded to follow the other avenues available to me by communicating my concern to other Government agencies that have the responsibility of investigating reports of waste and abuse of tax dollars.

At this point, I became an official whistleblower. However, it was only when the media exposed flagrant examples of excessive costs in the procurement of spare parts that this subject began to attract the attention of Defense officials.

But the problem with spare parts is only one aspect of a much larger problem. The causes of that problem touch many other areas of military procurement. Experience has shown that major suppliers cannot be relied upon to exercise self-restraint in their incurrence of costs of defense contracts.

In February of 1982, I submitted a 12–701 report of fraud, waste, and abuse through my supervisor that Pratt & Whitney had violated Pentagon standards of conduct by lavishly entertaining high-ranking Air Force and Navy officials. I also challenged the contractor's practice of claiming certain travel and entertainment expenses as bona fide Government business. The Defense Criminal Investigative Service became aware of our 12–701 report during a visit to my office on another matter. It independently processed that report, without delay, in July 1982. The DCAA, on the other hand, did not forward the report for investigation until September 1982. The matter is now being considered by a grand jury in West Palm Beach, Fla. In July 1982, I also contacted the General Accounting Office hotline, the Inspector General hotline, and the Secretary of the Air Force, Verne Orr. I never heard anything more about the matter.

Shortly afterward, my story was picked up by several members of the press, including Clark Mollenhoff of the Washington Times, who documented almost every new development in what turned out to be a long and complicated series of events. For brevity's sake, I will not go into the details of what I have been through in

the past 2 years. Instead, I have submitted for the record a chronology of events based on press accounts that have appeared in the Washington Times, the Federal Times, and the Palm Beach Post.

[Chronological material referred to appears on page 10.]

It is no secret that my tough audits, my demands for information from the contractor and my outspoken criticism of my agency for not taking more aggressive action have gotten me into trouble. Let me be more specific about the retaliation I was subjected to by DCAA officials:

First, the threat of unwanted transfer to Los Angeles within 18 months of my retirement date.

Second, a criminal investigation of allegations concerning my performance at Pratt & Whitney to the effect that I was "soft on the contractor."

Third, a request for criminal investigation by the Department of Justice alleging release of Pratt & Whitney reports to the media.

Fourth, substantial reduction in my performance ratings.

Fifth, great pressure to retire.

Sixth, refusal to reinstate my annual leave, which was lost due to DCAA management's instructions.

At one point, I was ready to give up and accept the transfer. I was just not sure it was worth the fight. What convinced me otherwise was the strong support I received from my wife and family and the members of my staff. I knew protection for whistleblowers was virtually nonexistent, but I decided to do what I knew was right. It was then I filed a complaint with the Office of the Special Counsel to the Merit Systems Protection Board.

In addition to the report on travel expenses, I have been responsible for other controversial audits. For instance, in March of 1982, I issued a report questioning the pay escalation at Pratt & Whitney's Florida plant. Salary levels, particularly those of executives, greatly exceed the amounts paid by private industry. The report showed that pay increases to the company's employees were twice as high as those granted workers in the private sector, triple that for Federal employees. This was creating an ever-widening salary gap between the defense contractor and the private sector. The report was based upon the assumption that the Department of Defense should hold their contractors to the same limitations that operate in the competitive environment of private industry. We estimated that Pratt & Whitney's raises would cost the Government an unnecessary $150 million between 1982 and 1984.

Coincidentally, Verne Orr, Secretary of the Air Force, in April 1982, 1 month later, independently issued his own directive that contractor labor costs were excessive and ought to be controlled. These findings were supported by a report issued by the Defense Logistics Agency. DCAA's only response to my salary report was that the language be modified because it was too inflammatory. They also wanted to know why I had not followed a specific routing procedure. The substance of the report was never addressed.

It is only because of the intervention of the Office of Special Counsel that I am being permitted to complete my assignment in West Palm Beach. As you know, the case brought by the Special Counsel against my superiors is still pending. I am no longer con-

cerned for my own sake. However, I do fear the possibility of retaliation against my coworkers when I am gone.

The issue of whistleblowers and what happens to them when they dare to stand up and tell the truth is the subject of this hearing and the reason I am here today. There are two vitally important questions that I hope will be explored this morning.

First, are we willing—and by we, I mean the Department of Defense and Congress—to stand up and say "No" to the defense contractor who is diverting funds from our national defense to his own pocket?

Second, what kinds of protection can be provided for those men and women who would risk their careers to do an honest job? We have reached an alarming state of affairs when such individuals are singled out and labeled as whistleblowers, as I have been, for merely doing what they are supposed to do.

There are several suggestions I would like to make for your consideration. The first is that information be made available to all DOD employees as to the procedures they can follow and channels that are available to them for reporting waste or fraud. Often, violations go unreported because the DOD employees did not know such avenues exist. Second, protection must be afforded to those who support or provide evidence on behalf of the whistleblower. I say this because several members of my staff are afraid that they may lose their jobs because of their involvement in my case.

My third suggestion has to do with the disclosure of audit reports to the public. All audits carry a cover sheet with the following statement: "Contractor information contained in this audit report may be confidential. The restrictions of 18 U.S.C. 1905 should be considered before this information is released to the public."

Defense contractors use this restriction to keep information on waste and cost overruns from the taxpayer by claiming it is proprietary information. How can waste of tax dollars be proprietary information? I suggest that the intent of 18 U.S.C. 1905 be examined. The knowledge that disclosures of waste can be publicized could prove to be an effective cost deterrent.

Finally, all of this would be unnecessary if Government agencies performed their functions with their true constituents in mind, the taxpayers. To do otherwise is to legitimize the growing sense of mistrust that people have of the Government. That mistrust is certainly warranted if we continue to cast a blind eye toward defense contractors who line their pockets with the wages of unsuspecting citizens.

I urge this subcommittee and the Congress to do whatever is in its power to right this very serious problem.

Thank you for the opportunity to present my views. I am happy to respond to your questions.

Senator GRASSLEY. I was not going to ask questions at this point, but Mr. Spanton, if you would wait just a minute. There is something you said near the tail-end of your testimony that I want to ask about, because I cannot believe that the situation is filtering down to people who work on your staff. You said something about members of your staff are fearful of what will happen to them after you retire, or after you leave West Palm Beach. Is that what you said?

Mr. SPANTON. Yes, Senator, that is true.

Senator GRASSLEY. Would you elaborate on that, then?

Mr. SPANTON. Well, approximately 2 weeks ago, there was a news story in the West Palm Beach paper which made reference to an auditor and an administrative clerk who had provided statements attesting to certain facts to the Office of Special Counsel. And for the first time since I became involved, I truly had second thoughts as to whether I should have embarked on this venture, because this lady walked into my office, her voice was trembling, there were tears in her eyes. She had seen her name in the paper and first realized that the attention would be focused on her. She said, "Mr. Spanton, I just cannot afford to lose my house." She is supporting her husband, who is not in good health. And she said, "I am afraid that after you leave, they will terminate me or downgrade me, but somehow I am fearful that they will take action for my having spoken what I felt to be the truth."

And I repeat, that was really the first time and the only time that I had regrets that to the extent that I drew other people in to be supportive, voluntarily and by their own action, nevertheless, I came to realize their own fears where they have future careers and how they believe these careers are in jeopardy.

I have heard similar comments to a lesser degree from other professional auditors on my staff, and that is my concern.

Senator GRASSLEY. Well, you referred to a newspaper article that this lady staff member of yours read. Did she refer to specific instances during her daily routine on the job where she felt threatened?

Mr. SPANTON. In this newspaper story, it concerned one of my supervisors who had been in the office recently, within the last 30 days, making comments to the effect that I should essentially drop my participation as a witness for Office of Special Counsel's case against certain officials in the DCAA.

Senator GRASSLEY. In other words, you should forego the protection of the laws protecting whistleblowers. Is that what they were saying?

Mr. SPANTON. Well, it went beyond that because I am presently under the protection of certain legal protections, as obtained by the Office of Special Counsel. But it went beyond that. It was to pursue what wrongs took place within my agency and how can they be corrected, and this individual suggested that I might, since I plan on retiring, that I might as well drop the whole thing and enjoy a leisurely life of retirement—words to that effect.

Senator GRASSLEY. Was it more than just casual conversation? Did it border on intimidation?

Mr. SPANTON. Well, frankly, I have passed the point of being intimidated, but nevertheless, that was more than a casual suggestion.

Senator GRASSLEY. Is there any other sort of retaliation against you that you can elaborate on, other than what you gave in your testimony?

Mr. SPANTON. Well, the retaliation takes many forms. Some of it is passive, where the fears of other members of my agency in like positions, other managers, in attendance at, let us say, conferences, find that there are possibly better places to be seen than in my

company. And so individuals that you have come to know over the years, 15 years, let us say, suddenly feel unsure of themselves and unsafe to be seen, let us say, in my presence. This is just a small item, but it shows to me, at least, the concerns and the fears that other people within the agency have for their own security and that perhaps if they do not toe the line, they too can be subjected to some of the harassment which I have faced.

Senator GRASSLEY. Has there been any sort of retaliation or intimidation against your lawyer?

Mr. SPANTON. Capt. John Morris is representing me. I obtained his services initially when I received a request—it was more of a request, but it was an order—that I appear and furnish depositions for the respondents in this Office of Special Counsel's case. My initial attempt was to get some legal guidance from my own agency, and I was told by my agency that the four members of the legal staff were unable to provide guidance to me because they were committed to the officials of the agency. This is in addition to the four attorneys that are representing them.

I then went to the Office of General Counsel of the Department of Defense and talked to Mr. Neilander, and he provided the services of Captain Morris. Initially, I suggested to Captain Morris that he should consider his future, being a military man, and not knowing how far-reaching the case might go, and what levels of military involvement there might be. And Captain Morris said he had a commitment to his profession, and he was not concerned about that.

Recently—without getting into the details—Captain Morris expressed some concern, as a result of his involvement, and these concerns relate to his career within the military.

Senator GRASSLEY. Thank you.

Before I go to Mr. Cooke, I would invite Senator Heflin to join in at this point, if he wants to ask Mr. Spanton any questions, before we go to Mr. Cooke.

Senator HEFLIN. Mr. Spanton, you are a resident auditor for the Defense Contract Auditing Agency; is that correct?

Mr. SPANTON. Yes, sir.

Senator HEFLIN. That is, in effect, a policing unit to determine whether or not the law has been complied with and whether inaccuracies or fraud or abuse exists between defense contractors and the Department of Defense. In other words, if you do not have independence in your agency, how, then, can you really perform the task that it is charged with carrying out?

Mr. SPANTON. You cannot, Senator, and that was one of the focal points of my complaint. Not only did I find fault with the expenditures of the major defense contractors and the inability of defense procurement officials to control them, but I found fault particularly with my own agency, that seemed committed more to the interests of procurement and furnishing procurement reports which they would find acceptable to them, and simply getting along with the major defense contractors, than being totally independent, turning out a product which would be the best product that a professional could put together and saying, "Here, Procurement. Here is what we think. Now it is your job to carry these recommendations through." This was not the atmosphere that existed—it is not

the atmosphere that exists—in the DCAA. They refer to Procurement as DCAA's clients, and that connotation alone is enough to make one uncomfortable. Beyond that, the agency in its attempts to get along with major defense contractors does not pursue the subject of access to records, and I defy any auditor to be able to do a professional audit without the records, no matter how minimal the limitations. The one record he does not see could be the one that would make the entire audit worthless. And so, it was my commitment to the agency and the members of my staff to assure them that I would get them the tools—in this case, the records—to do a job. It was their responsibility to do the best audit, professionally, that they were capable of. In turn, it was my responsibility to sell what they reported, and as a consequence, in the selling attempt, I ran into the resistance of my own agency, not because the product was deficient technically, but it was just too tough.

Senator HEFLIN. Is the Defense Contract Audit Agency a part of the Inspector General's Department of the Department of Defense?

Mr. SPANTON. No, sir, it is separate, and reports to the Assistant Secretary of Defense Comptroller.

Senator HEFLIN. You have no connection, then, with the Inspector General's Department of the Department of Defense?

Mr. SPANTON. No, Senator.

Senator HEFLIN. Thank you, Mr. Chairman.

Senator GRASSLEY. I want to thank you, but would you remain there, because after Mr. Cooke's testimony, I will have some questions of each of you.

I want to thank you, Mr. Spanton, for describing your experiences for us.

[Material submitted for the record follows:]

Chronology of Events*

The following is a chronology of events concerning the case of George Spanton, Defense Contract Audit Agency chief in West Palm Beach, Florida. Mr. Spanton has been a military contract auditor for thirty years. Last year, he began investigating and demanding access to records of wage rates at Pratt & Whitney in West Palm Beach, as well as questionable travel and entertainment expenses incurred by Pratt & Whitney executives and charged to the government. Pratt & Whitney denied Mr. Spanton much of the data he requested. He was subjected to months of harassment by his superiors at DCAA. He was threatened with transfer and termination.

MARCH, 1982

-- George Spanton writes a report on "excessive labor escalation" in defense firms. He finds companies with government contracts negotiating with labor unions to give pay hikes to their employees which are far higher than the increases granted to federal government employees. He says defense firm pay raises are 178% higher than those federal employees received and 108% higher than for employees in private industry. The cost to the taxpayers: $150 million over three years.

Mr. Spanton also reports on laxity on the part of the Defense Contract Audit Agency (DCAA) to force defense contractors to turn over complete financial records.

AUGUST, 1982

-- Mr. Spanton is pressured by his DCAA superiors to transfer to Los Angeles or resign in the wake of disagreements over his audits of labor union contracts. He files an appeal with the special counsel of the U.S. Merit Systems Protection Board (MSPB) saying that the transfer is "illegal retaliation" for his candid audits.

-- Defense Secretary Caspar Weinberger accepts the explanation of DCAA Director, Charles Starrett, that Mr. Spanton's transfer is part of DCAA's normal 5-year rotational process. He says no DoD employee who suggests cutting waste and saving money "would be penalized."

-- DOD says it plans to initiate an agency wide investigation into "excessive labor costs" in military weapons contracts as per Spanton's suggestion. It also says Mr. Weinberger will intervene with the DCAA to prevent Mr. Spanton's transfer to Los Angeles by September 15. Reportedly, Mr. Weinberger has decided that Mr. Spanton "should not be removed until next March - the normal rotational period - if then."

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*The enclosed chronology of events about the case of George Spanton was compiled from articles in the following newspapers:

THE WASHINGTON TIMES	Clark Mollenhoff
THE FEDERAL TIMES	Greg Rushford
THE PALM BEACH POST	Carolyn Sussman

They span the period from August, 1982 to November, 1983.

-- The DCAA reverses itself and notifies Mr. Spanton that he will not have to transfer to California by September 15 or be fired.

SEPTEMBER, 1982

-- The Air Force begins an investigation into unnecessary costs tacked on to military contracts and passed on to the taxpayer. These "overhead costs" include unrestrained travel and relocation expenses and research into producing engines and other products with little government, but great commercial value.

NOVEMBER, 1982

-- In an interview with the Federal Times, Mr. Spanton says that the Air Force has not done anything to follow up on intentions to crack down on excessive defense contract wages.

JANUARY, 1983

-- Mr. Spanton tells the FBI that DCAA's pressure on him to resign by February 1 is on-going. The FBI informs the Merit Systems Protection Board that removal of Mr. Spanton will interfere with their criminal investigation of allegations of fraud at Pratt & Whitney. The alleged fraud involves lavish entertainment and travel expenses by Pratt & Whitney employees which were charged to military contracts and is the subject of a Justice Department investigation.

MARCH, 1983

-- The Washington Times reports that government investigators have obtained audio tapes that support Mr. Spanton's contention that he is being pressured to retire. Conversations taped in February involve Mr. Spanton, DCAA Atlanta Bureau Head ,.Paul Evans,and other DCAA officials. The proposal is made that if Mr. Spanton will retire by February 28, Mr. Evans will approve 23 days of overtime. Mr. Spanton suggests March 31 which will give him time to complete the FBI investigation. Mr. Evans is heard to reply that "March 31 won't be worth a tinker's damn" because the Pratt & Whitney investigation won't be completed for two years. Mr. Spanton decides to reitre December 1.

-- Mr. Spanton is interviewed on ABC's "20/20." On March 11, the day after the broadcast, DCAA director, Charles Starrett, orders Mr. Spanton transferred within 60 days or be fired. In his letter to Mr. Spanton, Starrett says that one of the reasons for the transfer is that "the contractor (Pratt & Whitney) has voiced an intention not to provide certain (financial) data to you, although they would provide the data to your supervisor."

-- Senator Orrin Hatch calls for an investigation by Mr. Weinberger into the Spanton case. Hatch's request comes after Representative Jack Brooks writes to Mr. Starrett expressing fear that Mr. Spanton's transfer will "inhibit other auditors from being too aggressive..." Both Senators Brooks and Hatch say it appears the efforts to transfer Mr. Spanton are punitive.

-- A March 18 letter from Mr. Weinberger to Rep. Charles Bennett states that Mr. Spanton is only being transferred because he has been at Pratt & Whitney for the maximum number of years. In that

letter, Mr. Weinberger also says that the Air Force is witholding $25 million in payments to Pratt & Whitney which otherwise would reimburse the company for "extraordinary" expenses.

-- The Merit Systems Protection Board orders the Defense Department not to transfer George Spanton for at least 15 days. The Board's attorney, William O'Connor, says he had "reason to believe the reassignment was proposed in reprisal for Mr. Spanton's protected disclosures of information (to the press)." A spokesman for the Board says the request was a "radical action" taken only where there "is a possibility of an egregious wrong, like a termination or transfer."

APRIL, 1983

-- Senator Charles Grassley writes a letter to Air Force Secretary Verne Orr warning that the Defense Department's treatment of George Spanton is "counter productive" in the Pentagon's campaign to cut waste and fraud. He says Mr. Spanton has been getting shabby treatment from the DCAA. Sen. Grassley tells the Washington Times that the Reagan administration "must do something affirmatively to demonstrate support for Spanton" and must take "some kind of action against his superiors to show that abuse of honest whistleblowers will not be tolerated....The reward should go to the honest whistleblowers who are trying to expose the waste and fraud. Those bureaucrats who take retaliatory action or otherwise stand in the way of the fight against waste must see that they cannot get away with it."

-- In conversation with Senator Grassley and Secretary Weinberger, President Reagan reveals that he has seen the "20/20" program on George Spanton. According to Senator Grassley, the President was "pretty disgusted" when he saw the examples of Pratt & Whitney's huge increases in spare parts prices and on entertainment expenses charged to the government. The President tells Senator Grassley that he had called the Pentagon and was satisfied with their respone, including the claim that ABC had "sensationalized" the situation to make it appear worse than it was. The President assures Senator Grassley that his administration was doing an effective job of eliminating waste and fraud in military contracts. Secretary Weinberger assures Senator Grassley that Mr. Spanton's transfer order from the DCAA is "routine rotation and not a cover-up for Pratt & Whitney." Senator Grassley tells the Washington Times that he is "disappointed" with the reaction of both President Reagan and Secretary Weinberger, that both men are "badly misinformed" on the seriousness of the problems at DCAA. He says the President must show leadership and iniative against "waste and theft of defense dollars" if he expects Congress and the public to support his defense budget."

-- The Merit System Protection Board grants George Spanton a 30-day stay on his transfer, ruling that there is cause for believing Mr. Spanton is the victim of illegal retaliation by the DCAA.

-- A spokesman for Secretary Weinberger's office tells the Palm Beach Post that is "immaterial" to Mr. Weinberger whether Mr. Spanton stays on the job. The comment is in response to a letter from Senator Grassley asking that the Secretary back up remarks he reportedly made at a Senate Budget Committee meeting. The Secretary said that if keeping Mr. Spanton on the job was all it would take to satisfy Senator Grassley, Mr. Spanton would be retained.

-- Special counsel for the Merit System Protection Board, William O'Connor, declares that Mr. Spanton has been the victim of illegal harassment, discrimination and retaliation by his superiors, including Mr. Starrett. O'Connor says Starrett has relied on "half-truths." He requests Secretary Weinberger to overrule DCAA Director Starrett and cancel Mr. Spanton's transfer. Mr. O'Connor's letter mentions Mr. Spanton's excellent 30 year record as a military contract auditor with excellent relations with past directors. The DCAA office in Atlanta had lowered Mr. Spanton's performance rating.

-- In response to the Merit System Protection Board, the Department of Defense orders Mr. Spanton to remain in his post until December.

-- Defense Department Comptroller Vincent Puritano, who supervises DCAA, writes a memo to Mr. Starrett saying that the controversy surrounding Mr. Spanton's transfer is "not in the best interest of the Department of Defense." He instructs Mr. Starrett to remind his managers that they are prohibited from taking "personnel action in reprisal for an employee's protected activity." Despite the MSPB's findings, Mr. Puritano goes on to praise Mr. Starrett, saying: "You may be assured that I have the highest regard for the quality of the work performed by the Defense Contract Audit Agency and am confident that, under your leadership, the auditors will continue as they have in the past to look at all claims (filed against the government) and question any they feel should be questioned."

-- Mr. Starrett writes a brief memo to Mr. Spanton urging him to "make every possible effort to work with the regional management to assure that the government's best interests are served."

-- The Merit System Protection Board tells the DOD it plans to continue investigating the case to determine whether the special counsel should take disciplinary action against any of the DCAA officials involved. The matter is also referred to DOD's Inspector General, Joseph Sherick.

MAY, 1983

-- The Justice Department, on instructions from Mr. Starrett, begins investigating allegations that Mr. Spanton divulged corporate secrets in going to the press with his complaints. Mr. Starrett's action is initated by a complaint from Pratt & Whitney.

JULY, 1983

-- Mr. Spanton recommends and the Department of Defense acts to withold $28 million in contract payments from Pratt & Whitney until it makes financial records available to the DCAA in West Palm Beach.

-- Pratt & Whitney appeals to the Air Force to have the DOD ruling overturned. Pratt & Whitney claims they have turned over the financial records on executives salaries requested by Mr. Spanton, but Air Force spokesmen say they can find no record of the data. Pratt & Whitney says it would turn over to Mr. Spanton employee salaries with employee ID numbers but no names, for fear that Mr. Spanton would turn those

names over to the press and violate the "privacy" of its top executives.

-- Secretary Weinberger announces a 10-point program directed at officials throughout the Department of Defense, to combat spare parts pricing abuses.

The first point proposes rewards for those who look for ways to reduce costs.

The second threatens disciplinary action, including "reprimand, demotion and dismissal", against those who are "negligent in implementing (DOD's) procedures."

Finally, DOD would "expose and take appropriate corrective action against those contractors and employees who are either negligent in performing their duties or are engaging in excessive pricing practices."

-- Secretary Weinberger addresses employees of Pratt & Whitney in Hartford, Connecticut. His remarks include the following:

"Where industry is at fault, I fully intend to be just as tough with irresponsible firms as we are with our own employees. That means we will use every method to obtain refunds where we have been overcharged, including suing contractors."

"The job of auditor is inherently a difficult, and often thankless, job. It is for that reason that I have required all DOD managers to give our auditors full cooperation and access. And, within our legal right, I demand the same from the industries that serve us."

AUGUST, 1983

-- The Washington Times carries a story about a report prepared by Mr. Spanton which finds that executive salaries paid by Pratt & Whitney "exceeded the norm for other defense contractors by 40%."

-- The Washington Times reports on another Spanton audit which shows the mark-up and profit on an unidentified product that cost DoD $28,579 to be $27,579.

-- Senator Alfonse D'Amato of New York calls for the firing of DCAA director Charles Starrett because of his involvement in "illegal actions" in the harassment and retaliation directed against Mr. Spanton.

-- Secretary Weinberger rejects Congressional suggestions that Mr. Starrett be fired or disciplined for illegally retaliating against Mr. Spanton. He characterizes the findings of the special counsel of the Merit System Protection Board as "unverified stories or rumors."

-- Senator Grassley is disappointed with Secretary Weinberger's response. He advises Mr. Weinberger to "take another look at the record" and not rely on the conclusions of his subordinates.

-- Pratt & Whitney agrees to turn over salary records to DoD auditors as Mr. Spanton has requested.

SEPTEMBER, 1983

-- The special counsel recommends to the Merit Systems Protection Board that disciplinary action be taken against four employees of the DCAA, including chief Charles Starrett, for the illegal harassment and intimidation of George Spanton. Investigator William O'Connor concludes that "the job of the auditor is to root out problems within government. Mr. Spanton did his job and for that he was punished."

The recommendation is the result of a year long investigation. Disciplinary action could mean removal from office and a $1,000 fine for each charge.

OCTOBER, 1983

-- The special counsel seeks a protective order to prevent Charles Starrett and other DCAA officials from threatening or intimidating Mr. Spanton. Investigator O'Connor found that Mr. Spanton's new supervisor, Mr. Joseph Cali, criticized Mr. Spanton for damaging DCAA and told him that DCAA was working hard to fight the special counsel's charges. He advised Mr. Spanton to withdraw the complaint from the Merit System Protection Board and stop talking to Washington Times reporter, Clark Mollenhoff.

Senator Grassley calls Mr. Cali's actions an exercise of "inexcusable abusive authority."

NOVEMBER, 1983

-- Reporter Bob Shaw of Knight Ridder newspapers publishes an account of a Spanton audit which shows Pratt & Whitney earning a $900,000 profit on maintenance tools sold to the Air Force, nearly triple what the items were worth. As a result the Air Force paid $221 for a pair of needlenose pliers and $269 for a socket wrench extension.

-- Administrative Law Judge Edward Reidy turns down the request of the special counsel for an order to protect the witnesses in the Spanton case.

-- Judge Reidy is to hear testimony beginning on December 6 on the special counsel's recommendation that DCAA officers be disciplined for illegally retaliating against Mr. Spanton.

Senator GRASSLEY. Mr. Cooke, before you testify, I believe I ought to note for the record that this subcommittee extended an invitation to Mr. Charles Starret, the Director of the DCAA who, more than anyone else, is familiar with the details of this particular case. Nonetheless, we are pleased that you could come before the subcommittee to present the official views of the Department of Defense, and I would hope, Mr. Cooke, before your testimony, that you could indicate for the record the appropriateness or the relevance to your position of your being here in relationship to the topic of whistleblowers, and particularly this case before us.

I would ask you to proceed.

STATEMENT OF DAVID O. COOKE

Mr. COOKE. Thank you very much, Mr. Chairman.

In answer to your question, may I refer to your letter of November 2, 1983, and I quote:

> The subcommittee will generally examine the protections afforded to Federal employees who perform watchdog functions that often tend to engender criticism from immediate supervisors. The subcommittee will examine whether the current system affords adequate protection to these employees. In your written testimony, please comment on the above issues, with particular emphasis on the protections granted by the Civil Service Reform Act.

I would note that if the purpose of the hearing is as stated in your letter of request which I just quoted, Mr. Starret has no programmatic responsibilities in this area. If the purpose of the hearing was to discuss the so-called *Spanton* case, as you know, Mr. Starrett is a party respondent before the Merit Systems Protection Board, and it would be highly inappropriate for him to appear. As a matter of fact, I consider it inappropriate to discuss in any manner the details of a case currently before the Merit Systems Protection Board.

Some of the statements you have heard are matters of issue before that Board. They are not resolved until the Board hears the case. We will, of course, continue to monitor this case, as all others, and if the end results indicate need for systems reform, we will take action.

Senator GRASSLEY. Mr. Cooke, for the record, I will state that I appreciate what you just said. We are aware of that, and any of our questions will be framed with that environment in mind.

Mr. COOKE. But I just wanted to call it to your attention that that is my role, and it is completely inappropriate to discuss any of the details raised on the factual situation involving the Spanton matter.

Senator GRASSLEY. Fine.

Mr. COOKE. May I proceed with my statement, Mr. Chairman?

Senator GRASSLEY. Yes.

Mr. COOKE. The Civil Service Reform Act of 1978, CSRA, provides the statutory basis for policies and procedures on the treatment of whistleblowers. In general, the CSRA prohibits reprisals against employees who report incidents of fraud, waste, and mismanagement. In addition, the act established the Merit Systems Protection Board and its Special Counsel to exercise jurisdiction in cases where reprisals are alleged. Of course, employees who believe they are victims of actions taken in reprisal for lawful disclosure of

fraud, waste, or mismanagement may also seek redress through the agency grievance system or appeals procedure for adverse actions.

Two distinct types of disclosures are protected under the act. First, all disclosures to the Special Counsel, MSPB, or to an agency Inspector General are protected if the employee reasonably believes his or her information reveals illegal or improper Government action.

Second, all other disclosures, including public disclosures, are protected if the employee reasonably believes the information discloses illegal or improper action by the Government and such disclosure is not specifically prohibited by law or specifically required to be kept secret by Executive order.

Although the Inspector General Act does not have any significant impact on the whistleblower rules of the CSRA, Inspectors General are authorized to receive complaints and investigate allegations of illegal or improper Government actions. The IG act does prohibit reprisals for making a complaint or disclosing information to an Inspector General unless the complaint was made or the information disclosed with knowledge that it was false or with willful disregard for its truth.

Neither act provides protections from otherwise justified agency action merely because a disclosure is made. The acts, for example, do not provide immunity from appropriate disciplinary action to an employee who is otherwise engaged in misconduct. Neither do they afford immunity from action based on less than satisfactory performance. Whether disciplinary action or other personnel action is taken as a reprisal or for permissible reasons is initially determined by the agency, and ultimately by the Special Counsel, the Merit Systems Protection Board, and the courts.

The Department of Defense has accepted and implemented the Civil Service Reform Act and the Inspector General Act. In this regard, the following actions have been taken:

On June 5, 1981, the Secretary of Defense established by memorandum the Defense hotline, under the auspices of the now DOD Inspector General, and directed that all substantive calls be investigated thoroughly, and that appropriate criminal and administrative remedies be pursued where warranted. Further, the Secretary of Defense directed that the identity of any caller be protected.

On May 14, 1982, the Deputy Secretary of Defense issued DOD directive 7050.1, which formalized the DOD hotline program, assigning responsibilities and prescribing managing and operating procedures. The directive states:

> Necessary controls shall be established to protect, to the maximum extent possible, the identity of users of the DOD hotline program. Informants shall be assured that they can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of their identity. Informants reporting alleged fraud and mismanagement should be encouraged to identify themselves so that additional facts can be obtained, if necessary.

On October 17, 1983, the Secretary of Defense again endorsed the Defense hotline in a memorandum to all DOD employees, reminding them that protecting the confidentiality of hotline users who prefer not to be identified remains a cornerstone of the program.

To add additional impetus to our program, a DOD directive is being developed which will establish a program to grant cash awards to DOD employees whose disclosures to the DOD Inspector General of fraud, waste, and mismanagement result in cost savings to the Department. The directive will provide anonymity to the recipient of the award at the employee's request.

The military departments have published their own implementing regulations based on the DOD directive, and Secretary of Defense policy statements. These provide procedural protections for whistleblowers who are the subject of adverse action and believe they are victims of reprisal. The military departments have also issued policy statements emphasizing the right of employees to file a disclosure without fear of reprisal, protecting the identity of the callers, if they so desire, and identifying appropriate methods for reporting alleged acts of reprisal. For example, Air Force regulation 40-101 states:

> Taking reprisals. Do not take (or fail to take) a personnel action, as a reprisal against an applicant or employee, because the person: (1) lawfully discloses violations of a law, rule, or regulation; or instances of mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety; (2) refused to engage in political activity, including making political contributions or performing services; (3) exercised an appeal right granted by law, rule, or regulation.

Navy civilian personnel instruction 752 on the subject of adverse actions includes prohibited personnel practices as offenses punishable by a range of penalties from reprimand to removal. Moreover, the military departments have hotlines of their own which supplement the DOD hotline. And I have here someplace, if you will bear with me, our latest Department of Defense directive and DOD policy for civilian personnel, which states that "All DOD Managers shall also be familiar with prohibited personnel practices in 5 U.S. Code 2302(b)." This, by the way, is DOD directive 1400.5. It further states that "In presenting a grievance or complaint, an employee shall be free from interference, restraint, or reprisal and may be accompanied and assisted by a representative."

Mr. Chairman, these issuances have been widely distributed throughout the Department of Defense to Department of Defense employees. There are also in place a number of policies, regulations, and systems which encourage employees to report fraud, waste, and mismanagement without fear of reprisal or unauthorized disclosure of their identity. The Office of the DOD Inspector General receives complaints and investigates allegations of illegal or improper Government action.

It should be pointed out, however, that more often than not, allegations of reprisal are made directly to the Office of the Special Counsel. Nevertheless, we are prepared to look into the possibility of issuing additional DOD guidance to preclude reprisals against those who make complaints about operations and policies of the Department if there is any evidence of inadequacies in the current regulations.

Let me conclude by expressing the view that in general, the Department of Defense is increasing its efforts to protect whistle-

blowers. We will do everything we can to insure that managers and employees are aware of the prohibited activities. We intend to continue strengthening systems which provide for registering and investigating the complaints of such activities.

Mr. Chairman, this concludes my formal statement. I will be pleased to respond to your questions.

[Submissions of Mr. Cooke follow:]

DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330

AF REGULATION 40–101

30 January 1980

Civilian Personnel

PRINCIPLES OF THE CIVILIAN PERSONNEL PROGRAM

This regulation gives information needed by all commanders, staff and central civilian personnel offices, other staff offices, and all supervisors of civilian employees. It states the principles of the merit system that must be observed, and the personnel practices that are prohibited, in administering and managing civilian employees. This regulation applies to all employees in the Competitive, Excepted, and Senior Executive Services. It also applies to other civilian employees when modified to meet special requirements, laws or regulations, local practices, and international agreements. This regulation implements DOD Directive 1400.5, 16 January 1970, and 5 U.S.C., chapter 23.

1. Objective of the Civilian Personnel Program. The objective of the civilian personnel program is to recruit, develop, motivate, utilize, and sustain a balanced, structured, and high quality work force to carry out the Air Force's mission efficiently and effectively. In achieving this objective, the principles of the merit system and certain prohibited personnel practices must be observed strictly.

2. Principles of the Merit System. All staff officials, managers, and supervisors with civilian personnel program responsibilities must preserve the following merit principles:

a. **Treat Employees Fairly:**

(1) Base all personnel decisions and actions on merit factors—not on an employee's race, color, religion, sex, national origin, age, handicapping condition, marital status, political affiliation, or membership in any organization, including a labor organization.

(2) Treat employees with full regard for their dignity as individuals, including individual privacy and constitutional rights. Judge employees' trustworthiness on their actions—not from their pay or grade levels.

b. **Recruit and Place Employees Effectively:**

(1) Within mission, manning, and funding requirements, recruit persons to create and maintain a civilian work force that represents all segments of society.

(2) Place employees in the jobs they are best qualified for, and give them opportunities for advancement. Select and advance employees solely on their relative ability, knowledges, and skills under fair and open competition.

c. **Motivate and Retain Employees:**

(1) Respect the right of employees, without interference, coercion, restraint, or reprisal, to join or refrain from joining labor organizations or employee associations. When a recognized labor organization represents employees, try to build a relationship of mutual respect and trust with that organization.

(2) Inform employees and their recognized labor organizations, when possible, of plans and policies that affect them.

(3) Allow employees to discuss their problems with staff members of their servicing central civilian personnel office, social actions office counselor, equal employment opportunity officer or counselor, labor organization representative, someone named to give guidance about conflict of interest, or a supervisory or management official of higher rank or level than the immediate supervisor.

(4) Evaluate each employee's work performance fairly and objectively by comparing it to established reasonable job requirements, discuss the results of an evaluation with the employee, and recognize all significant employee achievements and contributions.

(5) Use the civilian work force efficiently and effectively. Help employees improve when their work is inadequate, and remove employees from their positions when they cannot or will not meet required standards.

(6) Give employees equal pay for work of equal value, as provided by the compensation schedule applicable to their employment. Also, give them incentives, recognition, and pay adjustments for excellence in performance.

(7) Make working conditions as safe and healthful as practicable.

(8) Encourage employees to suggest ways to improve work methods and working conditions.

(9) Let employees decide whether or not to participate in voluntary fundraising campaigns, and in purchasing US Savings Bonds, without compulsion, coercion, or reprisal.

(10) Recognize that employees have statutory rights against arbitrary action, personal favoritism, or coercion for partisan political purposes.

(11) Allow employees, individually and collectively, to petition and furnish lawful information to Congress or a member of Congress.

(12) Recognize that employees have statutory rights against reprisal for lawfully disclosing informa-

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tion which shows a violation of law, rule, or regulation; or shows mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety.

(13) Offer an employee with a grievance or complaint of discrimination a fair and prompt informal resolution and, if the employee is not satisfied, let the employee pursue the matter under the Air Force grievance system, a negotiated grievance procedure, or the discrimination-complaint procedure, as appropriate. Let an employee present a grievance or complaint without interference, restraint, or reprisal. Unless a negotiated agreement provides otherwise, allow the employee to be accompanied and assisted by the representative he or she chooses.

d. **Develop Employees:**

(1) Provide education and training when necessary for more effective individual-employee and organizational performance.

(2) Consider all eligible employees when making selections for training which may lead to promotion.

(3) Encourage employee self-development by making information about training opportunities and self-study materials available to employees, and recognize self-initiated improvement in performance.

3. Prohibited Personnel Practices. All persons with authority to take, direct others to take, recommend, or approve any personnel action are prohibited from:

a. **Discriminating Because of Non-Merit Factors:**

(1) Do not discriminate for or against an employee or applicant because of race, color, religion, sex, national origin, age, handicapping condition, marital status, political affiliation, membership in any organization, or lawful conduct which does not adversely affect the person's (or other workers') performance.

(2) Do not solicit or consider any recommendation, oral or written, about an applicant or employee you are considering for a personnel action, unless it evaluates the person's work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for employment.

b. **Using Influence Unlawfully:**

(1) Do not coerce an applicant or employee to take political actions or to make political contributions.

(2) Do not willfully deceive or obstruct applicants or employees about their right to compete for federal employment.

(3) Do not influence a person to withdraw from competition for a position to improve or injure another person's prospects.

(4) Do not grant an applicant or employee any preferential treatment or advantage not authorized by law, rule, or regulation.

(5) Do not appoint, employ, promote, or advance a relative to a civilian position in the agency, or advocate such actions.

c. **Taking Reprisals.** Do not take (or fail to take) a personnel action, as a reprisal against an applicant or employee, because the person:

(1) Lawfully disclosed violations of a law, rule, or regulation; or instances of mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety.

(2) Refused to engage in political activity, including making political contributions or performing services.

(3) Exercised an appeal right granted by law, rule, or regulation.

d. **Violating Other Merit System Principles.** Do not take (or fail to take) any personnel action in violation of a law, rule, or regulation that implements the principles of the merit system or concerns them directly.

4. Responsibilities:

a. Management officials and supervisors must:

(1) Recognize they are an important part of the management team. They help formulate official policy and represent management in administering policies and labor-management agreements.

(2) Observe the principles of the merit system, and prohibited personnel practices, strictly.

(3) Provide progressive and constructive leadership, keep employees informed about matters that concern them, and maintain a work environment that encourages good morale, efficiency, and effectiveness.

b. Employees must:

(1) Recognize that they share responsibility for maintaining sound management-employee relations.

(2) Maintain high standards of integrity, conduct, and concern for the public interest.

(3) Work efficiently and effectively, and cooperate with those who direct their work.

5. Implementation. The principles of the merit system and the prohibited personnel practices given in this regulation are basic to the civilian personnel program. They govern the policies and guidance in other Air Force regulations in the 40 series.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

LEW ALLEN, JR., General, USAF
Chief of Staff

VAN L. CRAWFORD, JR., Colonel, USAF
Director of Administration

SUMMARY OF CHANGES

This revision adds the merit system principles and prohibited personnel practices prescribed by the Civil Service Reform Act of 1978 and codified in 5 U.S.C., Chapter 23.

THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

JUN 3 1981

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Defense Hotline

To publicize our efforts to combat fraud and inefficiency in DoD operations, please ensure that the attached memorandum is widely circulated in your organization. It emphasizes the President's and my personal commitment to the reduction of fraud and inefficiency in Defense programs and spotlights the Defense Hotline as an important tool in this effort. Your continuing personal support of this anti-fraud and management improvement program is essential to its success. The program's success is a key to our ability to acquire and manage the resources we need to strengthen and improve our military forces.

I would also like each of you to take any additional actions you feel appropriate to publicize the Defense Hotline within your organization to make all your personnel aware of its existence and your support for its use. Possibilities include the use of posters, telephone stickers, pamphlets, placing Hotline numbers on covers of DoD telephone books, etc.

Please advise my Assistant for Review and Oversight by June 15, 1981 of the specific publicity actions you have planned.

Caspar W. Weinberger

Enclosure

THE SECRETARY OF DEFENSE

WASHINGTON D.C 20301

JUN 5 1981

MEMORANDUM FOR ALL DEPARTMENT OF DEFENSE PERSONNEL

SUBJECT: Defense Hotline

The reduction of fraud and inefficiency in all Federal programs is a major commitment and priority of President Reagan. I fully support this Presidential program and, to strengthen and focus Departmental efforts in support thereof, I have established a new position of Assistant to the Secretary of Defense (Review and Oversight). This new official will serve as my principal advisor on matters relating to the combating of fraud, waste and abuse in DoD programs and operations.

The commitment to reduce fraud and waste cannot be met, however, by simply establishing a new oversight office. Our efforts to attack fraud, waste and inefficiency will require the cooperation and support of all DoD personnel. You are the key to the success of this effort, and success is essential if we are going to acquire the resources and carry out the programs required to strengthen and improve our military forces. Each of you should be alert to opportunities for improved economies and efficiencies in DoD operations. Recommendations for improved efficiency and economy of operations should be made through the appropriate management channel or as part of the Departmental suggestion award program. All instances of suspected fraudulent activities should be promptly reported to appropriate DoD criminal investigative organizations.

To ensure that full and proper consideration is given to all suspected cases of fraud and mismanagement in DoD, I have established the Defense Hotline under the direction and control of the Assistant to the Secretary of Defense (Review and Oversight). The Defense Hotline is in Washington, DC and operates between 0800 and 1630 each workday. The Hotline numbers are: 800-424-9098 (toll free); 693-5080 (National Capital Region); and 223-5080 (Autovon). I have directed the Assistant to the Secretary of Defense (Review and Oversight) to ensure that all substantive calls are fully investigated, and that appropriate criminal and administrative remedies are pursued where warranted. Moreover, I have directed that the identity of any caller be fully protected.

I am asking for your support and cooperation to assure that our objective is accomplished.

Caspar W. Weinberger

May 14, 1982
NUMBER 7050.1

Department of Defense Directive

ATSD(R&O)

SUBJECT: DoD Hotline

References: (a) DoD Directive 5148.10, "Assistant to the Secretary of Defense (Review and Oversight)," April 20, 1981
(b) Secretary of Defense Memorandum, "Defense Hotline," June 5, 1981
(c) through (f), see enclosure 1

A. PURPOSE

This Directive establishes the DoD hotline program under references (a) and (b), assigns responsibilities, and prescribes managing and operating procedures.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD) and its field activities, the Military Departments including their National Guard and reserve components, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

C. DEFINITIONS

1. Fraud. Includes fraud and other unlawful activity and is defined as any willful or conscious wrongdoing that adversely affects the government's interest. This includes, but is not limited to, acts of dishonesty that contribute to a loss or injury to the government.

2. Mismanagement. A collective term covering acts of waste and abuse. Extravagant, careless, or needless expenditure of government funds or the consumption or misuse of government property, resulting from deficient practices, systems, controls, or decisions. Abuse of authority or similar actions not involving prosecutable fraud.

3. Independence. The state or quality of being free from the influence or control of situations, things, or others. A general standard which incorporates this quality and places upon the auditors, inspectors, and investigators and their respective organizations, the responsibility for maintaining neutrality and exercising objectivity so that opinions, conclusions, judgments, and recommendations on allegations examined are impartial and will be viewed as impartial by knowledgeable third parties.

D. POLICY

It is the policy of the Department of Defense to combat fraud and mismanagement in DoD programs and operations. To strengthen and focus departmental efforts in support of this policy, the DoD hotline program, under the direction and control of the Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)), will ensure that allegations of fraud and mismanagement are evaluated; substantive allegations are examined; appropriate administrative, remedial, or prosecutive actions are taken; and systems of records for the control of the hotline are established and maintained.

E. PROCEDURES

1. Methods for processing and controlling the receipt, examination, and reporting of all allegations referred to DoD Components for audit, inspection, and investigation through the DoD hotline program, are addressed below and in section F., and include procedures to account for, monitor, and follow-up on allegations referred to the hotline, regardless of source. Sources include communications referred from the Congress, General Accounting Office (GAO) hotline, Office of Management and Budget (OMB), DoD staff activities, and those written to the ATSD(R&O).

2. Necessary controls shall be established to protect, to the maximum extent possible, the identity of users of the DoD hotline program. Informants shall be assured that they can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of their identity. Informants reporting alleged fraud and mismanagement should be encouraged to identify themselves so that additional facts can be obtained if necessary.

3. All substantive allegations received by the DoD hotline shall be examined. The examinations normally shall be conducted by qualified auditors, inspectors, or investigators. When necessary, DoD Components may use individuals or groups with other professional or technical skills to assist in or conduct examinations under the supervision of the responsible audit, inspection, or investigative organization.

4. Procedures must ensure that due professional care and organizational independence are observed, and that impartial and objective examinations are made. Allegations must be examined by officials outside and independent of the operation in which the complaint is alleged to have occurred.

5. DoD Components shall encourage their personnel to register complaints and grievances through appropriate management and grievance channels, and submit suggestions for management improvements as a part of the DoD Incentive Awards Program. However, they shall encourage the reporting of suspected fraud and mismanagement to the DoD hotline program office either by telephone (800)424-9098, (202)693-5080, or AUTOVON 223-5080 or by mail, DoD Hotline Program, The Pentagon, Washington, D.C. 20301.

F. RESPONSIBILITIES

1. The Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)), as the principal advisor to the Secretary of Defense on all matters relating to the prevention and detection of fraud and mismanagement, shall develop and oversee the DoD hotline program, provide guidance to DoD Components for implementing its policies, and shall:

a. Direct, manage, and control the operations of the DoD hotline program and establish procedures to ensure that full and proper consideration is given to all alleged cases of fraud and mismanagement in the Department of Defense that is reported through the hotline program.

b. Ensure that audits, inspections, and investigations initiated as an integral part of the DoD hotline program are conducted in accordance with applicable laws, court decisions, and DoD regulatory documents and policies, including the Uniform Code of Military Justice (reference (c)).

c. Review and evaluate periodically the operations of the DoD hotline program.

d. Establish a DoD hotline advisory group composed of members of the ATSD(R&O) staff whose functions shall be to:

(1) Review DoD hotline allegations furnished in accordance with paragraph F.2.f., and provide guidance to the Defense Criminal Investigative Service (DoD Directive 5105.50, reference (d)) and other DoD Components regarding the processing of DoD hotline allegations and related audits, inspections, and investigations.

(2) Review selectively the reports of completed audits, inspections, and investigations of DoD hotline cases. Weaknesses and deficiencies in examinations shall be referred to ATSD(R&O) for appropriate action and resolution.

(3) Advise the ATSD(R&O) of serious allegations and significant trends disclosed in the operation of the DoD hotline program.

(4) Coordinate with the GAO hotline office on hotline-related matters.

e. Coordinate with the heads of DoD Components concerned before directly conducting audits, inspections, or investigations of matters normally under their jurisdiction.

f. Ensure that any allegation involving the Office of the ATSD(R&O), persons involved in the audit, inspection, or investigative functions or anyone connected in any way with the hotline program receives an impartial, independent, and objective review.

2. The Director, Defense Criminal Investigative Service (DCIS), shall:

a. Operate the DoD hotline program, logging all allegations received by telephone, mail, or other means of communications from all sources.

b. Under the provisions of the Secretary of Defense memorandum and P.L. 95-452 (references (b) and (e)), establish controls to protect, to the maximum extent possible, the identity of all persons using the hotline.

c. Maintain proper controls, files, and records for tracking allegations through the receipt, examination, and close-out phases.

d. Obtain specific and detailed information to ascertain the substance of each allegation and determine the DoD Component to whom the allegation should be referred for action. Use the format at enclosure 2, "Record of DoD Hotline Call," for recording and documenting each allegation received by telephone. Refer all non-DoD-related allegations to appropriate federal agencies.

e. Prepare a DoD processing decision memorandum (see enclosure 3) for allegations received, annotating to whom the allegations will be referred for information or action with a recommendation whether the independent review should be made by audit, inspection, or investigation, and other comments and guidance considered necessary.

f. Refer items preliminarily determined to be sensitive, controversial, or involving flag and general officers or DoD civilian officials of equivalent grades to the DoD hotline advisory group for review and disposition guidance. Refer other allegations directly to the DoD Component concerned.

g. Receive all DoD-related allegations from the GAO hotline office and process them promptly in the same manner as DoD hotline allegations. Advise the DoD hotline advisory group of any problems encountered in performing this function.

h. Process promptly all allegations received, and expedite the processing of allegations that are time-sensitive.

i. Monitor closely the reports of completed examinations to ensure that all aspects of the hotline complaints were fully covered, the examinations were properly conducted, and appropriate actions were taken based on examination findings.

j. Notify promptly the appropriate DoD Component hotline coordinator of discrepancies noted in individual reports or apparent deficiencies in the related examination, so that the DoD Component can review, and if necessary, redo its audit, inspection, or investigation of the complaint and submit a revised report.

k. Notify the ATSD(R&O) hotline advisory group of all instances where reports of completed examinations indicate that the work performed did not meet prescribed audit, inspection, or investigation standards, or was defective in depth, scope, independence, or some other respect.

l. Investigate all allegations of criminal activity in the OSD, the OJCS, and the Defense Agencies, and other allegations directed to DCIS by the ATSD(R&O) or the DoD hotline advisory group.

m. Investigate and participate in investigations of allegations of DoD hotline allegations of criminal activity involving more than one DoD Component or in other special circumstances.

n. Ensure that due professional care and organizational independence are observed at all times and that DCIS investigations of allegations are conducted impartially and objectively.

o. Retain all DoD hotline investigation files for at least 2 years after the DCIS investigation is completed.

p. Maintain a followup system to track the in-process status and final disposition of all DoD hotline allegations. Include the results of criminal prosecution, sentences imposed, monetary recoveries, administrative, and other actions taken.

q. Inform Defense Agency hotline coordinators of allegations passed directly, either to the Defense Audit Service or DCIS, for action, to keep the Agency hotline coordinators informed.

r. Maintain liaison and communication with DoD Component hotline coordinators, other government agencies and organizations, and with external investigative agencies.

s. Prepare periodic summary analyses of all DoD hotline operations, including regular reports to the ATSD(R&O) for each 6-month period ending on March 31 and September 30. Include in the semiannual reports an accounting for all allegations received at the DoD hotline office from all sources, and prepare them in accordance with the format at enclosure 4, "DoD Hotline Program--Analysis of Allegations received."

t. Sustain the widest dissemination of information concerning the hotline by using such mechanisms as news releases, items in internal publications (including telephone directories), official notices, posters, and other media. Develop educational material for use in encouraging DoD employees to report fraud and mismanagement in DoD programs and operations.

3. Heads of other DoD Components shall establish and implement policies to ensure that the DoD hotline program is fully effective. To achieve this aim, they shall:

a. Establish a single coordinator to manage, monitor, and report to DCIS the actions of audit, inspection, and investigative groups on DoD hotline allegations referred to the DoD Component for action.

b. Establish procedures set forth in section E., this Directive.

c. Normally, have the cognizant audit, inspection, and investigative organizations examine DoD hotline complaints. They, in turn, shall:

(1) Audit, inspect, or investigate DoD hotline referrals in accordance with the standards and procedures prescribed herein. Examination of DoD hotline allegations by Army, Navy (including the Marine Corps), and Air Force Inspectors General shall be conducted as informal investigations using the prescribed procedures of each Military Department concerned. Ensure that examinations conducted by other individuals or groups are supervised by one of the audit, inspection, or investigative organizations.

(2) Maintain appropriate records to ensure accountability for all DoD hotline referrals until final disposition.

(3) Establish necessary controls to protect, to the maximum extent possible, the identity of all DoD hotline users who request anonymity.

(4) Ensure that due professional care and organizational independence are observed and that audits, inspections, and investigations are conducted impartially and objectively.

(5) Process promptly all allegations received, and expedite the examination of allegations that are time-sensitive.

(6) Retain all working papers and files for at least 2 years after an examination is completed.

(7) Submit to DCIS progress reports on the status of all open cases which have been open 6 months or more as of March 31 and September 30 to facilitate semiannual reporting under P.L. 95-452 (reference (e)). Submit a report for each open case using the format at enclosure 5, "DoD Hotline Progress Report," within 15 working days of the close of each 6-month period.

(8) Submit a final report through the Component's hotline coordinator to DCIS within 60 days from the date the complaint was transmitted by DCIS for action. Use the format prescribed at enclosure 6, "DoD Hotline Completion Report." When an examination cannot be completed in 60 days, notify DCIS of the reason for the delay and the date the report can be expected.

(9) Provide ATSD(R&O) and DCIS information or documentation relative to examinations in process or closed, as may be required.

d. Cooperate with the auditors, inspectors, and investigators in granting immediate unrestricted access to personnel, documents, and records, and providing suitable working facilities and arrangements.

e. Ensure, under reporting requirements outlined in F.3.c.(8), above, that local commanders report promptly to the referring audit, inspection, or investigative organization on the administrative or other type actions taken on cases referred to them for resolution.

f. Maintain an active hotline publicity program using local newspapers, official notices, posters, telephone directories, and other media. Implement education programs to encourage employees to identify and report fraud and mismanagement in DoD programs and operations.

G. INFORMATION REQUIREMENTS

The reporting requirements prescribed in section F., above are exempt from formal approval and licensing in accordance with subsection VII.F. of enclosure 3 to DoD Directive 5000.19 (reference (f)).

H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant to the Secretary of Defense (Review and Oversight) within 60 days.

Frank C. Carlucci
Deputy Secretary of Defense

Enclosures - 6
1. References
2. Record of DoD hotline call
3. DoD hotline processing decision memorandum
4. DoD hotline program--analysis of allegations received
5. DoD hotline progress report
6. DoD hotline completion report

REFERENCES, continued

(c) Title 10, United States Code, Sections 801-940, "Uniform Code of Military Justice"
(d) DoD Directive 5105.50, "Defense Criminal Investigative Service," April 28, 1982
(e) Public Law 95-452, "Inspector General Act of 1978," October 12, 1978
(f) DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976

May 14, 82
7050.1 (Encl 2)

RECORD OF DOD HOTLINE CALL

DATE: _____ TIME: _____ AGENT: _____

CONTROL NUMBER: _____

ALLEGATION: _____

_____

CALLER'S NAME: _____

CIVILIAN TITLE OR MILITARY RANK: _____

HOME ADDRESS: _____
_____
_____

HOME TELEPHONE: _____

BUSINESS OR FEDERAL AGENCY ADDRESS: _____
_____
_____

BUSINESS OR FEDERAL AGENCY TELEPHONE: _____

_____

DID CALLER TAKE OTHER ACTION REGARDING THIS MATTER? Yes ____ No ____

To Whom:

When:

Results:

IS CALLER AMENABLE TO PERSONAL INTERVIEW? Yes ____ No ____

DOES CALLER REQUEST ANONYMITY? Yes ____ No ____

WAS AN EXPRESSED PROMISE OF CONFIDENTIALITY GIVEN? Yes ____ No ____

_____

AGENT'S EVALUATION OF ALLEGATION

May 14, 82
7050.1 (Encl 2)

RECORD OF DoD HOTLINE CALL

CONTROL NUMBER: _____

ALLEGATION: _____

_____

_____

_____

COMPLAINT: (Record of call should contain basic elements of information to identify the who, what, where, when, and why of the offense. Obtain fullest details possible, such as nature of offense; DoD Component involved; location of offense; names, number and type of people involved; nature and extent of loss; modus operandi; means of concealment; corroboration by persons or documentation, dates and duration of offense):

CALLER WAS GRANTED ANONYMITY under guidance contained in Secretary of Defense Memorandum for all DoD Personnel, June 5, 1981. The identity of the caller will be protected, to the maximum extent possible. If additional information is necessary, contact _____.

May 14, 82
7050.1 (Encl 3)

DoD HOTLINE
PROCESSING DECISION MEMORANDUM

CONTROL NO.: _____ DATE: _____

1. REFER FOR INDEPENDENT REVIEW (Tracking required)

FOR INDEPENDENT REVIEW BY:

	AUDITORS	INSPECTORS	INVESTIGATORS
☐ Army			
☐ Navy			
☐ Air Force			
☐ DAS		XXXXXXXXXX	XXXXXXXXXXXX
☐ DCIS	XXXXXXXX	XXXXXXXXXX	
☐ Other (specify) _____			XXXXXXXXXXXX

2. REFER FOR INFO/ACTION
(No tracking or response required)

☐ Army .....
☐ Navy .....
☐ Air Force .....
☐ Other (specify) _____ .....

3. CLOSE CASE (without referral action)

☐ Insufficient information .....

☐ Other (specify) _____ .....

4. ACKNOWLEDGEMENT REQUIRED (specify)

☐ _____

☐ _____

5. COMMENTS OR GUIDANCE

_____

DOD HOTLINE PROGRAM
ANALYSIS OF ALLEGATIONS RECEIVED - (PROVIDE SOURCE)
SIX-MONTH PERIOD ENDED _____

	DoD Component				
Number of Allegations Received:	Army	Navy	Air Force	Defense Agencies	Total
Prior periods					1,455[1]
Current period					806
Total allegations received					2,261
Less: Number referred to other departments					26
Net Allegations Received					2,235
Less: Number closed without referral to DoD Components					100
Net Allegations Subject to Referral to DoD Components	753	637	532	213	2,135
Less: Number referred to DoD Components for information	3	5	5	3	16
Net Allegations Referred to DoD Components for Examinations	750	632	527	210	2,119
Less: Allegations closed					
Prior periods	488	424	295	89	1,296
Current period	19	24	8	21	72
Total allegations closed	507	448	303	110	1,368
Allegations Open as of (End of period)	243	184	224	100	751
Aging of Open Allegations:					
April 1981 - September 1981	216	151	174	71	612
October 1980 - March 1981	18	20	16	7	61
April 1980 - September 1980	4	4	12	8	28
Prior to April 1980	5	9	22	14	50
Totals	243	184	224	100	751

[1]Numbers supplied for illustrative purposes only.

DOD HOTLINE PROGRESS REPORT
AS OF (APPLICABLE DATE)

1. Applicable DoD Component:

2. Hotline Control No:

3. Date Referral Initially Received:

4. Status:

Examination is being conducted by (name of applicable organization). (Describe in brief terms the allegation and what has been determined to date).

5. Expected Date of Completion:

6. Action Agency Point of Contact:

May 14, 82
7050.1 (Encl 6)

DOD HOTLINE COMPLETION REPORT

AS OF (APPLICABLE DATE)

1. Name and Organization of Examining Official(s):

2. Hotline Control No:

3. Scope of Examination, Conclusions, and Recommendations. Identify allegation, applicable organization and location, person or persons against whom the allegation was made, dollar significance of actual or estimated loss or waste of resources, and results of examination, including amount of actual or potential recoveries of resources which tend to prove or disprove the allegation. Include comments regarding the nature and scope of examination (documentary review, witnesses interviewed, evidence collected, or interrogations of person or persons identified above, when appropriate). Provide comments on program reviews made; adequacy of existing regulations or policy; system weaknesses noted; and similar weaknesses.

4. Cite Criminal or Regulatory Violation or Violations Substantiated.

5. Disposition. Report the specific action taken. For examinations involving economies and efficiencies, report management actions taken or planned at the time of the final report. For examinations involving criminal or other unlawful acts, include results of criminal prosecution, providing details of all charges and sentences imposed. Include results of administrative sanctions, reprimands, value of property or money recovered or other such actions taken to preclude recurrence.

6. Security Classification of Information. Each examining organization must determine and state, when applicable, the security classification of information included in this report which could jeopardize national defense or otherwise compromise security if the contents were disclosed to unauthorized sources.

7. Location of Field Working Papers and Files.

File Immediately Following Chapter 752
of the Federal Personnel Manual

DEPARTMENT OF NAVY ADVERSE ACTIONS

I. PURPOSE

This instruction establishes the Department of Navy (DON) regulations for effecting adverse actions and provides guidance in disciplinary actions.

II. DEFINITIONS

A. "Activity" means a field installation, headquarters command, or office.

B. "Appealable Adverse Action" means a removal, suspensions for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

C. "Days" means calendar days.

→ D. "Employee" means:

1. For purposes of grievable adverse actions, a member of the Senior Executive Service or an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less; and ←

2. For purpose of appealable adverse actions:

a. those employees listed in D1, and

b. a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar position.

E. "Furlough" means the placing of an employee in a temporary status without duties and pay because of a lack of work or funds or other nondisciplinary reasons.

F. "Grade" means a level of classification under a position classification system.

G. "Grievable Adverse Action" means a letter of reprimand or a suspension for 14 days or less.

H. "Letter of Admonishment" means a written correction by a superior official of an employee's improper conduct.

I. "Letter of Reprimand" means a written remedy by a superior official for an employee's improper conduct.

J. "Noncontestable Action" means an oral admonishment or a letter of admonishment, i.e., an action not recorded in an employee's Official Personnel Folder.

K. "Official" means an employee who has been delegated authority to propose or decide an adverse action under this instruction.

L. "Oral Admonishment" means an oral (non-written) correction by a superior official of an employee's improper conduct.

M. "Pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee.

N. "Removal" means the involuntary separation of an employee from the activity except when taken as a reduction-in-force action.

O. "Suspension" means the placing of an employee in a temporary status without duties or pay for disciplinary reasons.

III. COVERAGE

This instruction applies to all Department of Navy employees as defined in II D above except:

A. An employee of a non-appropriated fund instrumentality;

B. Schedule B excepted service employees without competitive status;

C. An employee whose appointment is made by and with the advice and consent of the Senate;

D. An employee whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by:

1. The Office of Personnel Management for a position that it has excepted from the competitive service; or

2. The President or the Secretary of the Navy for a position which is excepted from the competitive service by statute, and

E. Reduction in grade or pay and furlough for 30 days or less for a member of the Senior Executive Service;

F. For suspensions of 14 days or less, members of the Senior Executive Service and employees as defined in IID2b.

→ G. Removal or suspension for more than 14 days of a noncareer, limited term, or limited emergency Senior Executive Service appointee; or such removal or suspension of a career SES member during the probationary period who, by virtue of the appointment held immediately prior to entry into the SES, was not covered. ←

IV. EXCLUSIONS

A. A suspension or removal taken in the interests of national security. (5 USC 7532)

B. A reduction-in-force action.

C. The reduction in grade of a supervisor or manager who has not satisfactorily completed the probationary period if such reduction is to the grade held immediately before becoming such a supervisor or manager. (5 USC 3321)

D. A reduction in grade or removal based solely on unacceptable performance. (5 USC 4303)

E. An action initiated under authority of the Special Counsel or taken at the direction of the Merit Systems Protection Board. (5 USC 1205, 1206, 1207)

F. An action taken under provision of statute, other than one codified in 5 USC, which excepts the action from subchapter II of Chapter 75 of 5 USC.

G. An action which entitles an employee to grade retention and an action to terminate this entitlement. (5 USC 5362)

H. A voluntary action initiated by the employee.

I. An action taken or directed by the Office of Personnel Management for suitability reasons. (5 CFR Parts 731 and 754)

J. Involuntary retirement because of disability.

K. Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

L. Action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

M. An action which terminates a term promotion at the completion of the project or a specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a position of equivalent grade and pay.

N. Cancellation of a promotion to a position not classified prior to the promotion.

O. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in acccordance with conditions established at the time of appointment.

P. Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.

Q. An action against a reemployed annuitant.

R. An action against a Presidential appointee.

V. DELEGATION OF AUTHORITY

Heads of activities are delegated authority to propose and decide adverse actions under this instruction. Activity heads shall redelegate authority to propose and decide such actions to subordinate supervisors and managers to the extent they deem appropriate.

VI. STANDARD FOR ACTION

A. Activities shall take an adverse action against an employee only for such cause as will promote the efficiency of the service.

B. Activities may not take an adverse action against an employee on the basis of any prohibited personnel practice. (5 USC 2302)

C. Appendix A provides guidance on taking disciplinary actions.

D. Appendix B is the DON guideline schedule of disciplinary offenses and remedies.

VII. PROCEDURES FOR NONCONTESTABLE ACTIONS

A. An oral admonishment will not be counted as a prior offense when determining a remedy under Appendix B. An oral admonishment will not be made a matter of record in an employee's Official Personnel Folder. An oral admonishment is neither grievable nor appealable.

B. A letter of admonishment will:

1. Specify the reasons for its issuance,

2. Specify that the letter of admonishment is neither grievable nor appealable.

3. State that it will not be made a matter of record in an employee's Official Personnel Folder, and

4. State that it will not be counted as a prior offense when determining a remedy under Appendix B.

VIII. PROCEDURES FOR GRIEVABLE ADVERSE ACTIONS

A. A letter of reprimand will:

1. Specify the reasons for its issuance,

2. Specify the employee's right to file a grievance under CPI 771 or under a negotiated procedure, as appropriate,

3. State the length of time, not less than one nor more than two years, that it will be made a matter of record in the employee's Official Personnel Folder, and

4. State that it may be counted as a prior offense when determining a remedy under Appendix B.

B. An employee against whom a suspension of 14 days or less is proposed is entitled to:

1. An advance written notice stating:

a. the specific reasons for the proposed action,

b. the name and title of the official designated to hear an oral reply and/or receive the written reply (the official so designated must have authority to either make or recommend a final decision on the proposed adverse action),

c. the amount of time (but not less than 24 hours) that the employee is allowed to answer orally and in writing, and

d. the right of the employee or the employee's representative to review the material which is relied upon to support the reasons given in the notice;

2. a reasonable amount of official time to review the material relied upon to support the proposal and to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status;

3. a reasonable time, but not less than 24 hours, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

4. be represented by an attorney or other representative; and

5. a written decision at the earliest practicable date which:

a. considers only the reasons specified in the notice of proposed action,

b. specifies the reasons for the decision,

c. considers any answer of the employee and/or the employee's representative made to a designated official,

d. is signed by an official in a higher position than the official who proposed the action (if the activity head signed the advance written notice, the next higher level of management in chain of command must sign the written decision),

e. specifies the employee's right of appeal which is to file a grievance under CPI 771 or under a negotiated grievance procedure, as appropriate, and

f. which is delivered to the employee on or before the effective date of the action.

C. Employees in receipt of an advance notice may request an additional time to respond orally and in writing. The official designated to accept the response may make a decision regarding such request.

D. An employee's choice of an employee representative may be disallowed if such representative would result in a conflict of interest or position, conflict with the priority needs of the activity, or would give rise to unreasonable costs to the Government. The terms of any applicable bargaining agreement govern representation for employees in an exclusive bargaining unit.

1. Activity heads shall redelegate authority to make a determination to disallow the choice of an employee's representative to an appropriate level no lower than the level of the official designated to make the final written decision.

2. Activity instructions shall establish an expedited process for resolving an employee's disagreement with a determination to disallow a choice of representative. At a minimum, the review process shall require an official higher than the one who made the disputed determination to make a final decision.

IX. PROCEDURES FOR APPEALABLE ADVERSE ACTIONS

A. An employee against whom an appealable adverse action is proposed is entitled to:

1. at least 30 days' advance written notice (unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed), stating:

a. the specific reasons for the proposed action,

b. the name and title of the official designated to hear an oral reply and/or receive the written reply (the official so designated must have authority to either make or to recommend a final decision on the proposed adverse action),

c. the number of days, but no less than 7 days, that the employee is allowed to answer orally and in writing, and

d. the right of the employee or the employee's representative to review the material which is relied upon to support the reasons given in the notice; and

e. if appropriate, the basis of selecting a particular employee for furlough, when some but not all employees in a given competitive level are being furloughed, and the reason for the furlough;

2. a reasonable amount of official time to review the material relied upon to support the proposal and to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status;

3. a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

4. be represented by an attorney or other representative; and

5. a written decision at the earliest practicable date which:

a. considers only the reasons specified in the notice of proposed action,

b. specifies the reasons for the decision,

c. considers any answer of the employee and/or the employee's representative made to a designated official,

d. is signed by an official in a higher position than the official who proposed the action (if the activity head signed

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the advance written notice, the next higher level of management in chain of command must sign the written decision),

e. specifies the employee's right of appeal which is to the Merit Systems Protection Board (MSPB) and right, when applicable, to file a grievance under negotiated grievance procedures, but not both;

f. provides the time limits for filing an appeal to MSPB, the address of the appropriate Board office for filing the appeal, a copy of the Board's regulations and a copy of the Board's appeal form (Appendix C), and

g. which is delivered to the employee on or before the effective date of the action.

B. Since a hearing shall be made available at an employee's request after an action has been effected, activities may not provide for a hearing in lieu of or in addition to the opportunity for written and oral answer.

C. When the crime provision is invoked, activities may effect an action in less than 30 days following the advance written notice. Activities may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the activity may place the employee in a nonduty status with pay for such time, not to exceed 10 days, as is neccessary to effect the action.

D. The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseen circumstances such as sudden breakdowns of equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

E. The 30 days' advance written notice is not required for a suspension of more than 14 days during the notice period of a removal or an indefinite suspension when the circumstances are such that retention of the employee in an active duty status during the notice period may be injurious to the employee, fellow workers, or the general public, may result in damage to government property, or because the nature of the employee's offense may

reflect unfavorably on the public perception of the Department of the Navy. The activity shall include in the notice of suspension the reasons for not retaining the employee in an active duty status during the notice period of a removal or indefinite suspension. The activity may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the activity may place the employee in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the suspension.

E. F. Employees in receipt of an advance notice may request an additional time to respond orally and in writing. The official designated to accept the response may make a decision regarding such request.

F. G. An employee's choice of an employee representative may be disallowed if such representative would result in a conflict of interest or position, conflict with priority needs of the activity, would give rise to unreasonable costs to the Government. The terms of any applicable bargaining agreement govern representation for employees in an exclusive bargaining unit.

1. Activity heads shall redelegate authority to make a determination to disallow the choice of an employee's representative to an appropriate level no lower than the level of the official designated to make the final written decision.

2. Activity instructions shall establish an expedited process for resolving an employee's disagreement with a determination to disallow a choice of representative. At a minimum, the review process shall require an official higher than the one who made the disputed determination to make a final decision.

X. ROLE OF PERSONNEL OFFICES

A. The servicing civilian personnel office will provide advice and guidance to employees and managers involved in adverse actions.

B. The servicing civilian personnel office shall maintain records required by paragraph XI of this instruction.

XI. RECORDS

A. A record shall be maintained which, at a minimum, shall contain copies of:

1. The proposed action.

2. The employee's written answer, if any.

3. A summary of the employee's oral reply, if one was made.

4. The notice of decision and the reasons therefor.

5. Any supporting material.

6. Any order effecting the decision.

→ B. If an employee appeals to the MSPB, the record shall be furnished to the employee affected upon the employee's request and to the MSPB. The record shall be submitted to the appropriate field office in the following manner:

1. The documents should be placed in date order with the earliest dated document at the bottom and the latest dated document at the top.

2. A table of contents should be prepared which identifies the case and lists all the enclosed documents (the earliest dated document should be identified and tabbed as number 1, the next document in date sequence should be identified and tabbed as number 2, and so on. The highest number should indicate the most recent document.

3. The table of contents should have the following headings:

Location Date Document Description Source

(The location indicates the tab number under which the document is filed; the date is the date of receipt or issuance of the document; document description should fully identify the document; source should indicate the submitter of the document.)

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4. Place the completed table of contents on top of the tabbed documents or, if a manila folder or equivalent is used, place the table of contents on the left side of the folder and the tabbed documents on the right side. ←

XII. REPORTS

Statistics on formal adverse actions effected under this CPI shall be generated by the Personnel Automated Data System (PADS) and reviewed by CNO (Op-14) and the Commandant of the Marine Corps (MPC-30) for Marine Corps activities. Inconsistencies revealed by such review shall be referred to the appropriate level of command for resolution.

XIII. IMPLEMENTING INSTRUCTIONS

Activities are required to issue local instructions implementing this Civilian Personnel Instruction by 1 October 1981.

APPENDIX A - Guidance in effecting disciplinary actions

A. Purpose

The purpose of Appendix A is to provide advice and guidance to supervisors and managers in effecting disciplinary actions. While none of this advice and guidance is mandatory, it should be understood to constitute minimum acceptable procedure and followed under normal disciplinary situations. See FPM 752 for detailed advice and guidance of a predominately technical nature.

B. DON philosophy of discipline

Discipline is a managerial tool intended to correct deficiencies in employee behavior and attitude, correct situations which interfere with efficient operations, maintain high standards of government service and maintain public confidence in the Department of the Navy. It is not the philosophy of DON to utilize disciplinary measures for the sole purpose of punishing employees. An employee whose behavior is not acceptable to management but whose behavior is not corrected is quite likely to persist in that unacceptable behavior in the erroneous belief that it is correct, or at least condoned. Supervisors and managers have an obligation to such employees to correct behavioral deficiencies while they are still minor and before the behavior becomes habit and a bad example to others. It is easier to correct a first instance of deficient behavior than to ignore the situation and later try to correct the third, fourth, or fifth instance. It is easier and better management to correct a minor case of deficient behavior than to ignore the situation and allow the problem to become a major one.

C. Guidance in selecting a proper course of disciplinary action

1. CHOOSE THE MINIMUM DISCIPLINARY ACTION LIKELY TO CORRECT THE IMPROPER BEHAVIOR. Most people would not use an elephant gun in hunting rabbits and this analogy holds true in choosing disciplinary actions. For example, it would be foolish to attempt to correct an employee's first instance of tardiness by imposing a 1-day suspension. Such an action could create a significant amount of resentment in the employee and do more damage than good. Determining the minimum action likely to correct the problem is extremely important and a responsibility which frequently lies with the first line supervisor.

2. DISCIPLINARY ACTIONS MUST BE FAIR AND JUST. This is another way of saying that there must be similar actions for similar offenses. This does not mean that all similar actions must bear identical remedies since there are other factors such as mitigating circumstances which should be considered. It is important that managers have good reasons for imposing significantly different remedies for similar offenses. A good place to start in determining a proper remedy is to look at Appendix B. While the schedule of corrective actions in Appendix B is not mandatory, most actions within the DON fall within its limits and there should be good reasons for deviation from the guide when it occurs.

3. DISCIPLINARY ACTIONS SHOULD BE TIMELY. Being timely does not mean that disciplinary actions should be taken in haste. Disciplinary actions should not be taken precipitately because important facts mights be ignored. However, the corrective influence of a suspension, for example, is greatly diminished if it follows the offense by six months or a year.

4. MITIGATING, UNUSUAL, OR AGGRAVATING CIRCUMSTANCES SHOULD BE CONSIDERED IN DETERMINING A PROPER DISCIPLINARY ACTION. Such considerations as the employee's position, length of service, prior disciplinary actions, etc., should be taken into consideration. If at all possible, obtain the employee's version of the events before initiating a disciplinary action. It may be that the employee will have an acceptable explanation or be able to present mitigating circumstances.

5. CONSIDER THE EMPLOYEE AS A UNIQUE INDIVIDUAL. What is the employee's attitude? Does the employee fully understand the nature of the offense and why the manager is troubled? Is the offense part of a continuing behavioral pattern or does it represent an isolated action? Has the employee been led to believe that the behavior in question is appropriate?

D. Alternative courses of action

While it is a generally bad idea to ignore instances of employee misconduct, all misconduct does not warrant disciplinary action. There are other forms of correction available.

1. EXPLANATION OR TRAINING. If the employee is unaware of the proper performance or conduct, it may be that training, or perhaps a sound explanation, will be sufficient to correct the

problem. This alternative is likely to be appropriate particularly when the employee is new or working in an unfamiliar environment.

→2. CIVILIAN EMPLOYEE ASSISTANCE PROGRAM (CEAP). As a general rule it is in the best interest of DON to rehabilitate rather than remove an employee. Misconduct is not always willful. It may stem from alcoholism, misuse of drugs, or from other personal problems which may be helped through the Civilian Employee Assistance Program (CEAP). A manager should seek guidance and advice from the civilian personnel office on whether to refer an employee to a CEAP counselor or take disciplinary action.←

→3. PERFORMANCE RATINGS. Most employees are aware of the importance of performance ratings and want to receive favorable ratings. Employees who are under the Merit Pay System know that the amount of their salary depends in large part upon good performance appraisals. A discussion about performance and/or a low performance appraisal should have a positive effect in improving employee performance. If an employee's performance becomes unacceptable, that employee may be demoted or removed in accordance with CPI 432.←

→4. WITHHOLDING WITHIN-GRADE INCREASES. If an employee's performance does not warrant a within-grade-increase, it is appropriate to give the employee a negative determination. This procedure is available to defer or deny unearned incremental salary increases and to motivate the employee to improve current performance. See CPI 431 for further details.←

5. FITNESS FOR DUTY EXAMINATIONS. Misconduct may be the result of illness. In such ** instances, reassignment to a position which the employee can physically handle or retiring the employee on disability is preferable to effecting disciplinary action. One way that management has of determining whether or not illness is the cause of the misconduct is to refer the employee for a fitness-for-duty examination.

6. VOLUNTARY ACTION BY AN EMPLOYEE. An employee who is confronted by management with a potential disciplinary situation may volunteer to accept a lower grade, a reassignment or resign in lieu of a disciplinary action.→However, management must not coerce the employee into taking such an action.← It is permissible to tell an employee that a removal action is contemplated and that if he/she resigns before an action is proposed, no record will be made in the Official Personnel File. It is not permissible to tell the employee that he/she must resign or face a removal action. The latter example is coercion, and must be avoided. See FPM 752 for further details.←

7. LETTERS OF CAUTION. A supervisor may want to warn an employee that continued instances of misconduct may lead to disciplinary action. In such instances, the supervisor may wish to issue a nondisciplinary letter cautioning the employee that future misconduct may lead to disciplinary action. These letters are not disciplinary or adverse actions. The warning is prospective only and is not grievable.

8. LETTERS OF REQUIREMENT. In cases of sick or annual leave abuse, or other specific performance deficiencies, a supervisor may wish to impose requirements on an individual which do not apply to the rest of the work force. This can be done by issuing a letter of requirement which establishes the precise circumstances under which leave will be approved or precisely what performance is required. Letters of requirement are not disciplinary actions. Letters of requirement are nothing more than written orders.

E. Special disciplinary situations

1. LEAVE ABUSE. Leave Without Pay (LWOP) is an approved absence. Supervisors should not attempt to impose disciplinary action based on instances of LWOP. If an employee is absent without permission, that employee must be carried as Absent Without Leave (AWOL). A charge of AWOL will support a disciplinary action. However, every instance of AWOL does not demand a disciplinary action. An employee who is AWOL will not be compensated for the period of unapproved absence. A supervisor may determine that the loss of pay is sufficient motivation to prevent such absences in the future.

* *

2. LEAVE WITH PAY. In unusual cases, an employee's actions may represent a threat to life, health or government property, and it may be necessary to remove the employee from the worksite while a disciplinary action is being processed. In such instances, it is permissible to place the employee in a nonduty status with pay for up to 30 days. See CPI 630 and FPM 752 for a detailed discussion of this option.

3. INDEFINITE SUSPENSION. If there is good reason, such as an indictment, to believe that an employee is guilty of a crime, it is possible to place the employee on an indefinite suspension pending resolution of the matter. Though an indefinite suspension is of unspecified duration, the same rules apply as to any type of suspension. If it is expected that the indefinite suspension will last for more than 14 days, the employee must be given 30 days' notice (7 days if the crime provision is invoked), and the employee has the right to appeal to the Merit Systems Protection Board (MSPB). "Emergency" supensions without giving employees the proper notice period and appeal rights are no longer permitted (Cuellar v. U.S. Postal Service, MSPB Docket No. SF075299045, November 13, 1981). FPM 752 should be reviewed carefully before an indefinite suspension is proposed.

4. DRUG ABUSE PROBLEMS. All civilian employees of the DON support, directly or indirectly, the mission of the operating forces. Drug abuse among these employees has a detrimental effect on their health, conduct and performance and, therefore, undermines their ability to provide the necessary level of support to assure the readiness of those forces. Consequently, because drug abuse is incompatible with safe, effective and efficient mission accomplishment, it must be detected and eliminated. SECNAVINST 5300.28 prohibits the wrongful or illegal possession or use of marijuana, narcotics or other controlled substances in any amount, or the sale, promotion or distribution of marijuana, narcotics or other controlled substances or drug paraphernalia. Such prohibited misconduct may

warrant administrative corrective action up to and including removal. However, when such abuse is determined to be a handicapping condition, as defined by the Rehabilitation Act of 1973, and the activity knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action, it must be dealt with in accordance with the provisions of the CEAP as promulgated by CPI 792.

a. Effecting Adverse Actions. Whether the drug abuse involves the possession, use, sale or transfer of drugs or drug paraphernalia, any resulting adverse action must demonstrate compliance with certain precedential decisions rendered by the Merit Systems Protection Board (MSPB). By its decision in Merritt v. Department of Justice, MSPB has determined that it is the activity's burden to prove the existence of a logical and reasonable nexus between the misconduct (on or off-duty) on which the adverse action is based, and the adverse effect which that misconduct had on the employee's performance, the performance of others, or the mission of the activity. Activities are cautioned to avoid limiting their nexus demonstration to an assertion that the action taken or proposed promotes the efficiency of the service. MSPB has ruled that such an assertion, per se, fails to establish the nexus. In its decision in Merritt, MSPB ruled that off-duty use of marijuana, in and of itself, did not provide the requisite nexus. Therefore, adverse actions taken for off-duty use of marijuana will likely be reversed by MSPB in the absence of an appropriate showing of nexus. Further, MSPB has determined through its decision in Douglas v. Veterans Administration that it is the activity's burden to show the reasonableness of the penalty after appropriate consideration of each of the applicable mitigating factors established by that decision. When an employee has been convicted for criminal misconduct involving drugs, and an adverse action is warranted, the adverse action should be based on the events upon which the conviction is based, and not on the conviction itself since the conviction could be appealed and overturned, thus eliminating the justification for the adverse action (the same applies to arrests and indictments). In summary, the requirements imposed by Merritt and Douglas must be met by the activity in any adverse actions based on misconduct involving drugs regardless

of the nature of the misconduct (i.e., possession, use, sale or transfer) or whether the misconduct occurred on-duty or off-duty. Activities should also note that the Merritt and Douglas decisions are applied by arbitrators in arriving at awards rendered under the grievance/arbitration process.

b. Drug Use and Reasonable Accommodation. In Ruzek v. General Services Administration, MSPB ruled that drug abuse, like alcholism, is a handicapping condition requiring reasonable accommodation. Accordingly, when an employee's unacceptable performance or misconduct on duty is caused by the effects of the use of illegal drugs, and the activity knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action, reasonable accommodation, including the use of sick leave, must be accorded to that employee prior to the initiation of adverse action for the unacceptable performance or misconduct. In accordance with CPI 792, Civilian Employee Assistance Program, the employee's supervisor is obligated to (1) refer the employee to a Contact and Referral Counselor (C&RC) for assistance and (2) warn the employee that continued performance or conduct problems may result in disciplinary action. If the employee refuses to seek the assistance of or cooperate with the C&RC or health care facility designated to assist in rehabilitation, the activity has fulfilled the reasonable accommodation requirement and may then initiate appropriate adverse action based upon the unacceptable performance (see CPI 432) or misconduct (see CPI 752). Notwithstanding the decision in Ruzek, the entitlement to reasonable accommodation does not arise unless the employee establishes that the unacceptable performance or misconduct was caused by the handcapping condition (drug use) as defined by the Rehabilitation Act of 1973, and that the activity knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action. Accordingly, although activities can and should initiate adverse action when warranted, they should be alert to the possibility of this defense by the employee. Further, even in instances where there is a requirement to accommodate, that requirement has limits and may be met by a showing that the requisite reasonable accommodation would impose an undue hardship on the

activity. Like Merritt and Douglas, the Ruzek decision is also applied by arbitrators in arriving at awards rendered under the grievance/arbitration process. ←

APPENDIX B - Guideline schedule of disciplinary offenses and recommended remedies for civilian employees in the Department of the Navy (greater or lesser remedies may be assessed depending upon circumstances).

INSTRUCTIONS FOR USE OF THE SCHEDULE

1. The schedule is not intended to cover every possible offense. Remedies for offenses not listed will be determined consistent with the guidelines contained herein.→(See Douglas v. Veterans Administration, MSPB Docket No. AT075299006, April 10, 1981, for guidance on selection of penalties.)←

2. Many of the items listed on this schedule combine several offenses in one statement connected by the word "OR". Usage of the word "OR" in a charge makes it nonspecific. Therefore, use only the items which describe the employee's actual conduct and leave out parts which do not apply.

3. Remedies for disciplinary offenses will, in general, range from the minimum to the maximum indicated.→Depending on mitigating or aggravating factors, a remedy outside the general range may be imposed.←

4. Suspension remedies on this schedule refer to calendar days.

* *

5. In considering past offenses in determining a remedy, the following limitations must be observed:

a. Oral and written admonishments may not be counted as prior offenses in determining a remedy;

b. A letter of reprimand may be counted as a prior offense provided the letter of reprimand is dated no more than two years before the date of the proposed notice of adverse action in which it is cited;

c. A suspension or reduction in grade or pay (if effected for disciplinary reasons) may be counted as a prior offense provided the effective date of the suspension or reduction in

grade or pay is not more than three years before the date of the proposed adverse action in which it is cited.

* *

d. In utilizing past offenses in determining a corrective action, the notice of proposed adverse action should cite specifically the past offense in sufficient detail to allow the employee to respond. Past offenses may only be counted if the employee was disciplined in writing, the employee had the right to dispute the action to a higher level, and the action was made a matter of record in the official personnel folder (Howard v. Department of the Army, MSPB Docket No. PH075209128, May 15, 1981.) ←

6. For information concerning other offenses for which employees may be disciplined by removal, fine or imprisonment, see FPM Chapter 735.

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
ATTENDANCE			
EXCESSIVE UNAUTHORIZED ABSENCE (MORE THAN 5 CONSECUTIVE WORK DAYS)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FALSIFYING ATTENDANCE RECORD FOR ONESELF OR ANOTHER EMPLOYEE	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
LEAVING JOB TO WHICH ASSIGNED OR NAVY PREMISES AT ANY TIME DURING WORKING HOURS WITHOUT PROPER PERMISSION	Reprimand to 5-day suspension	5- to 10-day suspension	10-day suspension to removal
UNEXCUSED OR UNAUTHORIZED ABSENCE ON ONE OR MORE SCHEDULED DAYS OF WORK OR ASSIGNED OVERTIME	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
UNEXCUSED TARDNESS	Reprimand	Reprimand to 1-day suspension	Reprimand to 2-day suspension
CONDUCT			

UNAUTHORIZED POSSESSION (INCLUDING ACTUAL OR ATTEMPTED WRONGFUL REMOVAL FROM ITS PROPER LOCATION) OF GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

→Do not use "theft" as a charge unless the definition in Black's Law Dictionary can be met. ←

CRIMINAL, DISHONEST, INFAMOUS OR NOTORIOUSLY DISGRACEFUL CONDUCT →HAVING AN ADVERSE EFFECT ON THE EFFICIENCY OF THE SERVICE ←	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
DISOBEDIENCE TO CONSTITUTED AUTHORITIES, OR DELIBERATE REFUSAL TO CARRY OUT ANY PROPER ORDER FROM ANY SUPERVISOR HAVING RESPONSIBILITY FOR THE WORK OF THE EMPLOYEE; INSUBORDINATION	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
DISORDERLY CONDUCT; FIGHTING; THREATENING OR ATTEMPTING TO INFLICT BODILY INJURY TO ANOTHER; ENGAGING IN DANGEROUS HORSEPLAY; OR RESISTING COMPETENT AUTHORITY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

DISRESPECTFUL CONDUCT, USE OF INSULTING, ABUSIVE OR OBSCENE LANGUAGE TO OR ABOUT OTHER PERSONNEL	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
FAILURE TO CARRY OR SHOW PROPER IDENTIFICATION ON NAVY PREMISES AS REQUIRED BY COMPETENT AUTHORITY	Reprimand to 1-day suspension	1- to 2-day suspension	2- to 5-day suspension
* * * * * * * * *			
FALSIFICATION, MISSTATEMENT, OR CONCEALMENT OF MATERIAL FACT IN CONNECTION WITH ANY OFFICIAL RECORD	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FALSE TESTIMONY OR REFUSAL TO TESTIFY IN AN INQUIRY, INVESTIGATION OR OTHER OFFICIAL PROCEEDING	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FILING FALSE CLAIMS AGAINST THE GOVERNMENT OR KNOWINGLY AIDING AND ASSISTING IN THE PROSECUTION OF SUCH CLAIMS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

KNOWINGLY MAKING FALSE OR MALICIOUS STATEMENTS WITH THE INTENT TO HARM OR DESTROY THE REPUTATION, AUTHORITY, OR OFFICIAL STANDING OF INDIVIDUALS OR ORGANIZATIONS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*CARELESS WORKMANSHIP RESULTING IN SPOILAGE OR WASTE OF MATERIALS OR DELAY IN PRODUCTION	Reprimand to 5-day suspension	5- to 10-day suspension	10-day suspension to removal
*COVERING UP OR ATTEMPTING TO CONCEAL DEFECTIVE WORK; REMOVING OR DESTROYING SAME WITHOUT PERMISSION	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
*FAILURE OR DELAY IN CARRYING OUT ORDERS, WORK ASSIGNMENTS OR INSTRUCTIONS	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal

→*Action should be taken under CPI 432 rather than CPI 752 if these areas are covered in employee's critical elements and performance standards. ←

LOAFING, WASTING TIME, OR INATTENTION TO DUTY	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
SLEEPING ON DUTY	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal

CPI 752-B

a. WHERE LIFE OR PROPERTY IS ENDANGERED	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
→UNAUTHORIZED USE OF, LOSS OF, OR DAMAGE TO GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS←	Reprimand to Removal	5-day suspension to removal	10-day suspension to removal
GAMBLING OR BETTING DURING WORKING HOURS	Reprimand to 2-day suspension	Reprimand to 5-day suspension	Reprimand to removal
PROMOTION OF GAMBLING ON NAVY PREMISES	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
WILLFUL DAMAGE TO GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
DISCRIMINATION			
DISCRIMINATION AGAINST AN EMPLOYEE OR APPLICANT BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, NATIONAL ORIGIN, OR AGE OR ANY REPRISAL ACTION →ON SUCH BASIS← AGAINST AN EMPLOYEE	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
SEXUAL HARASSMENT	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

SAFETY			
FAILURE TO OBSERVE PRECAUTIONS FOR PERSONAL SAFETY, POSTED RULES, SIGNS, WRITTEN OR ORAL SAFETY INSTRUCTIONS, OR TO USE PROTECTIVE CLOTHING OR EQUIPMENT	Reprimand to 2-day suspension	1- to 5-day suspension	10-day suspension to removal
VIOLATION OF SAFETY REGULATION WHICH ENDANGERS LIFE OR PROPERTY	Reprimand to 5-day suspension	2-day suspension to removal	10-day suspension to removal
ENDANGERING THE SAFETY OF OR CAUSING INJURY TO PERSONNEL THROUGH CARELESSNESS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FAILURE TO OBSERVE NO SMOKING REGULATIONS OR CARRYING MATCHES IN RESTRICTED AREAS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
VIOLATING TRAFFIC REGULATIONS, RECKLESS DRIVING ON NAVY PREMISES, OR IMPROPER OPERATION OF MOTOR VEHICLE	Reprimand to 2-day suspension	Reprimand to 5-day suspension	5- to 10-day suspension
SECURITY			
FAILURE TO SAFEGUARD CLASSIFIED MATTER OR OTHER SECURITY	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal

VIOLATIONS			
a. WHEN CLASSIFIED MATERIAL HAS BEEN COMPROMISED	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
PROHIBITED PERSONNEL PRACTICE			
COMMITTING A PROHIBITED PERSONNEL PRACTICE (SEE 5 U.S.C. 2302)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
→ SUBSTANCE ABUSE			
*Referral to Civilian Employee Assistance Program and reasonable accommodation must be provided prior to initiation of disciplinary action when the employee's substance abuse is a handicapping condition as defined in the Rehabilitation Act of 1973 (29 C.F.R. 1613.701 et seq.) and the activity knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action.			
POSSESSION OF MARIJUANA, A NARCOTIC, OR A CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA WITHOUT AUTHORIZATION ON DUTY	Reprimand to removal	10-day suspension to removal	14-day suspension to removal
*REPORTING FOR DUTY UNDER THE INFLUENCE OF MARIJUANA, A NARCOTIC, OR A CONTROLLED SUBSTANCE WITHOUT AUTHORIZATION	14-day suspension to removal	30-day suspension to removal	Removal

*USE OF OR BEING UNDER THE INFLUENCE OF MARIJUANA, A NARCOTIC, OR A CONTROLLED SUBSTANCE WITHOUT AUTHORIZATION ON DUTY	14-day suspension to removal	30-day suspension to removal	Removal
UNAUTHORIZED SALE OR TRANSFER OF MARIJUANA, A NARCOTIC, OR A CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA ON DUTY	30-day suspension to removal	Removal	
UNAUTHORIZED POSSESSION OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*REPORTING FOR DUTY UNDER THE INFLUENCE OF ALCOHOL	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*USE OF OR BEING UNDER THE INFLUENCE OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
UNAUTHORIZED SALE OR TRANSFER OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal ←

OPNAVINST 12000.14 CH-11

CPI 752-C

NOV 04 1981

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are *not* required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1 NAME *(Last, first, middle)*	2 SOCIAL SECURITY NUMBER
3 PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*	4 HOME PHONE *(Include area code)*
	5 OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6 BRIEFLY DESCRIBE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

7 NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*			8 APPELLANT'S POSITION TITLE AT TIME OF ACTION	
			9 GRADE AT TIME OF ACTION	10 SALARY AT TIME OF ACTION $ PER
11 ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ NO ☐ YES	12 TYPE OF APPOINTMENT ☐ Temporary ☐ Applicant ☐ Permanent ☐ Term	13 TYPE OF SERVICE ☐ Competitive ☐ Excepted	14 LENGTH OF GOVERNMENT SERVICE	15 LENGTH OF SERVICE WITH ACTING AGENCY
16 ARE YOU RETIRED? ☐ NO ☐ YES	16A IF YES, DATE OF RETIREMENT *(Month, day, year)*		17 WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY? ☐ NO ☐ YES	
18 DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19 DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)*		20 EFFECTIVE DATE OF ACTION *(Month, day, year)*	

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☐ NO ☐ YES *(Attach copy)*

23A. IF YES, DATE FILED *(Month, day, year)*	23B. PLACE FILED *(Agency and location)*	23C. HAS DECISION BEEN ISSUED? ☐ NO ☐ YES
23D. IF YES, DATE ISSUED *(Month, day, year)*	23E. NAME OF ISSUING OFFICIAL	23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ NO ☐ YES *(Attach copy)*

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS THERE BEEN A DECISION? ☐ NO ☐ YES

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?
☐ NO ☐ YES
IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. YOUR SIGNATURE	27C. DATE	27D. REPRESENTATIVE'S SIGNATURE *(if any)*	27E. DATE

27F. REPRESENTATIVE'S ADDRESS	27G. REPRESENTATIVE'S EMPLOYER

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAMES AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

A. NAME	B. RELATIONSHIP TO CASE

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29. TENURE OF SUB-GROUP	30. SERVICE COMPUTATION DATE	31. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ NO ☐ YES

32. TITLE OF OFFERED POSITION	33. GRADE OF POSITION OFFERED	34. SALARY OF POSITION OFFERED $ PER

35. LOCATION OF OFFERED POSITION	36. DID YOU ACCEPT THIS POSITION? ☐NO ☐YES

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. *(Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

(Continue on the next page)

37 *(Continued from Page 3.)*

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief	SIGNATURE OF APPELLANT	DATE SIGNED

* U.S. GOVERNMENT PRINTING OFFICE : 1983 O - 361-526 (EA67)

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, D C 20350

change made 11/5/83

IN REPLY REFER TO
OPNAVINST 12000.14 CH-11
Op-143C

NOV 04 1981

OPNAV INSTRUCTION 12000.14 CHANGE TRANSMITTAL 11

From: Chief of Naval Operations

Subj: Civilian Personnel/Equal Employment Opportunity Directives System (CIVPERS/EEODIRSYS)

Encl: (1) Revised pages 7-8 of CPI 432
(2) Revised attachment 1 to CPI 432 (Merit Systems Protection Board Appeals - Optional Form 283)
(3) Revised pages 11, 11.01 and reprinted page 12 to CPI 752
(4) Revised CPI 752-C (Merit Systems Protection Board Appeals - Optional Form 283)

1. Purpose. To revise Civilian Personnel Instructions 432 and 752 by replacing the existing Merit Systems Protection Board (MSPB) appeal form with a revised form and establishing the procedure for submitting the files to the MSPB in appeals.

2. Marine Corps. This instruction has been coordinated with the Commandant of the Marine Corps. The Commandant has authorized its transmission to Marine Corps activities.

3. Action

a. Remove pages 7, 8 and Attachment 1 of CPI 432 and file enclosures (1) and (2).

b. Remove pages 11 and 12 and file enclosure (3).

c. Remove CPI 752-C and replace with enclosure (4).

d. Make the following pen changes:

(1) On page 3 (CH-5) of enclosure (1) of the basic instruction, across from 432, in last column, line 3, change "CH-1" to CH-11."

(2) On page 5 (CH-5) of enclosure (1) of the basic instruction, across from 752 in the last column, change "CH-1" to "CH-11."

e. Enter this change on the record of changes.

4. Forms. Optional Form 283 (Merit Systems Protection Board Appeal) may be obtained from the local Merit Systems Protection Board.

5. Cancellation. This transmittal may be retained for reference purposes.

THOMAS R. MUIR
By direction

Distribution:
(Same as basic)

Stocked:
CO, NAVPUBFORMCEN
5801 Tabor Ave.
Phila., PA 19120 (500)

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, D.C. 20350

changes made 11/15/

IN REPLY REFER TO
OPNAVINST 12000.14 CH-18
Op-143C1
MAR 12 1982

OPNAV INSTRUCTION 12000.14 CHANGE TRANSMITTAL 18

From: Chief of Naval Operations

Subj: Civilian Personnel/Equal Employment Opportunity Directives System (CIVPERS/EEODIRSYS)

Encl: (1) Revised page 1 and reprinted page 2 of CPI 752 (Department of the Navy Adverse Actions)

1. Purpose. To promulgate a change to Civilian Personnel Instruction 752, which was transmitted by OPNAVNOTE 12752 of 20 October 1980, Ser 143C/701106 (cancelled frp: Oct 81). This change clarifies the definition of employee for the purposes of grievable adverse actions and indicates a change in procedures based on a recent Merit Systems Protection Board decision.

2. Marine Corps. This notice has been coordinated with the Commandant of the Marine Corps. The Commandant has authorized its transmission to Marine Corps activities.

3. Action

a. Remove pages 1 and 2 of CPI 752 and file enclosure (1).

b. On pages 9-10 of CPI 752, delete paragraph IXE and reletter paragraphs "F" and "G" as "E" and "F".

c. On enclosure (1) of the basic instruction, page 5, (CH-5), in the last column, across from FPM Chapter 752 in the last entry, after "CH-1" add "and CH-18".

d. Enter this change on the record of changes.

4. Cancellation. This transmittal should be retained for reference purposes.

THOMAS R. MUIR
By direction

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DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, D.C. 20350

changes made 11/15/83

IN REPLY REFER TO
OPNAVINST 12000.14 CH-26
Op-143C1

JUL 15 1982

OPNAV INSTRUCTION 12000.14 CHANGE TRANSMITTAL 26

From: Chief of Naval Operations

Subj: Civilian Personnel/Equal Employment Opportunity Directives Systems (CIVPERS/EEODIRSYS)

Encl: (1) Revised pages 1 and 3 and reprinted pages 2 and 4 of CPI 752 (Department of the Navy Adverse Actions)

1. Purposes. To amend Civilian Personnel Instruction 752, which was transmitted by OPNAVNOTE 12752 of 20 October 1980, Ser 143C/701106 (cancelled frp: Oct '81). OPNAV Instruction 12000.14 Change Transmittal 18 of 12 Mar 1982 inadvertantly changed the definition of employee for the purposes of grievable adverse actions. This change reverts to the definition which originally appeared in CPI 752. To add subparagraph IIIG to the exclusions to clarify the rights of Senior Executive Service members under the law.

2. Marine Corps. This issuance has been coordinated with the Commandant of the Marine Corps. The Commandant has authorized its transmission to Marine Corps activities.

3. Action

a. Remove pages 1, 2, 3, and 4 of CPI 752 and file enclosure (1).

b. On enclosure (1) of the basic instruction, page 5 (CH-5), across from "751" delete "133"

c. On enclosure (1) of the basic instruction, page 5 (CH-5), in the last column, across from FPM Chapter 752 in the last entry, after "CH-18" add "OPNAVINST 12000.14 CH-26"

d. Enter this change on the record of changes.

OPNAVINST 12000.14 CH-26

JUL 15 1[illegible]

4. Cancellation. This transmittal should be retained for reference purposes.

[illegible] R. MUIR
Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity)

Distribution:
(Same as basic)

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CO, NAVPUBFORMCEN
5801 Tabor Avenue
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DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, DC 20350

11/15/83

IN REPLY REFER TO
OPNAVINST 12000.14 CH-29
Op-143C1

AUG 23 1982

OPNAV INSTRUCTION 12000.14 CHANGE TRANSMITTAL 29

From: Chief of Naval Operations

Subj: Civilian Personnel/Equal Employment Opportunity Directives System (CIVPERS/EEODIRSYS)

Encl: (1) Revised page 14-29 and reprinted page 13 of CPI 752-A and CPI 752-B

1. Purpose

a. To promulgate changes to Civilian Personnel Instruction 752, which was transmitted by OPNAVNOTE 12752 of 20 October 1980, Ser 143C/701106 (cancelled frp: Oct 81). These changes are required by recent Merit Systems Protection Board decisions and the DON effort to detect and deter drug offenses.

b. To provide pen change to CPI 771 to extend report requirement.

2. Marine Corps. This notice has been coordinated with the Commandant of the Marine Corps. The Commandant has authorized its transmission to Marine Corps activities.

3. Action

a. Remove pages 13 through 24 of CPI 752 and file enclosure (1).

b. Make the following pen changes:

(1) CPI 771, page 11, in the second to the last sentence, change the word "two" to "four."

(2) On enclosure (1) of the basic instruction, page 5, (CH-5), in the last column, across from FPM Chapter 752 in the last entry, after "CH-1" add "and CH-29."

(3) On enclosure (1) of the basic instruction, page 5 (CH-5), across from 771, in the right column add "OPNAVINST 12000.14 CH-29."

c. Enter this change on the record of changes.

33-732 O—84——6

OPNAVINST 12000.14 CH-29

AUG 23 1982

4. Cancellation. This transmittal should be retained for reference purposes.

Dorothy M Meletzke

DOROTHY M. MELETZKE
Acting Director
Civilian Personnel Policy Division

Distribution:
(Same as basic)

Stocked:
CO, NAVPUBFORMCEN
5801 Tabor Avenue
Philadelphia, PA 19120 (500)

March 21, 1983
NUMBER 1400.5

ASD(MRA&L)

Department of Defense Directive

SUBJECT: DoD Policy for Civilian Personnel

References: (a) DoD Directive 1400.5, "Statement of Personnel Policy for Civilian Personnel in the Department of Defense," January 16, 1970 (hereby canceled)
(b) Federal Personnel Manual, Chapter 250
(c) DoD Directive 1400.6, "DoD Civilian Employees in Overseas Areas," February 15, 1980
(d) Title 5, United States Code, Sections 2301(b), 2302(b), and 2305

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update the civilian personnel policy of the Department of Defense and to implement reference (b).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components"), and to their nonappropriated fund activities. Policies for DoD civilian personnel employed in overseas areas are set forth in reference (c).

C. POLICY

1. It is the policy of the Department of Defense to use civilian employees in all positions that do not require military incumbents for reasons of law, training, security, discipline, rotation, or combat readiness, or that do not require a military background for successful performance of the duties involved.

2. In carrying out their responsibilities for civilian personnel management, DoD managers shall be guided by the policies in this Directive and reference (b) and the merit system principles in 5 U.S.C. 2301(b) (reference (d)), except as may be otherwise provided by 5 U.S.C. 2305. Managers shall also be familiar with the prohibited personnel practices in 5 U.S.C. 2302(b).

D. PROCEDURES

The DoD Components shall conduct their relationships with civilian employees in accordance with the following principles and procedures:

1. There shall be no discrimination because of race, sex, marital status, age, color, religion, national origin, lawful political affiliation, labor organization membership, or handicapping condition.

2. Employees shall be placed in jobs for which they are qualified and shall be given equal opportunities for advancement. Selections to fill positions shall be made impartially on the basis of merit and fitness.

3. Training and development required to improve present job performance and meet future skill needs shall be provided.

4. Employee work performance shall be evaluated fairly and objectively on a continuing basis, and the results of such evaluation shall be discussed with the employee.

5. Within whatever compensation schedule is applicable, employees shall receive similar pay treatment for work of substantially similar difficulty and responsibility.

6. Working conditions shall be made as safe and healthful as possible.

7. Recognizing that a well-informed work force is a productive work force, employees and their recognized labor organizations shall be informed, insofar as possible, of plans and policies affecting them and their employment.

8. Employees shall be encouraged to express themselves concerning improvement of work methods and working conditions.

9. Employees shall have the right, without interference, coercion, restraint, or reprisal, to join or refrain from joining any lawful labor organization or employee association. When employees are represented by a recognized labor organization, management officials and supervisors shall endeavor to build a relationship with that organization based upon mutual respect and trust.

10. Any employee having a grievance or complaint shall be accorded immediately a fair and prompt discussion with the supervisor concerned, and failing prompt and satisfactory adjustment, shall have the right to pursue the matter under an applicable grievance or complaint system. In presenting a grievance or complaint an employee shall be free from interference, restraint, or reprisal, and may be accompanied and assisted by a representative.

11. Employees shall have the right to discuss their problems with their supervisor, personnel office, equal employment opportunity officer or counselor, labor organization representative, a person designated to provide guidance on questions of conflict of interest, or a supervisory or management official of higher rank or level than the immediate supervisor.

12. Employees shall have the right to participate or not to participate, without compulsion, coercion, or reprisal, in voluntary fund-raising campaigns and the purchase of U.S. Savings Bonds.

13. Employees shall be treated with full regard for their dignity as individuals, and no distinctions as to trustworthiness of employees shall be made on the basis of their wage levels or grades.

14. Supervisors shall contribute to the formulation of official policy and shall represent management in the administration of policy and labor-management agreements. They shall provide progressive and constructive leadership and shall ensure that all employees understand what is expected of them, to whom they are responsible, and their work relationships with fellow workers.

D. RESPONSIBILITIES

Heads of DoD Components shall comply with the provisions of this Directive.

E. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 120 days.

Paul Thayer
PAUL THAYER
Deputy Secretary of Defense

THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

17 OCT 1983

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Defense Hotline

Please ensure that the attached memorandum is widely circulated. It emphasizes the President's and my personal commitment to the reduction of fraud and waste in Defense programs and highlights the Defense Hotline as an important tool in this effort. Your continuing personal support of this program is essential to its success and, through it, our ability to acquire and manage the resources we need to strengthen and improve our military forces and the defense of the nation.

I would also like each of you to publicize the Defense Hotline throughout your organization and ensure your personnel are aware of its existence and your support of its use.

Please advise my Inspector General of any specific publicity actions you have planned or taken.

Caspar W. Weinberger

Attachment

47043

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

17 OCT 1983

MEMORANDUM FOR ALL DEPARTMENT OF DEFENSE PERSONNEL

SUBJECT: Defense Hotline

The reduction of fraud, waste, and inefficiency in all Federal programs remains a major commitment of this Administration. Today, this Department continues to support the President's program by strengthening management actions, by developing new and innovative techniques for focusing attention on the problem, and by dedicating sufficient resources to identify and correct instances of fraud, waste, and abuse.

Two years ago, when asked for support of the Defense Hotline, many of you rose to the challenge. Calls are being received in record numbers, and the addition of a mailing address opened it up to worldwide access. Recent reports in the media, highlighting some of our shortcomings, attest to your support of this vital program but fail to give credit to those of you whose hard work surfaced the problems in the first place. Notwithstanding our progress, continued effort is required if we are to minimize the effect of fraudulent and wasteful practices that eat away at the tax dollars provided for national defense.

Today, the Defense Hotline is operated by the Defense Inspector General who will review all substantive issues and ensure appropriate criminal and administrative remedies are pursued where warranted. It is located in Washington, D.C. and operates between 0800 and 1730 each workday. The Hotline telephone numbers are: 800-424-9098 (toll free); 693-5080 (National Capital Region); and 223-5080 (Autovon). Mail can be addressed to the Defense Hotline, The Pentagon, Washington, D.C. 20301. Protecting the confidentiality of Hotline users who prefer not be identified remains a cornerstone of the program.

I ask each of you to continue to seek out and report improvements and suspected problems through established command channels or by calling or writing the Defense Hotline.

Caspar W. Weinberger

Senator GRASSLEY. Thank you, Mr. Cooke. I appreciate that very much, and I believe you have given us a very apt and official description of how the system should operate, at least in an abstract sense.

I will turn to Mr. Spanton now, to see how his experience fits into the framework that you have described. I would like to refer first of all to page 4, which is the last page of your testimony, Mr. Cooke, and then have Mr. Spanton comment on this provision where you say, "There are in place a number of policies, regulations, and systems which encourage employees to report fraud, waste, and mismanagement without fear of reprisal or unauthorized disclosure of their identity."

I would like to ask Mr. Spanton to comment and to see how that official policy fits in with your relationship with the official policy in practice.

Mr. SPANTON. Well, perhaps there are sufficient regulations, instructions, procedures with an intent to establish protection for employees who speak out. Apparently, in my situation, they were ineffective. Of course, I was not concerned about disclosing my identity—that would have been impossible. However, I found that my agency from the very beginning, since they could not suggest that I was ineffective as an auditor, found other means to be critical of my performance, namely, personnel problems within the office. Well, as the matter was pursued, it was found that there were really no problems that were longstanding in duration. In fact, my worst critic within the office over a period of years wrote me—and he is no longer in my office; he is now in Texas—wrote me within a matter of months and said he was proud to have worked for me, and that he felt I was one of the strongest managers within the DCAA, and he strongly supports what I am attempting to do, because he has run into like conditions in other places where he is presently assigned.

So, while the system might provide the means for protection, again I say, in my situation it proved ineffective.

Senator GRASSLEY. I am aware, Mr. Cooke, that we cannot expect you to comment on the case and do not ask you to, but if you have any comments that you want to make on what was just said, I would invite you to do it at this point, and then I would ask Senator Heflin if he has any questions of you, Mr. Cooke, before I go back to Mr. Spanton.

Mr. COOKE. Mr. Chairman, as I observed at the outset, I regard it as completely inappropriate to comment on the details of the case presently pending before the Merit Systems Protection Board.

Senator HEFLIN. Mr. Cooke, your testimony largely deals with hotlines—with procedures designed to let Federal employees who observe something going on in their department or agency to report it and to give some form of protection. But what we have here is an auditing group—a police group—the Defense Contract Audit Agency. They discovered what they consider to be unusual circumstances, and, without referring to the details of Mr. Spanton's case, let us take an example of a hypothetical case that an audit does reveal that a defense contractor has spent large sums of money lavishly entertaining officials of the Department of Defense and the armed services. When that appears, what does your De-

partment, you as head of administration, what steps do you take relative to these matters, after an audit, a police body, has disclosed this?

Mr. COOKE. Mr. Chairman, as a matter of fact, as far as the procedures in DCAA itself on handling of audits after the contract, Mr. Spanton is undoubtedly a more expert witness than I. I can observe, however, that there are cost recoveries and cost disallowances as part of the contract audit process, and I would be very pleased to furnish for the record some of the disallowances and the procedures followed by the agency for your examination and consideration.

[Subsequent to the hearing, the following was received for the record:]

Entertainment and certain other types of costs routinely incurred by contractors have been declared unallowable by provisions of the Defense Acquisition Regulation. Moreover, Cost Accounting Standard 405 specifies that these "expressly" unallowable costs shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. When a contractor inadvertently or intentionally attempts to claim such costs, the DCAA auditor will advise a contracting officer by means of an audit report. The report, outlining the situation and taking exception to the claimed costs, is addressed to the contracting officer who has procurement or administrative responsibility for the contract or contracts involved. Contracting officer "recovery actions" can range from excluding the item from negotiation consideration (in proposal negotiation proceedings) to withholding portions of ongoing payments (on open contracts) or requiring contractor refunds. Section VIII of DoD Directive 5500.7 prohibits DoD employees from accepting anything of value from contractors. While DCAA has no responsibility for monitoring compliance with Section VIII, the Agency Contract Audit Manual states that detected apparent noncompliances are to be reported using procedures consistent with those used to report suspected contractor fraud or unlawful activity.

Senator HEFLIN. Do you know of any instances in which there have been disallowances for lavishly entertaining Department of Defense officials?

Mr. COOKE. I am certain there are, Mr. Heflin, but I do not know of my own knowledge—but again, I will be very pleased to furnish them to you for the record.

Senator HEFLIN. All right. We would appreciate you doing that.

[Subsequent to the hearing, the following was received for the record:]

DoD contract provisions make entertainment costs unallowable and contractors should not claim these costs under DoD contracts. In the event entertainment costs are claimed, they would be disallowed by audit as reimbursable contract costs. If they are excluded and not claimed for reimbursement, it is unlikely that audits of contract costs would disclose the expenditures. Whenever an auditor becomes aware of situations where Government officials appear to have accepted a gratuity they report the details to their Headquarters. Since October 1978, six audit offices have discovered this type of situation and these cases have been referred for appropriate action.

Senator HEFLIN. Again, this is a police agency. It brings to our attention that the salaries of officials have been increased greatly beyond the private sector or the defense sector. It shows up in an audit which could mean over a period of time, hundreds of millions of dollars of costs to the Government. What happens with this? Is this referred to any other agency, such as Internal Revenue?

Mr. COOKE. Again, may I furnish a reply for the record. Senator Heflin, I was prepared to respond to the letter of invitation, which did not go into the procedures as such of the Defense Contract

Audit Agency. And by the way, the Defense Contract Audit Agency has two functions. It does conduct audits after a contract is let, but it is also an integral part of the contract procurement process before a contract is let. This does not change the nature of your question, but I did want to make it clear that it was something more than it had procurement functions in addition to the post-award audits.

[Subsequent to the hearing, the following was received for the record:]

DCAA is not a police or investigative agency. It is an audit agency, providing contract audit support to DoD and other executive department procurement and administrative components. Executive compensation, like other areas of claimed costs, is audited for reasonableness and allowability under existing procurement regulations. If unreasonable or otherwise unallowable compensation costs are found during an audit, the costs are questioned by the auditor and an advisory audit report is provided to the Government contracting officer having negotiation or administrative authority over the contractor. Any such audit position represents a recommendation for disallowance against a contract or contracts held by an individual contractor. Such an audit position does not address any questions relative to the appropriate reporting of income or expenses to the Internal Revenue Service. Thus, referrals to the Internal Revenue Service are not routinely made. The agency does, or course, cooperate with the Service by responding to direct inquiries.

Senator HEFLIN. Well, I suppose we are speaking here in the context of postaward audits and contract audits. That is usually where overruns occur, I believe. What review is given to these audits and who reviews them? Give us the mechanism that occurs after such an audit.

Mr. COOKE. Again, Senator Heflin, I will be pleased to respond to this for the record.

[Subsequent to the hearing, the following was received for the record:]

Audit findings are conveyed to acquisition officials by means of audit reports which are subject to supervisory review prior to issuance. Audits are conducted and reports are prepared using auditing standards published by the General Accounting Office, which parallel standards issued by the American Institute of Certified Public Accountants. DoD specialized contract audit requirements and applicable procurement regulations are also considered. The DCAA audit staff consists of about 3080 college-trained men and women whose skills and talents are enhanced by means of a formal continuing education program. Of those employed, 585 are Certified Public Accountants, and an additional 177 have passed the uniform CPA examination and are currently fulfilling experience requirements to obtain certification. Furthermore, 15 percent of the current staff hold graduate degrees in one or more disciplines.

Senator HEFLIN. Well, just in a general way, what is your procedure? I am not asking you specifics.

Mr. COOKE. I understand that, but we are getting into the procedures of the role, mission and procedures of the Defense Contract Audit Agency, and I am up here to respond to the discussion of whistleblowers, not the mission and functions of the Audit Agency. In general, I will say that the contract audit reports are referred through the chain of DCAA from the plant auditors up; they are considered by management levels. They are also referred to the procurement officials in the military departments, and there are records, as I told you, which we will furnish for the record to disallow costs or recover costs from defense contractors.

[Subsequent to the hearing, the following was received for the record:]

DCAA provides audit coverage sufficient to identify costs which should be disallowed because of being unreasonable, nonallocable, or specifically unallowable in provisions of the applicable acquisition regulations or in terms of the contract. The audit recommendations are communicated to the cognizant contracting officer who is responsible for disallowing or recovering the costs either in price negotiations, withholding payments, or asserting contractual authority to obtain refunds.

Senator GRASSLEY. Would you let me interrupt just a second? I would like to give my view as chairman of the subcommittee, regardless of the letter I signed, that I do not think Senator Heflin's questions are out of order. They do contribute to a basic understanding of the DCAA function, which of course is very essential to us as policymakers of the Congress, in order to decide whether or not the people who work there are performing their duties and whether or not people who operate within that function and make use of whistleblower protection are doing what they should be doing. I would think that even though you are right in coming prepared to respond to the questions, the extent to which Senator Heflin is asking what I would consider everyday functioning of the DCAA, and since you are a top administrator within that agency, you ought to be able to answer what the procedure is.

Mr. COOKE. Mr. Chairman, I had no intention whatsoever of suggesting the Senator's questions were out of order. Because I wanted our answers to accurately portray the role, I suggested that we provide these for the record. I am not an administrator within DCAA at all, Mr. Chairman. I am Deputy Assistant Secretary of Defense for Administration, and as such, have no direct line authority or involvement in the processes of DCAA's programmatic mission.

Senator GRASSLEY. Well, I appreciate that.

Did you want to continue, Senator Heflin?

Senator HEFLIN. Well, if he is not familiar with it, then there is no point in pursuing it. But it seems to me that the issue of audits and cost overruns is one of the most paramount issues that ought to be confronting the administration of the Department of Defense to date.

Mr. COOKE. Indeed, it is, and I would also be pleased to furnish you for the record some of the specific steps and fixes that Secretary Weinberger has taken since his tenure in office on this important problem.

Senator HEFLIN. Well, we would appreciate you furnishing it for the record, and sometime, I would like to have a bureaucrat up here who can give an answer other than saying that he will furnish it later.

Senator GRASSLEY. Well, to my colleague I would say that that is why, of course, we did invite Mr. Starrett to come and testify, and why, at any future hearing, we will have people who are prepared to answer those questions.

[Subsequent to the hearing, the following was received for the record:]

DoD has recognized the need for improvements in the acquisition process and has been in the forefront in taking action to bring about those needed improvements. In April 1981, then Deputy Secretary of Defense Frank Carlucci identified 32 decisions designed to improve the acquisition policy and process. The decisions, generally referred to as the Carlucci Initiatives, were intended to bring about (1) a reduction in DoD acquisition costs, (2) a shortening of acquisition time, (3) improvement in weapons support and readiness, and (4) improvement in the Defense Systems Acquisition Review Council (DSARC) process. Responsibility for monitoring and follow-up of

these initiatives was assigned to the Under Secretary of Defense for Research and Engineering.

In June 1983, the DoD Comptroller, Mr. Puritano, issued seven audit and management initiatives to DCAA (the Puritano Initiatives) with the objective of creating an impetus for achieving greater savings and economies in the DoD acquisition process. Briefly, these seven initiatives require the following DCAA action:

1. Identify specific cost principles that require clarification or revision to correct current problems.
2. Emphasize a series of new audit techniques in evaluating contractors' total compensation packages.
3. Undertake a new series of operations audits in such areas as equipment utilization, repair/rework/scrap, and contractor projects to improve efficiency and reduce costs on defense contracts.
4. Reevaluate the approach to potential defective pricing instances to identify conditions which might be indicators of fraud and to pursue recoveries.
5. Analyze DCAA's role in reviewing proposed subcontract costs and identify needed changes in appropriate regulations, if appropriate.
6. Look for ways of exchanging information among DCAA offices and throughout the DoD.
7. Investigate methods to increase DCAA productivity and improve management effectiveness.

I can report that DCAA is seriously addressing each of these initiatives and is providing milestone status reports to the Comptroller.

Yet another example of DoD self-initiated programs to improve the acquisition process is Secretary Weinberger's 25 July 1983 announcement of a ten-point program to improve DoD's spare parts procurement programs. The program is wide-ranging, and includes a requirement for continued audits of spare parts procurements. At the present time, the DoD IG is conducting a DoD-wide audit of spares procurements, involving the support of all audit components. DCAA is providing direct support to this audit by performing all contract audit tasks.

For these brief comments, I believe you can get a feel for the overall DoD commitment—and the specific commitment of the Comptroller and DCAA—to bringing about improvements in the acquisition process.

The Department of Defense has few reported "whistleblowers." Perhaps the reason is that our program is designed to recognize suggestions, making it unnecessary to restort to "whistleblowing." We have a well-publicized program to give monetary awards for suggestions. Attached is a list of civilian and military employees granted monetary awards for achieving cost reductions in defense operations.

Senator GRASSLEY. I guess I would ask Mr. Cooke for the record, and because you did make mention of the whistleblower process working successfully and about people being rewarded, I would appreciate then again for the record—and you can submit this in writing—a list of whistleblowers who during the past 5 years have been rewarded through promotion or monetary awards for the uncovering of waste, fraud, and abuse.

[Subsequent to the hearing, the following was received for the record:]

MONETARY AWARDS GRANTED TO DOD MILITARY AND CIVILIAN PERSONNEL FOR ACHIEVING COST REDUCTION IN DEFENSE OPERATIONS

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Frances J. Sweeny	$1,565.00	$28,835.00

The savings resulted from Mr. Sweeny's idea to revise purchase orders for the U.S. Army Engineer District, Sacramento.

Mr. Deloy Evans	$1,929.00	$40,952.00

Mr. Evans, Tooele Army Depot, suggested the repair of the truion assembly on semi-trailer straddle carriers in lieu of purchasing new walking bean assemblies.

Mr. J. Wellington Crane	$2,538.00	$61,257.00

Mr. Crane, U.S. Army Aviation Research and Development Command, suggested a change to the procurement plan for CH-47 Helicopter (AN-APN-209) installation kits.

Mr. Bernard C. Hardy	$3,450.00	$1,141,773.00

Mr. Hardy, DARCOM, suggested the compressing of a two-year procurement into a one-year delivery schedule.

Mr. Joe R. Montoya	$1,961.00	$42,022.00

Mr. Montoya, Pueblo Depot Activity, suggested the modification of the T-Pins to accommodate the installation of required maximum security locks on existing structures.

Mr. Richard Dinterman	$1,500.00	$110,000.00

Mr. Dinterman, U.S. Army Health Services Command, Research Chemist, accomplished the development of a tethering system for the maintenance of chronically catheterized monkeys. The new system allows the monkey to live under far more humane and comfortable conditions than the previous chair restraint.

Mr.Kenneth Bellinger	$5,240.00	$4,136,000

Mr. Bellinger, U.S. Army Materiel Development and Readiness Command suggested the acquisition and modification of nine C model cinetheodolites to meet operational requirements in lieu of purchasing new model F cinetheodolites.

Mr. Otto Kroeger	$4,500	$2,000,000

Mr. Kroeger, White Sands Missile Range, developed and applied his idea to employ a destruct inhibit mechanism after second stage burnout on the long range Pershing II Missile.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Linnie E Newsome	$2,235	$1,121,163

Mr. Newsome suggested the repair of and reclamation of 7.62 Ammunition Drums. The method of welding and brazing these areas resulted in substantial savings.

Mr. John V. Menig	$2,070	$970,020

Mr. Menig, Mechanical Engineer, U.S. Army Communications Electronics Command, was rewarded for his idea of an antenna group design modification.

Mr. William Sontes	$1,500	$404,503

Mr. Sontes, U.S. Army Communications Systems Agency, detected and corrected contractor use of the EPA clause of a contract.

Mr. Doyle Johnson	$1,065	$144,284

Mr. Johnson conducted a study of welding methods used on combat vehicles (tanks) which resulted in an improved method of welding. The new method reduced materiel cost, protective equipment cost and significantly reduced air pollution.

Mr. Leslie Whitener	$2,155	$1,053,300

Mr. Whitener, Writer/Editor, U.S. Army Troop Support and Aviation Materiel Readiness Command was recognized for in-house preparation of equipment publications by placing emphasis on the in-house page program.

Mr. Michael Hoffman	$1,620	$519,195

Mr. Hoffman, U.S. Army Aviation R&D Command, suggested that closed circuit refueling be deleted from the proposed CH-47 fuel system improvement, the UH-60A and the AH-64 attack helicopter and that the actual requirement for its application in the AH-1 aircraft be reviewed.

Mr. Charles Thompson	$2,805	$2,738,000

Mr. Thompson, DARCOM, devised a method to recirculate back-wash waste water, thereby reducing the loads being placed on the city of Rock Island sewer plant and providing temporary relief from imposing restrictions from the city.

Mr. Jacob Gregory	$1,700	$600,000

Mr. Gregory, Redstone Arsenal, suggested that equipment which was being obtained for use in the Army Missile Command laboratories be removed from PERSHING II Engineering Development Contract. It was determined that the laboratories had neither the personnel nor the operating/storage space for this equipment, thereby providing a cost avoidance to the Government.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Owen T. Miller	$1,500	$249,465

Mr. Miller, White Sands Missile Range, suggested the modification of the PATRIOT ultra high frequency communications network test to provide for the testing of the entire network and each of the single links simultaneously.

Mr. Harry Woolverton	$2,785	$1,681,902

Mr. Woolverton, U.S. Army Troop Support and Aviation Materiel Readiness Command, suggested that the method used by Beech Aerospace Services, Inc. for calculating engineering support cost be revised to establish proper bulletin liability. The method recommended was that the applicable service bulletins be backed out of overhaul cost by engine serial number and a raw mean overhaul cost be established.

Mr. Ivy Smith	$1,740	$637,200

Mr. Smith, U.S. Army Troop Support and Aviation Materiel Readiness Command, suggested that the fuel pods of the CH-47A model helicopter be modified to fit the CH-47B model.

CW3 James Loftus	$1,250	(Intangible Benefits)

Chief Loftus, HHC, 2d SUPCOM (CORPS), suggested the use of a foam packaging machine instead of the currently used wooden boxes for the transporting of tank components.

Sgt. Timothy Winter	$3,652	$2,618,918

Sgt. Winter suggested repairing hoods that could no longer be used to be recycled as training hoods.

Mr. James Procyk	$1,930	$828,084

Mr. Procyk, U.S. Army Troop Support and Aviation Materiel Readiness Command, submitted a value engineering proposal which eliminated the installation tool (stapler), crimping tool, terminals and sandpaper from the Gridwire Sensor, a component of the Joint Services Interior Intrusion Detection System.

Mr. Rudolph Staples	$2,120	$1,015,320

Mr. Staples, U.S. Army Troop Support and Aviation Materiel Readiness Command, submitted a value engineering proposal which eliminated the support of an unnecessary 3.7 million dollar requirement without any degradation in performance or readiness of the AN/PSS-11 Mine Detector.

Mr. Mark Swendiman	$1,255	$150,993

Mr. Swendiman, White Sands Missile Range, suggested the installation of an Electronics Intrusion and Detection System in a building which had firm fixed power.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS

Mr. Ottis Bates $1,630 $527,436

Mr. Bates, Redstone Arsenal, suggested the use of 70-30 octol in the M207 warhead in lieu of 75-25 mixture, thereby providing a cost reduction per pound of octol.

Mr. James Traglia $2,045 $941,554

Mr. Traglia, Redstone Arsenal, suggested that action be taken to reinstate and allow refurbishments of I HAWK containers at Red River Army Depot.

Mr. Thomas Wilson $1,245 $20,808

Mr. Wilson, Redstone Arsenal, suggested a change to the System for Automation of Materiel Plans Army Materiel (SAMPAM) Program which significantly enhanced the program and benefited the Government by reducing the number of printed pages required.

Mr. Roger Leonard $2,100 $1,000,000

Mr. Leonard, Eighth U.S. Army, initiated a study which identified a deficiency upon which a tariff is based. Implementation of his recommendation resulted in a renegotiated five-year contract which will increase U.S. Government revenues by approximately 11.5 million dollars.

Mr. John Smith $1,475 $372,200

Mr. Smith, Redstone Arsenal, suggested the implementation of a separable gripstock for the STINGER Weapon System.

Mr. Herbert Gebhart $1,760 $658,631

Mr. Gebhart, Redstone Arsenal, suggested an alternate approach be adopted for buying out the Silicon Controlled Rectifier in the required quantities and furnishing these against future Command Module Procurement as Government furnished equipment.

LTC James Griffin, Jr. $18,800 $17,700,000

LTC Griffin, Kelly AFB, Texas, suggested direct procurement of F-15 Avionics Intermediate Shop (AIS) Test Stations from vendor in lieu of through prime weapon system contractor, thereby avoiding added costs incurred by prime contractor for administration and technical surveillance.

MSGT Roy Kappus $20,950 $3,549,962

MSGT Kappus, Kadena AB, Japan, submitted a suggestion that corrected severe corrosion problems in the outer fin and nozzle assemblies of rocket motors. By manufacturing fin and nozzle assemblies out of the same material used to manufacture fin blades, only the rocket motor assemblies were replaced.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
CWO Ronald Howell	$5,000	$1,609,626

CWO Howell, MacDill AFB, Florida, proposed the modification of power cargo trailers destined for disposal and use them in support of deployment equipment requirements. Previously, trailers had to be towed by trucks. The proposal reduced contract costs by eliminating the need to purchase trucks to tow trailers; saved airlift costs and eliminated two driver positions in each working unit.

CMSGT Edward Ezzell	$3,685	$2,582,260

CMSGT Ezzell, Offutt AFB, NE, suggested the modification of an existing space antenna in lieu of building a new antenna for use in a communication receiving facility. The recommendation cancelled a proposed contract.

TSGT Gary Lynch	$5,000	$2,610,921

TSGT Lynch, Seymour Johnson AFB, NC, suggested to locally repair mounting bracket on the bleed air duct on F-4 aircraft. Previously, the complete duct assembly had to be discarded when the bracket cracked.

MSGT Jerry McCallister	$2,380	$1,276,375

MSGT McCallister, Eglin AFB, Florida, recommended the stationing of one KC135 aircraft at Eglin for a prescribed period of time to meet local refueling requirements. Previously, four different organizations used aircraft flown from different Strategic Air Command bases resulting in sometimes two aircraft being assigned to the base at the same time.

MSGT Kenneth Taylor	$7,995	$2,114,717

MSGT Taylor, Shaw AFB, SC, suggested the modification of the tactical support communication (TSC) vans with a teletype multiplex capability. Now only TSC vans need to be deployed during contingencies instead of sending both the TSC van and a radio van. The flexibility and standardization provided by this addition saves in planning communications support, fuel and airlift costs.

Mr. Alexander Perez	$3,220	$2,115,645

Mr. Perez, McClellan AFB, CA, suggested the procurement of general radio digital analog test systems. This allowed development of depot support equipment recommendation data for the virtual image display and signal date converter shop replaceable units. As a result, more expensive contracts for the preparation of data were eliminated.

Mr. Ray Smith	$3,295	$2,194,416

Mr. Smith, Tinker AFB, OK, suggested the installation of amplifier computers obtained from Boeing 707s acquired for spare parts on E-3A airborne warning and control aircraft used for altitude surveillance and other missions. As a result, purchase of new amplifier computer was eliminated.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS

Ms. Mary Seaton $2,105 $1,000,132

Ms. Seaton, Naval Air Station, Lemoore, CA, clarified the requirements and regulations for packing stereo components for shipment as loose household goods.

Mr. Russell Martin $13,120 $7,020,000

Mr. Martin, Naval Air Rework Facility, Norfolk, suggested that Prototype A6 Bulkheads be replaced by the Naval Air Rework Facility, Norfolk vice contractor.

Mr. Joseph Swan $3,745 $2,373,000

Mr. Swan, Naval Air Test Center, Patuxent River, proposed and investigated the feasibility of providing the required signals with "Off the Shelf" equipment instead of purchasing certain modified equipment.

Mr. Arthur Dodd $3,140 $2,037,840

Mr. Dodd, Naval Sea Systems Command suggested removal of 750 KW electrical generating units from 2 classes of ships and reuse of these units in another class of vessel.

Mr. Frank Kulischak $2,500 $3,330,043.73

Mr. Kulischak, Naval Air Rework Facility, North Island, San Diego, CA, was rewarded for his suggestion concerning inventory procedure. He noted that an unrecorded inventory of H-3, H-46 and H-53 components were being held in various storage areas. He recommended that all material and parts be inventoried, evaluated, and returned to the supply system.

SMSGT Rodney Hindley $10,000 $32,000,000

SMSGT Hindley, AFSC, Wright-Patterson AFB, Ohio suggested an update and modification of F-15 and F-16 engines to be used for training purposes thereby precluding acquisition of 10 new production engines.

Mr. Benjamin Haralson $8,060 $6,957,790

Mr. Haralson, Robins AFB, Georgia, suggested the modification of the Radar Data Processor 3137081-155 to the Radar Data Processor 3173081-170 configuration and saved the Government nearly $7 million.

CMSGT Julius Jurek $2,000 $5,975,382

CMSGT Jurek, Langley AFB, Virginia suggested the use of a .22 cal. conversion rim fire adapter for small arms training resulting in savings in rehabilitation and construction costs.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Christopher Conrad	$5,225	$4,186,212

As a result of Mr. Conrad's suggestion at the Naval Air Rework Facility, Norfolk, Virginia, many F-14 beryllium brake components that were previously rejected and replaced because of chips and cracks are now being blended to acceptable limits.

L/CDR Boyd Fowler	$2,500	$1,947,000

L/CDR Fowler is stationed at the USNAS, Cubi Point, Philippines. As a result of his suggestion concerning the repair of damaged TF-41 case and vane assemblies by which good blades from defective units are used to replace blades in working units, a substantial savings was realized.

Mr. Bruce Black	$2,870	$1,773,108

Mr. Black, McClellan AFB, CA, submitted a suggestion concerning the repair of fill spoiler lap bodies and saved the Government nearly $1.8 million.

Colonel Richard Richter	$3,705	$1,603,804

Colonel Richter of the Air Force Tactical Air Command suggested modification of mobility bins which were designed many years ago to accommodate kits supporting B-29 aircraft, to be carried in the aircraft bomb bay.

Mr. James R. Pierce	$8,968	$1,153,350

Mr. Pierce, U.S. Army Missile Command, recommended the modification of existing W-30 cables at Red River Army Depot in lieu of purchasing new cables.

Mr. Bobbie Scott	$2,180	$1,141,773

Mr. Scott, Keesler AFB, Mississippi suggested the replacement of 487L TL Trainer with Electronic Systems Tests Sets which resulted in substantial savings.

Colonel A. R. McCahan	$5,000	$925,000

Colonel McCahan, Organization of the Joint Chiefs of Staff, submitted a suggestion dealing with Tactical Satellite Communications and in doing so saved the U.S. Government approximately $925,000.

GROUP AWARDS

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Ralph Carson Mr. Richard Ransdell Mr. Charles Moore Mr. Thomas Johnson Mr. Simon King Mr. Mark Black Mr. Thomas Jensen Mr. Salvador Gutierrez Mr. Abraham Gumbayan Mr. Charles Cummings Mr. Nicholas Mosley Mr. Iven Cobb Ms. Jody Smail	(Undetermined)	$1,077,249

The "Super Savers Quality Circle" in the Hydraulic and Miscellaneous Section at NARF, North Island, estimate that their suggestion to add an aircraft examiner to monitor work in various processing shops will save more than $1,000,000 after the first year.

Mr. Wallace Day Mr. Edwin Lard (Navy Ship Research and Development Center)	$10,000 with an additional $1,500 approved by OPM	$1,160,000

Messrs. Day and Lard devised a system which reduced fresh water consumption of a ship's laundry by over fifty percent. This is a very significant contribution in light of the limited availability of fresh water aboard ship.

Mr. James Jarrell Mr. Nathaniel Gelber Mr. Wong Fun Ark Mr. Francis X. Murphy Mr. Henry Kramer Mrs. Virginia Hogan	$9,700	$1,200,000

These six employees of the U.S. Army Materiel Development and Readiness Command received a group award for their special efforts in the development of analytical procedures for the quality and process control of the continuous production of nitroguanidine.

Mr. Delmar Rockemann Mr. Vernon Lahay	$1,542.50	$1,980,435

Messrs. Rockemann and Lahay, DARCOM, recommended a procedure for processing of Department of Defense Provisioning Data prior to Provisioning Design.

Mr. William Haley Mr. Daniel Pollard (Redstone Arsenal)	$5,560	$357,348

The suggester's idea resulted in a new concept for documenting Quality Assurance Provisions on Army drawings, thereby providing a savings to the Government.

NAME	AMOUNT OF AWARD	TANGIBLE SAVINGS
Mr. Donny Dreaden Mr. Alton McAllister Mr. Thomas Moore Mr. Charles Raley Mr. Kenneth Beam Mr. Jerri Cornelius Mr. Dennis Henry Mr. Kenneth Johnson Mr. Clyde Morris Mr. Robert Payne Mr. Ben Williams	$4,950	$1,500,000

These individuals designed and developed the computer lash-up software/hardware configuration. Their achievement provided MICOM and DARCOM with the ability to increase computer productivity without the normal comparable increase in hardware and support personnel costs.

Mr. Leonard Deney Mr. Joseph Manna Mr. Robert Monahan Mr. Richard Botticelli Mr. Werner Field (Large Caliber Weapon Systems Lab, Dover, NJ)	$4,035	$2,930,133

This team was responsible for the initiation and implementation of a Value Engineering Action. The nature of cost deduction involved the reduction from eight to six Grenade Body Loading Systems. This resulted in substantial equipment and operating savings.

MSGT Floyd Setser MSGT Leroy Stone CPT Gregory Ratz Cpt Michael Topp (HQ 4th Trans Bde, 3d Movement Region, Europe)	$1,000.00	$60,000

This team developed a centralized control for mail movement within USAREUR by implementation of this suggestion, the Frankfurt Transportation Movement Office was able to compile and finalize movement requirements and consolidate mail runs.

Mr. Paul Isham Mr. Donen Miller (U.S. Army Troop Support, St. Louis, Missouri)	$2,200 (Shared equally)	$1,098,360

These suggesters developed an in-house Program of Instruction (POI) for a very complex subsystem on the AH-15 Aircraft Program.

Senator GRASSLEY. Mr. Spanton, I would like to have you elaborate on your point that we cannot rely upon self-restraint of cost incurrence by the contractor.

Mr. SPANTON. The simple contract procedure is self-defeating as far as cost restraint. The contractor assigns a profit to the cost incurred. That in itself creates no incentive to reduce costs. The greater the cost, of course, the greater profit. For example, if a cost on a contract is $25 million, and his profit was 15 percent, it would be 15 percent of $25 million. If he spent $35 million, then he would get the 15 percent. If his estimated costs were $35 million, he would get the 15 percent on top of that. So there is no self-restraint, because it is to the contractor's advantage from a profit standpoint to incur costs. And as far as the areas where the contractor is incurring costs, possibly in answer to Senator Heflin's question, the best point to control costs is at the time of contracting—do not give the contractor the money so he can spend it. We attempted to do this when we did our labor and salary audit in 1982, in March. At that time, the economy was somewhat depressed, and there were major companies such as Eastern Airlines and General Motors, freezing or rolling back salaries. People were getting laid off. At the very same time these events were taking place, defense contractors were free to give increases to the extent that they desired—there were no limitations—while these other industries in the private sector were controlled by the economy, the only controls over defense contractors is the size of the defense budget. And we stepped foward and said: it was unreasonable during this period of time that Pratt & Whitney should allow these high rates of escalation for future year contracts at the same time that these other conditions existed in the private sector. It was our endeavor, then, to roll back through lessening the escalation rates, to roll back the salaries so that they would become closer to the amounts that were paid by the private sector.

That is how we projected in one plant alone over a 3-year period that the cost reductions would be $150 million. And we do not have a very large plant—there are 7,000 employees. If you project those savings throughout the defense industry, and major defense contractors, we are talking about billions of dollars in that one area alone. We are not saying that the salaries should be reduced below the private sector, but certainly, they should not exceed the private sector.

Now, we pursued this issue up to the present date, let us say. We tried to impress my agency and procurement each day that passed where there was inaction, it cost the Defense Department and the taxpayer millions of dollars daily; yet we could get no movement. And we were unsuccessful until the media became aware of what was taking place and began to publicize it.

Recently, there was an effort, not on the part of DCAA, but there was an effort by the Defense Contract Administrative Services to review salaries of another major contractor. However, and unfortunately, they concentrated not on the high and middle-level executives, but on the lower scale employees, the lowest levels. I have in my hand here a regional memorandum which shows at one defense contractor location, there was one group of employees whose average salary was between $24,900 and $25,600, while in the local

sector, the range was between $12,000 and $18,000. Here is a second category of employees at this major contractor location, where the salaries were between $22,000 and $24,000. The private sector was in the range of $12,500. In the third category, I have an average salary here by this major contractor of $25,000. In the private sector, $13,000.

Now, it does not take long, using a calculator, to find that if you took these conditions and applied this throughout the defense contractor community, we are talking about billions of dollars.

This report was submitted by my agency to all the field offices. I would like to draw your attention to the lack of impetus in resolving the problem. "You may find this audit approach and related data useful in similar reviews performed by FAOs under your supervision."

Now, this is a fallout of the situation that we tried to portray when we said if the defense contractor continually gives a pay escalation which greatly exceeds that of private industry, then this compounds upon itself, and within a very short period of time, you have the condition I just outlined. And to further portray the total separation between what the defense contractors perceive their responsibilities to the Department of Defense versus the private sector, I have a copy of an ad placed in a newspaper by Pratt & Whitney, and it reads this way:

Pratt-Whitney's Final Offer: More, not Less, for Employees. Pay cuts, freezes, COLA wipe-outs, benefit reductions--they are all common in labor settlements across America in these tough economic times. But not at Pratt-Whitney. The company has proposed to the union a new 3-year agreement providing solid economic gains and improved benefits for employees, plus major breakthroughs in job and income security.

Again, unfortunately, the attention is being directed toward the lowest level employee, with very little or no attention given to the executives, those who get these substantial salaries, and on top of that, they get year-end bonuses, rental automobiles, and the latest personal home computers for use in home or office as they choose.

Certainly, these are not conditions conducive to provide a strong military situation where we can feel proud that we have done our best. What we have here, as the budget goes up, the armament just costs more. We are not getting more armament. It is just keeping pace with the increase in the budget, and somehow in some way, this has to be brought to the attention of those in Congress that can do something about it.

One other word on the DCAA concerning the savings. I have here a bulletin which is dated March 1982, and on the face of the bulletin, it shows that in 1975 through 1981, the cost savings were $14 for every dollar spent on DCAA operations. It went up in 1980 to $27. In 1981, in the space of 1 year, it jumped to $47. This is totally unrealistic. Yes, the DCAA does have savings, but certainly not to the extent being reported.

One of the areas that I am responsible for is the reporting of cost savings and avoidances. That is an area I received a great deal of criticism on, because I refused to report savings that never materialized, and I think this type of information is self-defeating. Again, it places the agency in the position of gaining the public's trust and not earning it.

Senator GRASSLEY. Well, I think those items that you quoted from, I would like to have submitted for the record, if you would submit those.

Mr. SPANTON. Yes, Senator.

Senator GRASSLEY. Without objection, they will be included.

[The following was received for the record:]

[From the Sunday Republican, Nov. 28, 1982]

PRATT & WHITNEY'S FINAL OFFER: MORE, NOT LESS, FOR EMPLOYEES

(Pay cuts, freezes, COLA wipeouts, benefit reductions—they're all common in labor settlements across American in these tough economic times. But not at Pratt & Whitney. The company has proposed to the union a new three-year agreement providing solid economic gains and improved benefits for employees—plus major breakthroughs in job and income security.)

Three-year wage and COLA increases average $2.01, or 19.6%.

Current 84-cent COLA folded into first-year base rates:

1st year: increases up to 88 cents an hour, averaging 63 cents.

2nd year: increases up to 90 cents, averaging 69 cents.

3rd year: increases up to 90 cents, averaging 69 cents.

Faster wage progression—10 cents every 24 weeks to maximum rate.

COLA—5 cost-of-living adjustments, each up to 18 cents, totaling up to 90 cents over 3 years.

Special retirement supplements—Voluntary program during the first 3 months of 1983 for employees 55 or older with 25 or more years' credited service. Special supplement up to $10 a month for each year of credited service paid to age 62 or for 4 years, which ever is longer, but not beyond 65. However, employees 64 or older can receive supplements for one year.

Severance pay—Weekly benefits equal to 50% of 1 week's pay including COLA for up to 12 weeks, depending on seniority, for employees with at least 3 years' seniority who must be laid off indefinitely.

Strengthened seniority—Greater protection against layoff for longer-service employees through consolidation of job groupings and reduction of number of seniority areas in the East Hartford plant.

Seniority recall rights, now at 2 years' maximum, extended to 5 years' maximum.

Insurance—Company continues to pay *full cost* of health and dental insurance, despite increase in cost in 1983 to more than $900 for individual coverage and nearly $2,400 for family coverage.

Weekly disability income maximum raised to $200 on Jan. 1, 1985 . . . still 52 weeks of coverage.

Lifetime major medical maximum raised from present $100,000 to $250,000.

Dental: Payments increased for Class II (fillings) and III (dentures) procedures. Age limit removed for orthodontia treatment for employees and dependents, and maximum benefit raised 50% to $750 in January, 1985.

Pensions—Guaranteed maximum monthly pension per year of credited service increased to $20 on Jan. 1, 1983 . . . rising to $21 on Jan. 1, 1984.

New retirement benefit for surviving spouses of employees with 10 or more years' service who die before age 55.

Savings plan—Employees' maximum weekly savings opportunity increased to $12 on Jan. 1, 1983 . . . $14 on Jan. 1, 1984 . . . and $16 on Jan. 1, 1985—with company providing 50% match.

Other benefits—Christmas minivacation preserved with 12 paid holidays in 1st and 2nd contract years and 13 in 3rd year . . . paid military leave increased from 10 to maximum of 30 days . . . more than 30% increase in cash performance awards . . . up to 5 weeks' vacation, as at present.

PAY PROGRESS FOR EMPLOYEES

	Job grade										
	11	10	9	8	7	6	5	4	3	2	1
Current maximum rate	$8.27	$8.54	$8.92	$9.34	$9.80	$10.29	$10.83	$11.41	$12.02	$12.73	$13.44
Maximum rate, November 1985	9.79	10.13	10.59	11.10	11.66	12.25	12.89	13.58	14.32	15.18	16.07

PAY PROGRESS FOR EMPLOYEES—Continued

	Job grade										
	11	10	9	8	7	6	5	4	3	2	1
Total three-year increase.....	1.52	1.59	1.67	1.76	1.86	1.96	2.06	2.17	2.30	2.45	2.63

General increases: Nov. 29, 1982; December 5, 1983; December 3, 1984.
COLA increases: May 30, 1983; December 5, 1983; June 4. 1984, December 3, 1984; June 3, 1985; Rates in table assume 5.8% inflation per year.
The three-year package summarized here is the company's final offer. The company has told the union it will carefully consider any proposals but it will not increase the total value of the offer.

DEFENSE CONTRACT AUDIT AGENCY,
ATLANTA REGION,
Marietta, GA, August 31, 1983.

Regional Audit Memorandum No. RSO-73-83.
Memorandum for all Regional Audit Managers, Atlanta Region, DCAA.
Subject: Unreasonable labors costs.

One of our FAOs was recently asked for input (assistance) regarding a DCASR Compensation System Review of a large airframe manufacturing company. Review was made of three specific labor categories, namely: (1) security guards, (2) plant service workers (janitors), and (3) secretaries.

DAR 15-205.6(2) states, "Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services."

Exhibit A presents comparison of average pay, minimum pay and maximum pay for each of the labor categories by the contractor and by other employers.

Exhibits B, C and D present the job descriptions for each of the labor categories named in the first paragraph hereof.

You may find this audit approach and related data useful in similar reviews performed by FAOs under your supervision.

PAUL EVANS,
Regional Director.

Enclosures 4.

EXHIBIT A.—COMPARISON OF WAGES WITH AREA WAGE SURVEYS

	Straight time wages		Time required between minimum and maximum
	Minimum	Maximum	
Security Guards (fiscal year 1982 Average—$26,894)			
Contractor	[1] $24,960	[1] $25,688	15 mo.
Major airframe defense contractors (Avg.)	16,265	22,346	6 to 12 yr.
Local city police	11,378	18,554	do
Local city police	11,748	17,876	do
SAC AFB (Civilian)	13,369	17,383	do
Local county police	12,064	18,532	do
Janitors (Last Quarter fiscal year 1982 Average—$24,232)			
Contractor	[2] 22,048	[2] 24,7312	18 mo.
Major airframe defense contractors (Avg.)	12,771	19,000	10 to 12 yr.
Bureau of Labor Statistics (BLS) (local large city manufacturing)	14,518	.....	
American Management Association (AMA) (Geographical segment of United States where contractor located).	11,440	.....	
Secretaries (Fiscal year 1982—$24,544) (14% random sample)			
Contractor	[2] 24,960	[2] 25,688	18 mo.
Major airframe defense contractors	11,254	19,509	10 to 12 yr.
Bureau of Labor Statistics (BLS) (local large city)	14,976	.....	
American Management Association (AMA) (geographical segment of United States where contractor located).	12,896	.....	

[1] Based on negotiated hourly wage rates (excluding shift differential) as of the last quarter of fiscal year 1982 times 2,080 hours.
[2] Based on negotiated hourly wage rates as of the last quarter of fiscal year 1982 times 2,080 hours.

EXHIBIT B.—SECURITY GUARDS TECHNICAL AND OFFICE JOB DESCRIPTION

Occupational summary

Perform guard, watch, and patrol duties essential to employee and plant protection.

Work performed

Perform any guard, watch, and patrol duties on any assigned post.
Make preliminary investigation and reports as required.
Maintain order in emergencies. Make special investigations as assigned and in accordance with Company and Civil regulations.
Carry firearms when assigned.
Use two-way radio communication system and possess Third Class Radio-Telephone Operator's license, as required.
Perform routine clerical duties and make detailed written reports as required for post assignment.

EXHIBIT C.—PLANT SERVICE WORKER (JANITOR) FACTORY JOB DESCRIPTION

Occupational summary

This occupation requires the performance of hand sweeping, cleaning, dusting, waxing, polishing, mopping, and scrubbing operations, and other related duties necessary to maintain good housekeeping in office, factory, and ground areas; and other janitorial duties involving heavy manual work.

Work performed

Performs such typical operations as operating hand-power sweepers, waxers, polishers, and scrubbers; washing walls and ceilings; cleaning windows requiring the use of safety belts and performing janitorial duties involving the lifting of heavy containers and the moving of heavy equipment.
Performs such typical operations as sweeping outside, factory and office areas; emptying waste baskets and trays; placing sweepings and trash in carts and receptacles; hand scrubbing, mopping, washing and drying floors, woodwork and furniture; cleaning carpets, carpeting, and rugs with brooms, brushes, sweepers and vacuum cleaners; hand polishing and waxing office furniture, floors, linoleum and woodwork; washing and polishing windows where use of safety belts is not necessary; cleaning drinking fountains and lavatories; replenishing supplies, such as soap, towels, drinking cups, disinfectants, and sanitary napkins.
Maintains good housekeeping in office, factory, and ground areas. Does gardening as required.

EXHIBIT D.—SECRETARIES TECHNICAL AND OFFICE JOB DESCRIPTION

Occupational summary

Perform stenographic duties, compose letters for superior's signature, follow up superior's business arrangements, schedule and arrange appointments, and exercise discretion and judgment in conserving superior's time and promoting good departmental or company relations.

Work performed

Perform stenographic duties and, in addition, prepare letters, a portion of which are composed or compiled by the secretary on the basis of her personal knowledge of the subject matter, department or restricted files, or outside source of required data.
Arrange for and schedule appointments for superior, exercising discretion in conserving his time and promoting good public relations, including interviewing callers and making proper referrals; prepare material and make arrangements for meetings as required.
Perform general office work. Relieve superior of certain duties by transmitting information concerning the established policies and procedures of the company or the expressed wishes of superior. Make systematic follow-up of superior's business arrangements and correspondence.
Receive, scan, and sort mail for reply by superior personally, by other company personnel, or by secretary for superior's signature. Answer correspondence by collecting information and composing and typing replies on own initiative or brief general instructions for approval or signature of superior.

Distribute work to and review completed work of clerks, stenographers, and typists, as specifically authorized by superior.

Knowledge and ability required

Knowledge of company policies and procedures affecting department. Ability to operate a typewriter and knowledge of shorthand, speedwriting, stenotype or other method of taking and transcribing dictation.

EXAMPLE.—CONTRACTOR PROPOSED—AUDIT RECOMMENDED—DOD NEGOTIATED SALARY LABOR RATES

[Dollars per hour]

	1981	1982	1983	1984
Contractor:				
Paid	20.00			
Projection		23.00	26.50	30.50
Paid		23.50		
Projection			27.00	31.00
Paid			28.00	
Projection				32.00
Paid				32.00
DCAA: Recommended (1980)	19.00			
Basis	20.00			
Recommended		22.00	24.00	26.00
Basis		23.50		
Recommended			25.50	27.50
Basis			28.00	
Recommended				30.50
Private Industry: Actual	15.00	16.50	17.50	19.00
DOD: Negotiated (1980)	19.00	21.00	23.00	25.00
Basis	20.00			
Negotiated		22.50	25.50	28.00
Basis		23.50		
Negotiated			26.25	29.00
Basis			28.00	
Negotiated				30.00

EXAMPLE OF UNCONTROLLED ESCALATION OF SALARY RATES AND ITS COMPOUNDING EFFECTS IN DISPARITIES WITH PRIVATE INDUSTRY

1981

The actual rate paid by the contractor for 1981 was $20.00 hr. despite the contractor's negotiated agreement (in 1980) that $19.00 hr. was reasonable.

The DCAA will use $20.00 hr. as its bases for projecting rates for the years 1982–1984 even though it had recommended (in 1980) a rate of $19.00 hr. as a reasonable rate for 1981.

DOD procurement will use $20.00 hr. as its bases for negotiating 1982–1984 rates despite its negotiation (in 1980) of $19.00 hr. as a reasonable rate for 1981.

DOD Procurement and DCAA do not evaluate the "reasonableness" of the 1981 rate of $20.00 hr. They will accept it as the bases for projecting future rates with the simple explanation that it is their practice to accept whatever rates the contractor has paid as the bases for future rates.

Private industry in a competitive environment and recognizing the economics of the times paid $15.00 hr. in 1981.

The DOD contractors in a non-competitive environment pursued the practice of incurring cost on the bases of the availability of funds within the DOD budget. If the argument is presented that there is competition between the DOD contractors, it is only within limited confines where all the competitors are following the same practice of paying salaries greatly exceeding private industry. The only limitations in costs in this environment are those imposed by the magnitude of the Defense budget. Do not have to exercise the restraints imposed by competition within the private sector.

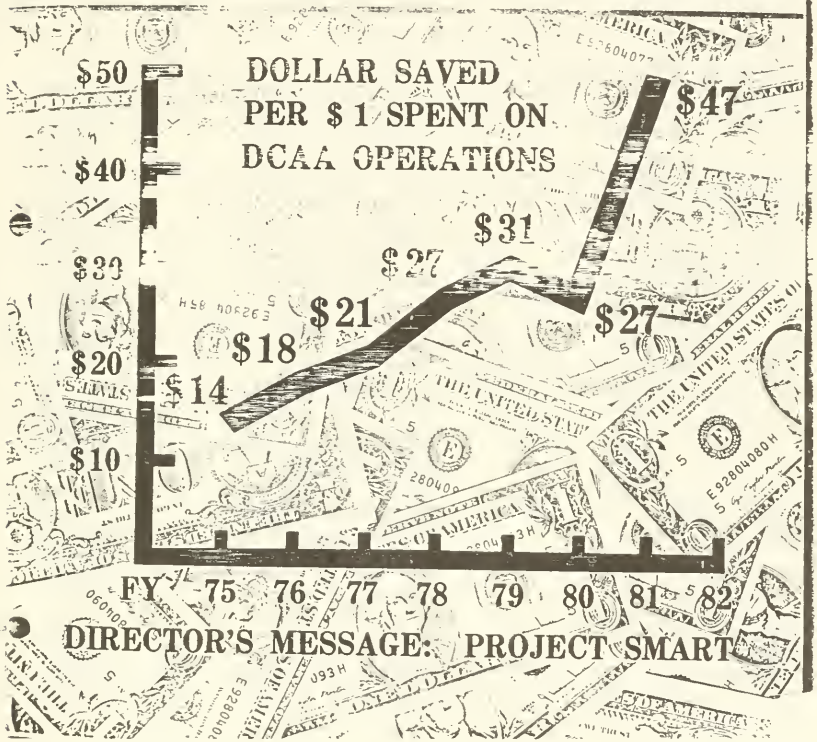
The entire purpose of our March 1982 labor report was to narrow the wide disparity between the salary rates paid to private industry and those paid by defense contractors.

Example	Difference	DOD contractor	Private industry
1981	$5.00	$20.00	$15.00
1982	7.00	23.50	16.50
1983	10.50	28.00	17.50
1984	13.00	32.00	19.00

the bulletin

Defense Contract Audit Agency/Cameron Station, Alexandria, Va. 22314

March 1982



DIRECTOR'S MESSAGE: PROJECT SMART

SPECIAL RECOGNITION AND AWARDS

QUALITY PERFORMANCE PAY INCREASE

Dina Caren Johnson	Clerk-Typist	Chicago
Debra Kay McAllister	Office Supervisor	Chicago
Kristina L. Denton	Clerk-Typist	San Francisco
Carol A. Shultz	Secretary Steno	San Francisco
Georgia J. Welker	Office Supervisor	San Francisco

SUSTAINED SUPERIOR ACCOMPLISHMENT AWARD

Joe I. Allen	Supervisory Auditor	Atlanta
Robert P. Basinger	Supervisory Auditor	Atlanta
Marlon J. Bishop RA. S.D	Supervisory Auditor	Atlanta
James C. Bourne Br.Mgr. Houston	Supervisory Auditor	Atlanta
Marvin L. Burroughs, Jr. Br.Mgr. Tampa	Supervisory Auditor	Atlanta
Jack C. Clark	Supervisory Auditor	Atlanta
Robert E. Coffelt	Supervisory Auditor	Atlanta
Jesse E. Collins	Supervisory Auditor	Atlanta
James T. Cox	Supervisory Auditor	Atlanta
Richard A. Cudd	Supervisory Auditor	Atlanta
Wade E. Emory	Auditor	Atlanta
Louis M. Esposito R.A. Lockheed	Supervisory Auditor	Atlanta
Thomas A. Gayhart, Sr.	Supervisory Auditor	Atlanta
Ray F. Griffith, Jr. Br.Mgr. Orlando	Supervisory Auditor	Atlanta
Jack D. Hartsock RA. Western Elec	Supervisory Auditor	Atlanta
Paul C. Higgins	Supervisory Auditor	Atlanta
Wilfred R. Johnson	Supervisory Auditor	Atlanta
Fred Kasmir RA. Martin	Supervisory Auditor	Atlanta
Glenn Robert Myers Br.Mgr. Dallas	Supervisory Auditor	Atlanta
Lewis G. Rink	Supervisory Auditor	Atlanta
Dick Hubert Roof	Supervisory Auditor	Atlanta
John J. Sack RA. Hercules	Supervisory Auditor	Atlanta
Vernon B. Tabor RA. Litton	Supervisory Auditor	Atlanta
William G. Thoms RA. Harris	Supervisory Auditor	Atlanta
Claude L. Turner Br.Mgr. Huntsville	Supervisory Auditor	Atlanta
Bedford J. Walters	Supervisory Auditor	Atlanta
William R. Wells	Supervisory Auditor	Atlanta
James D. White	Supervisory Auditor	Atlanta
Jack Pihlak	Supervisory Auditor	Chicago

Senator GRASSLEY. I have a report here I would like to ask you if you are familiar with. The title reads, "Audit Report on the Evaluation of Proposed 1982 to 1984 Forward Pricing Direct Labor Rates." Are you familiar with this report?

Mr. SPANTON. Yes, Senator.

Senator GRASSLEY. Would you explain the report, summarize it?

Mr. SPANTON. Yes, sir. That is a report where we are pointing out that if the escalation rates related to the private sector and related to those given Government employees showed some restraint, we could save the $150 million. It seems strange that the Government can establish what it can afford to give its own employees as a pay raise, while at the same time defense contractors virtually 100 percent involved in Government work can have no restraints, no limitations, no exercises towards keeping the expenditures down and can pay what they want, as I said at the inception of my discussion.

The method of contracting is self-defeating. The profits earned by the contractors, based upon the amounts that they invest, considering the many advantages, the progress payments that they receive as they proceed in the performance of their contracts, far exceed private industry. The rate of failure on these major defense contractors is in itself an indication that defense business is a good area to get into if you want to make money at minimum risk.

Senator GRASSLEY. We have this report in our possession and I want to put it in the record. So without objection, the entire report will be printed.

[The following was received for the record:]

This report was withdrawn by DCAA!

TK Pratt / P&W/WPB

AUDIT REPORT ON EVALUATION OF PROPOSED 1982-1984 FORWARD PRICING DIRECT LABOR RATES
UNITED TECHNOLOGIES CORPORATION
PRATT & WHITNEY AIRCRAFT GROUP
GOVERNMENT PRODUCTS DIVISION
WEST PALM BEACH, FLORIDA

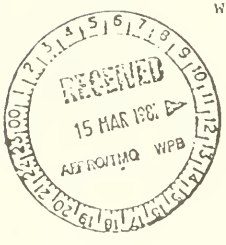
The Defense Contract Audit Agency has no objection to the release of this report, at the discretion of the Contracting Officer, to the duly authorized representatives of Pratt & Whitney Aircraft Group, Government Products Division.

Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b) (2) (as amended August 10, 1977), all Freedom of Information Act requests for audit reports received by DCAA will be referred to the cognizant contracting officer for determination as to releasability and a direct response to the requestor.

Contractor information contained in this audit report may be confidential. The restrictions of 18 USC 1905 should be considered before this information is released to the public.

This report may not be released to any Federal agency outside the Department of Defense without the approval of Headquarters, DCAA, except to an agency requesting the report in negotiating or administering its contract.

DEFENSE CONTRACT AUDIT AGENCY
ATLANTA REGION
PRATT & WHITNEY AIRCRAFT RESIDENT OFFICE
P. O. BOX 2691
WEST PALM BEACH, FLORIDA 33402



Audit Report No. 1481-2A230006

Date of Report: 13 March 1982

FOR OFFICIAL USE ONLY

ATLANTA REGION
P&WA - A. V. WHITNEY AIRCRAFT RESIDENT C ICE
P. O. BOX 3691
WEST PALM BEACH, FLORIDA 33402

1.481/MG

13 March 1982

SUBJECT: Report on Evaluation of Proposed 1982-1984 Forward Pricing Direct Labor Rates
United Technologies Corporation
Pratt & Whitney Aircraft Group
Government Products Division
West Palm Beach, Florida
Audit Report No. 1481-2A230006

Report has been withdrawn

TO: Administrative Contracting Officer
AF Plant Representative Office (Det 4)
Pratt & Whitney Aircraft Group
Government Products Division
West Palm Beach, Florida
ATTN: TM (H. J. Moyes, PACO)

1. Purpose and Scope of Audit.

a. In accordance with the AFPRO (Det. 4)/TMO letter dated 29 January 1982, we reviewed the subject forward pricing labor rate proposal dated 27 January 1982 to provide an advisory audit report to assist in the negotiation of labor rates. The proposal provides for domestic forward pricing direct labor rates for 1982-1984.

b. The evaluation was performed in accordance with generally accepted auditing standards and included such tests of the contractor's data and records and such other auditing procedures as considered necessary in the circumstances except as noted in paragraph 2. The cost principles contained in DAR Section XV, Part 2, and the practices required by applicable Cost Accounting Standards were used as criteria in the evaluation of the proposed rates.

2. Summary of Audit Results.

a. The results of audit, summarized on Exhibit A of this report, show that GPD has proposed over $150 million of excess labor costs to be incurred on current and future contracts from 1981 thru 1984. Our recommended direct labor rates will, over the 1982-1983 time frame, bring these abnormal GPD labor related costs in line with national averages and inflation indices.

FOR OFFICIAL USE ONLY

AUDIT REPORT ON EVALUATION OF PROPOSED 1982-1984 FORWARD PRICING DIRECT LABOR RATES UNITED TECHNOLOGIES CORPORATION PRATT & WHITNEY AIRCRAFT GROUP GOVERNMENT PRODUCTS DIVISION WEST PALM BEACH, FLORIDA

The Defense Contract Audit Agency has no objection to the release of this report, at the discretion of the Contracting Officer, to the duly authorized representatives of Pratt & Whitney Aircraft Group, Government Products Division.

Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b) (2) (as amended August 10, 1977), all Freedom of Information Act requests for audit reports received by DCAA will be referred to the cognizant contracting officer for determination as to releasability and a direct response to the requestor.

Contractor information contained in this audit report may be confidential. The restrictions of 18 USC 1905 should be considered before this information is released to the public.

This report may not be released to any Federal agency outside the Department of Defense without the approval of Headquarters, DCAA, except to an agency requesting the report in negotiating or administering its contract.

DEFENSE CONTRACT AUDIT AGENCY
ATLANTA REGION
PRATT & WHITNEY AIRCRAFT RESIDENT OFFICE
P. O. BOX 2691
WEST PALM BEACH, FLORIDA 33402

Audit Report No. 1481-2A230006

Date of Report: 13 March 1982

FOR OFFICIAL USE ONLY

DEFENSE CONTRACT AUDIT AGENCY
ATLANTA REGION
PRATT & WHITNEY AIRCRAFT RESIDENT OFFICE
P. O. BOX 2691
WEST PALM BEACH, FLORIDA 33402

1.481/MG 13 March 1982

SUBJECT: Report on Evaluation of Proposed 1982-1984
Forward Pricing Direct Labor Rates
United Technologies Corporation
Pratt & Whitney Aircraft Group
Government Products Division
West Palm Beach, Florida
Audit Report No. 1481-2A230006

TO: Administrative Contracting Officer
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2. Summary of Audit Results.

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Audit Report No. 1481-2A230006

b. In our opinion, the offeror has submitted adequate cost or pricing data. The proposal was prepared in accordance with applicable Cost Accounting Standards and DAR Section XV, Part 2. Therefore, we consider the proposal to be acceptable for negotiation of a price. This statement should not be interpreted to mean that the data are necessarily accurate, complete and current in accordance with Public Law 87-653, since a postaward audit review may disclose evidence not now discernible. Nor should the statement be interpreted to mean that the offeror is necessarily in compliance in all respects with Public Law 91-379, since a final recommendation cannot be made in a preaward evaluation. Instances of additional noncompliance with Public Law 91-379 may be reported during contract performance.

c. Factual audit matters were discussed with the contractor's authorized representative, Mr. J. M. Hritz, Contracts Liaison, to the extent necessary to ensure that the conclusions reached by the auditor were based on a proper understanding of the data involved, but results of audit were not disclosed.

d. Accounting counsel or additional audit services, as may be required, will be provided upon request to this office (Attention: Mr. L. Rink, Supervisory Auditor, telephone 305/840-4064). In any case, additional audit support should be requested if changed requirements or more current cost or pricing data have a significant impact on the proposal. We recommend that an auditor be invited to attend negotiations.

e. As required by DAR 3-807.8(c), please furnish us a memorandum of the negotiations as promptly as possible. In addition, a copy of the forward pricing rate recommendation memorandum is requested.

f. This report should not be used for other than the purpose stated in paragraph 1 above without prior consultation with this office.

Defense Contract Audit Agency

George R. Stanton

GEORGE R. STANTON, Resident Auditor

Encl. a/s
Copy furnished:
AFPRO/CC
RAMA-1 (Mr. A. Tueller)

United Technologies Corporation
Pratt & Whitney Aircraft Group
Government Products Division
West Palm Beach, Florida

STATEMENT OF CONTRACTOR'S 27 JANUARY 1982 PROPOSED FORWARD PRICING DIRECT LABOR RATES AND RESULTS OF AUDIT REVIEW

Labor Category	Contractor's Proposed Rates 1982	1983	1984	Results of Audit Review (Note 1) Questioned Rates 1982	1983	1984	Notes
Engr. Salary Nonexempt	$10.08	$11.54	$13.09	$ .57	$1.79	$2.68	2
Engr. Salary Exempt	16.98	19.54	22.02	.97	3.13	4.49	2
Engr. Treasury	27.53	31.51	35.73	1.60	4.93	7.34	2
Manufacturing Hourly	10.73	11.75	12.77	.65	1.42	1.75	3
Test Hourly	12.11	13.13	14.15	.72	1.46	1.70	3
Test Salary Nonexempt	11.51	13.17	14.94	.69	2.08	3.11	3
Test Salary Exempt	17.08	19.54	22.16	.96	3.01	4.52	3
Quality Hourly	10.82	11.84	12.86	.66	1.43	1.75	3
Quality Salary Nonexempt	9.11	10.42	11.82	.08	1.16	1.94	3
Quality Salary Exempt	14.94	17.10	19.39	.85	2.65	3.97	3
Tooling Hourly	11.13	12.15	13.17	.75	1.51	1.82	3
Assembly Hourly	11.01	12.03	13.05	.62	1.38	1.69	3
Field Srvc. Salary Exempt	17.03	19.49	22.10	.46	2.03	3.45	4
Tech. Pubs Salary Nonexempt	8.02	9.18	10.41	.27	1.01	1.68	4
Tech. Pubs Salary Exempt	14.57	16.67	18.91	.41	1.75	2.98	4
AGE Design Salary Exempt	16.06	18.37	20.84	.51	1.98	3.34	4

Explanatory Notes:

1. Within the context of (i) the public mandate for restraint in Federal spending and elimination of deficits, (ii) the need for strengthening the military with limited funding, and (iii) the threat of expansion of foreign business and workers into overpriced markets, it is reasonable to expect Government contractors to be sensitive to the need for controlling costs, especially since they are consuming public tax dollars. The Government has set an example for private industry with its curbs on Federal employee labor cost escalations. It is appropriate to expect Government contractors, including the GPD, to lead private industry in restraining spending, thereby demonstrating responsiveness to national public policy concerns as required by DAR 15-201.3(a)(iii). Beyond responsiveness to Government interests lies the issue of what eventually befalls industries where labor costs far exceed international competition. In the defense industry, lack of fiscal responsibility also threatens the existence of private enterprise as adequate defensive weapons become too costly for the free world to afford.

Regarding the expectation for prudent management by Defense contractors in expenditures against Government programs, the one area where GPD has almost absolute control over costs—namely, labor rates—should reflect restraint in escalation. Labor rates should be managed judiciously so that escalation approximates a midpoint range between private industry and Federal employee escalation. However, to the contrary, GPD far exceeded—and was a driving force in raising—the

national average with excessive labor escalation in 1981. And despite some proposed moderation for 1982, it plans to resume these excesses in 1983 and 1984. The chart on Appendix 1 illustrates the year to year GPD engineering labor rate escalation compared with Federal employee and private industry escalation. The primary cause of this labor cost escalation is the salary increases GPD gives to its employees. The chart on Appendix 3 (see related notes) compares the GPD average increase for those employees on board at both December 1980 and December 1981 with labor escalation in private industry and the rise in the consumer price index. As this chart indicates, GPD granted raises which were 178 percent higher than Federal employee escalation and 108 percent higher than all private industry (nonsupervisory, nonagricultural) workers. The chart on Appendix 4 details these inordinate increases by principal GPD direct labor categories. Such raises are extreme, damaging to the economy and unreasonable. GPD's failure to control/manage labor rates adds to the bidding up of labor costs in the Defense industry and contributes to labor inflation throughout the economy.

Within the Defense industry this unreasonable consumption of tax dollars impacts 1981 and future years as excesses compound (see Appendix 2 chart). The chart on Appendix 5, with related notes, illustrates an approximation of the cumulative impact of these costs from 1981 thru 1984. This unwarranted waste of public funds ($155 million thru 1984), which fuels inflation and contributes to Government deficits, must be challenged now by the Government acquisition community. The 1981 excesses cannot be undone. However, current planned escalation can be scaled down to insure that GPD becomes fully responsive to both Government and public expectations rather than a driver of inflation in our economy.

The 1982 salary escalation of 10.5 percent proposed by GPD effective June 1982 is based on an average of the escalation rates of 10.9 percent for engineers and 10.0 percent for accountants [which were taken from the National Survey of Professional, Administrative, Technical, and Clerical Pay, and represent percentage increases from average March 1980 salaries to average March 1981 salaries]. The 1983 and 1984 proposed escalations are based on undocumented judgemental estimates (by Messrs. J. C. Macko, Contracts Liaison, and L. M. Mazer, Business Forecasting) of five percent annually for general wage increases and skill mix enrichment, and an additional eight percent for merit increases. We find these rates unacceptable because (i) no consideration is given to current economic forecasts which show substantial reductions in inflation for 1982 thru 1984 compared to the March 1980-March 1981 base period used by GPD, (ii) no consideration is given to (offsetting) the excessive individual raises granted by GPD during 1981, (iii) provision is made for skill mix enrichment

which is not justified by increased (higher skill) requirements, (iv) no consideration is given to public policy concerns to reduce spending on Government programs/contracts, and (v) the annual increases plus an additional eight percent represent exorbitant, unsupported/judgmental estimates.

We recommend that the proposed 1982 and 1983 rate increases be limited sufficiently to offset the excess escalation (rate increases) given in 1981. A reasonable rate of escalation for the 1981 thru 1983 period will be attained by limiting proposed escalation for 1982 and 1983 to rates which, when compounded with the actual 1981 escalation rate, will approximate the cumulative 1981-1983 average of private industry and Federal employee escalation. Then, by 1984, GPD should have its labor rates under control and 1984 recommendations could be based on the recommended 1983 direct labor rate, escalated by the expected 1984 private industry/Federal employee average percentage increase. Computations are shown in Notes 2 thru 4.

2. Our recommended engineering labor rates are based on the rationale described in Note 1. The recommended rates for 1982 and 1983 were calculated by escalating 1981 actual labor rates by our recommended escalation factors computed as follows:

			Estimated			
Engineering		Actuals 1980-1981(a)	1981-1982(a)	1982-1983(a)	Three Year Compounded Escalation	1983-1984(a)
Government Labor Escalation	(b)	8.0%	5.4%	6.6%		5.5%
Private Industry Escalation	(c)	10.0%	8.0%	8.0%		8.0%
Average Escalation	(d)	9.0%	6.7%	7.3%	24.8%	6.8%
Recommended Escalation Factor	(e)	18.8%	2.5%	2.5%	24.8%	6.8%
Recommended Yearly Average Labor Rates	(f)	1981	1982	1983		1984
Salary Nonexempt		$ 9.28	$ 9.51	$ 9.75		$10.41
Salary Exempt		$15.62	$16.01	$16.41		$17.53
Treasury		$25.30	$25.93	$26.58		$28.39

(a) The percentages shown represent the (rate of) escalation from the 12 month average labor rate of one year to the 12 month average labor rate of the following year.

(b) Represents the average escalation of all Federal employees in labor grades GS-7 thru GS-13 from year to year, based on increases of 4.8 percent, 7 percent, 5.5 percent and 5.5 percent for the 12 month periods beginning in October of 1981 thru 1984, respectively, including the impact of turnover, step increases which average 1 1/2 percent annually, and within grade changes in mix.

(c) The estimated private industry escalation rates for the years 1980 thru 1984 were based on the 1976 thru 1981 average March year to year relationship of nationwide engineering increases with rises in the consumer price index (CPI) and the Bureau of Labor Statistics index for private industry manufacturing hourly earnings, as shown below. Nationwide engineering increases are from Text Table 2 of the Bureau of Labor Statistics National Survey of Professional, Administrative, Technical, and Clerical Pay (PAT&C) which measures average March year to year percentage salary increases by using January thru April data collections to reflect an average March reference period.

		Index of Avg. Hourly Earnings	Nat'l. Survey of PAT&C		
Actuals (1)	CPI	Mfg.	Engineering	Engineering Technician	Weighted Average(2)
March 1976-March 1977	6.1%	9.4%	6.4%	7.2%	6.6%
March 1977-March 1978	6.5%	8.9%	9.0%	7.1%	8.5%
March 1978-March 1979	10.0%	9.0%	8.4%	7.6%	8.1%
March 1979-March 1980	14.4%	7.5%	9.8%	11.0%	10.2%
March 1980-March 1981	10.9%	10.8%	10.9%	10.2%	10.7%
Projections (3)					
1980-1981	10.3%(4)	9.2%(4)			10.0% (5)
1981-1982	7.4%(4)	7.3%(4)			8.0% (5)
1982-1983	7.5%(4)	7.6%(4)			8.0% (5)
1983-1984	7.2%(4)	7.9%(4)			8.0% (5)

(1) Actuals represent year to year average March percentage increases (i.e., the average of the first four months of one calendar year compared to the same average one year later, expressed as a percentage change) for comparability with the National Survey of PAT&C (Text Table 2) data.

(2) The weighted average actuals represent a composite of the percentage increases in Engineering and Engineering Technician salaries shown in Text Table 2 of the March 1981 National Survey of PAT&C. The composite (average) was weighted based on the ratio of GPD salary nonexempt (engineering technician) labor to GPD salary exempt and treasury (engineering) labor, as follows:

Period	Engineering	Engineering Technician
March 1976-March 1977	76%	24%
March 1977-March 1978	74%	26%
March 1978-March 1979	68%	32%
March 1979-March 1980	68%	32%
March 1980-March 1981	74%	26%

(3) The projections differ from the actuals in that the projections are based on the percentage increase of the 12 month average (midpoint) of one year over the 12 month average (midpoint) of the following year.

(4) The CPI and Private Industry Manufacturing Average Hourly Earnings projections represent Data Resources, Inc. predictions as of February 1982.

(5) The weighted average (composite) engineering projections are auditor estimates based on the historical percentage increase relationships of the composite engineering rate to the CPI and Manufacturing Average Hourly Earnings indices and the DRI projections of these indices, rounded to whole percents.

(d) Represents the arithmetic mean of private industry escalation [see Note 2(c)]. and Federal employee escalation [see Note 2(b)].

(e) The 18.8 percent GPD escalation in 1981 is the actual incurred percentage increase of the composite GPD Engineering Department average direct labor rates from $12.63 in 1980 to $15.01 in 1981. The 6.8 percent escalation recommended for 1983-1984 is the projected average of private industry escalation and Federal employee escalation [see Note 2(d)]. The recommended 2.5 percent GPD escalation factors for 1982 and 1983 represent those factors which, when compounded with the 18.8 percent actual 1981 incurred escalation, will equate to the 24.8 percent compounded three year total average of private industry escalation and Federal employee escalation for the period 1981-1983 [see Note 2(d)].

(f) The recommended direct labor rates represent the GPD actual 1981 incurred average rates, escalated by the recommended factors of 2.5 percent for 1982, 2.5 percent for 1983 and 6.8 percent for 1984 [see Note 2(e)]. The questioned rates shown in Exhibit A are the difference between the 27 January 1982 proposed rates and our recommended direct labor rates.

3. The questioned manufacturing, test, quality, tooling and assembly rates are based on the same rationale described in Notes 1 and 2. Computation of the recommended GPD labor rates follows:

Operations	Actual 1980-1981	Estimated 1981-1982	1982-1983	Three Year Compounded Escalation	1983-1984
Government Labor Escalation	8.0%	5.4%	6.6%		5.5%
Private Industry Escalation-Mfg. (a)	9.2%	7.3%	7.6%		7.9%
Average Escalation	8.6%	6.4%	7.1%	23.8%	6.7%
Recommended Escalation Factor	17.9%(b)	2.5%	2.5%	23.8%	6.7%
Recommended Yearly Average Labor Rates	1981	1982	1983		1984
Mfg. Hourly	$ 9.83	$10.08	$10.33		$11.02
Test Hourly	$11.11	$11.39	$11.67		12.45
Test Salary Nonexempt	$10.56	$10.82	$11.09		11.83
Test Salary Exempt	$15.73	$16.12	$16.53		17.64
Quality Hourly	$ 9.91	$10.16	$10.41		11.11
Quality Salary Nonexempt	$ 8.81	$ 9.03	$ 9.26		9.88
Quality Salary Exempt	$13.75	$14.09	$14.45		15.42
Tooling Hourly	$10.13	$10.38	$10.64		11.35
Assembly Hourly	$10.14	$10.39	$10.65		11.36

(a) Private Industry Average Hourly Earnings—Manufacturing represent Data Resources, Inc. actual/predictions as of February 1982.

(b) The actual 1981 direct labor hour mix of operations rate categories was used to compute the 17.9 percent composite rate escalation from 1980 to 1981.

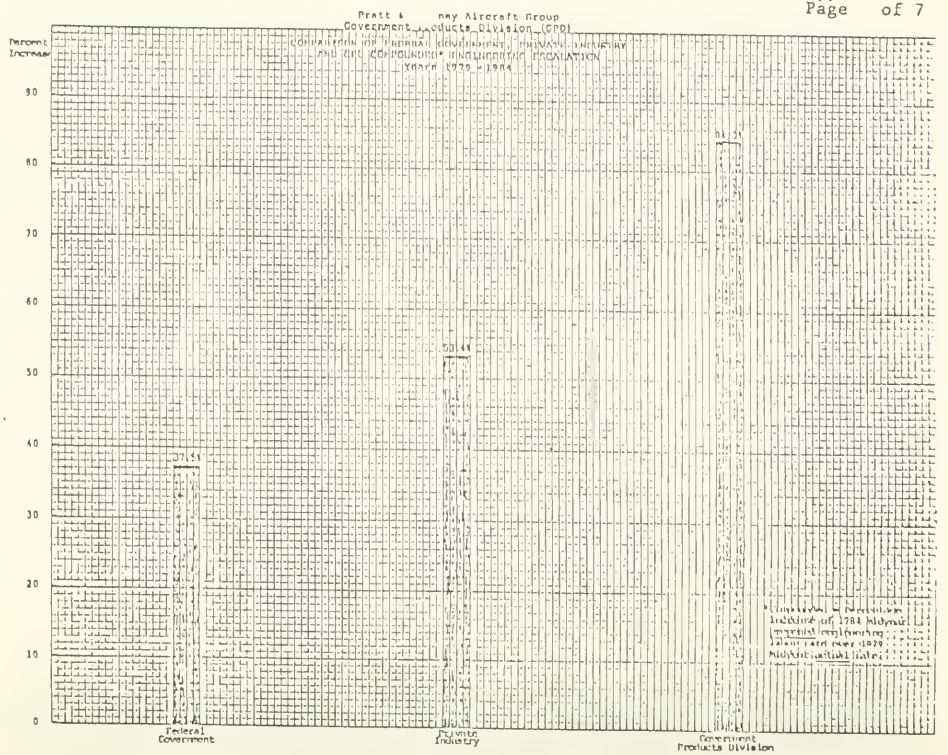
4. Questioned product support labor rates are also based on the same rationale stated in Notes 1 and 2:

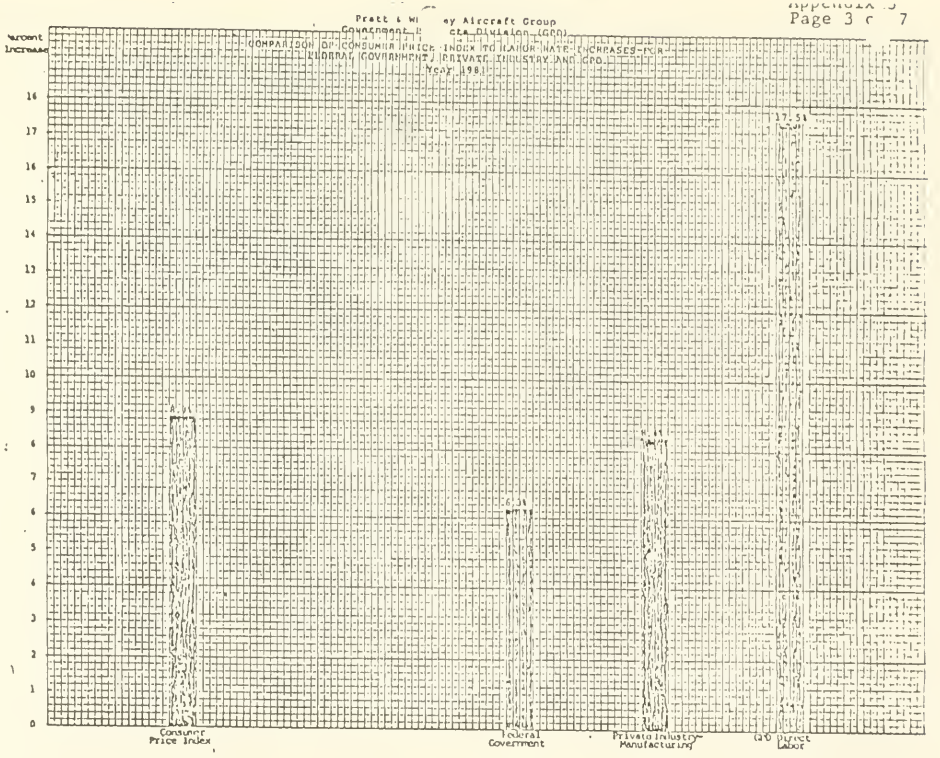
Product Support	Actual 1980-1981	Estimated 1981-1982	1982-1983	Three Year Compounded Escalation	1983-1984
Government Labor Escalation	8.0%	5.4%	6.6%		5.5%
Private Industry Escalation (a)	10.0%	8.0%	8.0%		8.0%
Average Escalation	9.0%	6.7%	7.3%	24.8%	6.8%
Recommended Escalation Factors	12.4%(b)	5.4%	5.4%	24.8%	6.8%
Recommended Yearly Average Labor Rates	1981	1982	1983		1984
Domestic Field Service	$15.72	$16.57	$17.46		$18.65
Tech. Pubs. Nonexempt	$ 7.35	$ 7.75	$ 8.17		$ 8.73
Tech. Pubs. Salary Exempt	$13.43	$14.16	$14.92		$15.93
AGE Design Salary Exempt	$14.75	$15.55	$16.39		$17.50

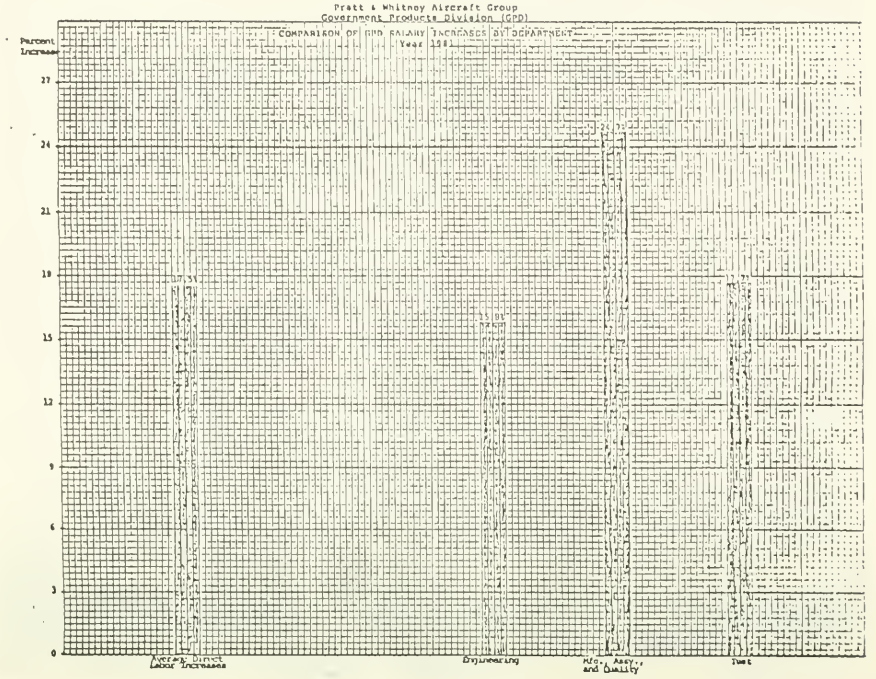
(a) See Note 2(c) above.

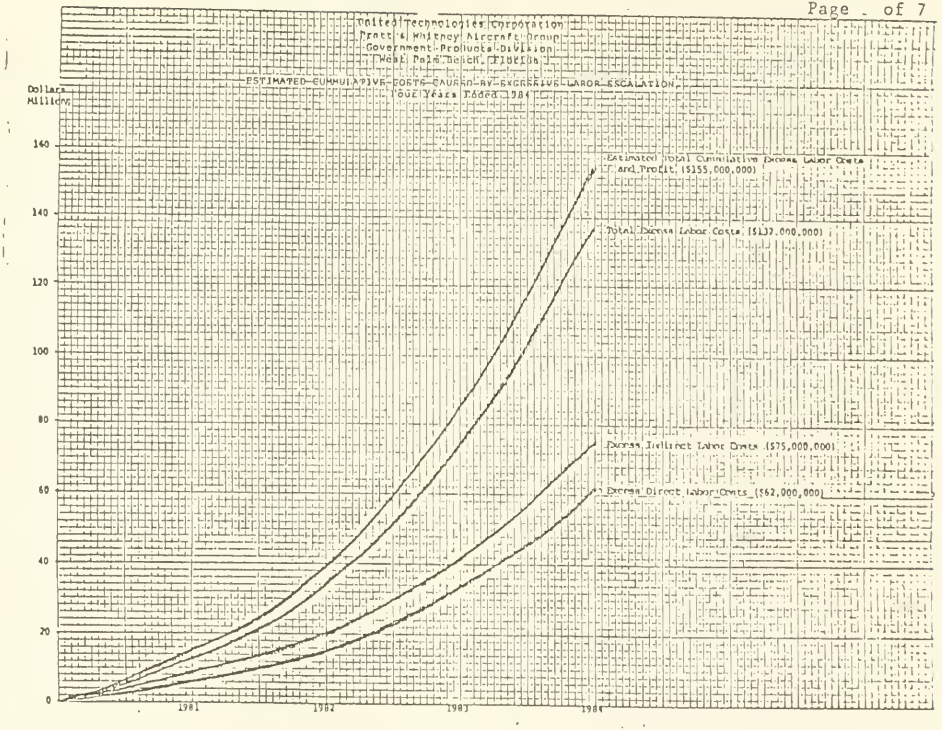
(b) The actual 1981 direct labor headcount mix of the product support rate categories was used to compute the 12.4 percent composite rate escalation from 1980 to 1981.

Government Products Division (GPD)
Percent Increase
A - Actual
E - Estimate (Auditor)
P - Proposed (GPD)
Federal Government
Private Industry
Government Products Division
1980-1981
1981-1982
1982-1983
1983-1984


Pratt & Whitney Aircraft Group
Government Products Division (GPD)
Percent Increase
90
80
70
60
50
40
30
20
10
0
Federal Government
Private Industry
Government Products Division


Pratt & Whitney Aircraft Group
Government Products Division (GPD)
COMPARISON OF CONSUMER PRICE INDEX TO MAJOR RATE INCREASES PER
GLOBAL GOVERNMENT / PRIVATE INDUSTRY AND GPD
Year 1981
Percent Increase
16
17
16
15
14
13
12
11
10
9
6
7
6
5
4
3
2
1
0
17.5%
6.3%
Consumer Price Index
Neutral Government
Private Industry Manufacturing
GPD Direct Labor


Pratt & Whitney Aircraft Group
Government Products Division (GPD)
COMPARISON OF GPD SALARY INCREASES BY DEPARTMENT
Year 19__
Percent Increase
27
24
21
18
15
12
9
6
3
0
24.0%
15.0%
Average Direct Labor Increases
Engineering
Mfg., Assy., and Quality
Tool



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Explanatory Notes to Charts on Appendixes 1 thru 5:

1. The chart on Appendix 1 compares year to year GPD actual and proposed composite engineering labor escalation with private industry and Federal Government escalation. The escalation rates shown on the Appendix 1 chart are the percentage increases, from calendar year midpoint to the next calendar year midpoint, of average direct engineering labor. The comparison shows that a given amount of engineering labor performed by GPD in 1981 cost 18.8 percent more than it would have cost in 1980.

2. The chart on Appendix 2 illustrates the total effect of the same data on a compounded basis from 1979 to 1984 rather than year by year.

3. The Appendix 3 chart shows GPD average December 1980 to December 1981 percentage salary increases for employees who remained on board the entire year compared with the increases in the Consumer Price Index and the Index of Average Manufacturing Hourly Earnings during the same period.

4. The Appendix 4 chart breaks out the GPD direct labor increases by major operating area (function). The differences between the individual percentage increases shown on the Appendix 4 chart and the 1980-1981 actual escalation factors shown in Notes 2 and 3 of Exhibit A and also shown on the Appendix 1 chart, are due to timing and skill mix differences. For example, the 15.8 percent engineering increase for 1981 shown on the Appendix 4 chart represents the average percentage increase in pay rates for engineers on board at 31 December 1980 and 1981 based on actual annual salary levels per employee at 31 December. The 18.8 percent increase shown in Note 2 to Exhibit A and on the Appendix 1 chart represents the overall increase in the total average engineering labor rate between 1980 and 1981, includes the effect of terminations and skill mix enrichment, and is based on total salaries paid and hours worked for each of the two years.

5. The cost lines on the Appendix 5 chart were computed as follows:

a. The 1981 level of effort (actual hours) were used (held constant thru 1984) to calculate the excess labor costs for 1981 thru 1984. The point on the direct labor cost line for 1981 is the difference between the actual costs for 1981 and what the costs would have been had the labor (including fringe benefits) risen only by the average private industry/ Federal employee rate of escalation as detailed in Notes 2, 3 and 4 to Exhibit A. The 1982, 1983 and 1984 cumulative amounts are based on the sum of (i) 1981 actual labor hours times the difference between the proposed labor rates and the "expected"

rates plus (ii) applicable fringe, diverted direct labor, and prior year excess labor (since 1980). The "expected" labor rates represent 1980 actuals, escalated by an average of Government and private industry escalation.

b. Excess indirect labor escalation was estimated by advancing (marking up) the direct labor cost line by the ratio of indirect payroll dollars to direct payroll dollars (55% divided by 45% or 1.22222). This estimate was based on the assumption that excess indirect labor escalation approximates that of direct labor. (GPD does not accumulate the type of indirect labor rate data that it does for direct, which precludes us from estimating more accurate indirect labor escalation).

c. The total labor cost line is a combination of the direct and indirect cost lines.

d. The total cost to the Government is the total labor cost line plus a profit rate of 13.4 percent.--

33-732 O—84——9

Senator GRASSLEY. Would it be fair to say in summary of what you said, Mr. Spanton, that the incentives within the Defense Department and the procurement process exist to increase costs rather than toward cost savings? Is that a correct summary?

Mr. SPANTON. Yes, sir.

Senator GRASSLEY. I had other questions that I think I will submit to you in writing, Mr. Spanton, but I do want to give Mr. Cooke an opportunity to comment on anything you said, if he would care to.

Mr. COOKE. My only comment, Mr. Chairman, is that it seems to me the announced purpose of the hearing, to discuss whistleblower protection, has moved far afield to matters which are undoubtedly of great concern to the Department; as a matter of fact, other committees in the Senate and in the other body are pursuing the same hearings at the present time——

Senator GRASSLEY. Yes.

Mr. COOKE [continuing]. On this same subject.

Senator GRASSLEY. And I hope other people do pursue this topic. I would say in the context of the additional witnesses that we are going to have at this hearing that, in our oversight capacity we are very concerned about the operation of whistleblower activities, and I would expect to hear from people yet on the program who would help us continue our inquiries in relation to specific cases, but also in general.

I may submit additional questions to you, Mr. Spanton. I want to thank you, and I want to thank Mr. Cooke for taking time to be with us. Again, there may be additional followup, as I previously suggested.

I will now go to our next witness, who is Mr. Ernest Fitzgerald, Management Systems Deputy, Office of the Assistant Secretary for Financial Management, in the U.S. Air Force.

Before you start your testimony, Mr. Fitzgerald, I hope that you can clear up a certain matter. Last week, I was informed by my staff that you had submitted your testimony, and that at some point between then and now, the Air Force held it up.

Would you explain what happened, and why?

STATEMENT OF A. ERNEST FITZGERALD, MANAGEMENT SYSTEMS DEPUTY, OFFICE OF THE ASSISTANT SECRETARY FOR FINANCIAL MANAGEMENT, U.S. AIR FORCE

Mr. FITZGERALD. Yes, sir.

Since I arrived at work this morning, we have had some clarification of that. It is true that my testimony was sent over, as you requested, last week, but it was requested by the Deputy General Counsel of the Air Force that it be withdrawn, and that was done.

Subsequently, we have been able, I believe—and I am stating this to the best of my belief and knowledge—that I now have a statement cleared by the Air Force, though not by the Office of the Secretary of Defense, I cannot account for what has gone on; I have been out of the city. I can only apologize to the subcommittee for the delay and say that I do have a statement that I believe is cleared by the Air Force. I unfortunately do not have it prepared

for you, but I can read from my notes and submit it later for the record.

Senator GRASSLEY. I would like to have you proceed, then, with your testimony.

Mr. FITZGERALD. All right, sir, thank you.

I am pleased to be here this morning to present Air Force views on the subject of this hearing. Following my opening remarks, any discussion, including my responses to questions you might have, will be my own views, which I hope will be shared by my superiors.

The Air Force views regarding unpleasant truths, whether they surface through so-called whistleblowers or otherwise, are shaped by the Constitution and statutes of the United States. In the case of the Constitution, the first amendment is obviously the most pertinent, especially that portion which deals with the right to petition Congress for redress of grievances. With the exception of true national security inhibitions, the Air Force supports the view that any citizen, including Government employees, has the right to communicate with Congress.

Of the Federal statutes which govern the right—indeed, the obligation—of employees to speak out, several are pertinent. For example, 18 U.S.C. 1505, makes it a serious crime to interfere with a congressional witness or to retaliate against that witness for his testimony. Then there is 18 U.S.C. 1001, which is short enough to be repeated in its entirety here, and I will quote:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Several sections of title V of the United States Code also bear on the questions of rights, responsibilities, and protection of Government employees who speak the truth. These sections are 1206, 1208, 2302, and 7211, and are involved in the *Spanton* case. The process envisioned in these statutes can be evaluated by the outcome of the *Spanton* case.

Finally, the Air Force wholeheartedly endorses the Code of Ethics for Government Service set forth in Public Law 96-303, unanimously passed by Congress on June 27, 1980, and signed into law by the President on July 3, 1980. Pertinent portions of the constitutional provisions and statutes are attached for ready reference.

That is the end of my prepared official statement, Mr. Chairman, but I would like to add just some very brief personal views.

Our value systems, beyond the Constitution and the various statutes that we operate under, profess to revere truth. The major religions of the world today all endorse it. You know, you can go beyond the Ten Commandments, and there is one in particular that I came across, an ancient Hebrew prayer from the distant past, and I will quote it. "From the cowardice that shrinks from new truth, from the laziness that is content with half-truths, from the arrogance that thinks it knows all truth, O God of truth, deliver us."

Now, that is repeated in our own time, in our ethical considerations. We almost literally worship truth in the abstract but, in

particular, particularly embarrassing truth, embarrassing to powerful special interests, we hate it.

I think you have heard within the last couple of weeks that I and some of my associates are probably the most hated people in the Pentagon for committing truth. I think that is what Mr. Spanton is up against. He is bucking a system that rewards not rocking the boat, not finding unpleasant truths, and I think he is in for a very difficult time. Fortunately for him, he is eligible to retire. But I am very much concerned, as I know he is, about the future of his employees, whom I have observed to be very diligent and highly motivated.

I do not know what we can do to counteract the natural tendency of the big spenders to strike out at its critics.

I was struck, listening to Mr. Cooke testify, at the genius of the Federal personnel system to change the subject. In almost every one of these cases, including my own, involving allegations of waste, mismanagement, or whatever, once the matter is into the Federal personnel system, we tend to forget, to lose from sight, the original problem that we were talking about. Fortunately, Mr. Spanton resurfaced those problems in his testimony. But it is somehow considered inappropriate to continue to talk about the rip off of the taxpayers once the matter is in administrative or legal procedures. I just disagree personally very much with that point of view. I think that our stewardship responsibilities continue and need to be discharged on a daily basis, whether or not the matter is before some quasi-judicial or judicial body.

[The following submissions of Mr. Fitzgerald were submitted for the record:]

CODE OF ETHICS

FOR GOVERNMENT SERVICE

ANY PERSON IN GOVERNMENT SERVICE SHOULD:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

Authority of Public Law 96-303, unanimously passed by the Congress of the United States on June 27, 1980, and signed into law by the President on July 3, 1980.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION [1]

AMENDMENT [I.] [2]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[1] In *Dillon* v. *Gloss*, 256 U.S. 368 (1921), the Supreme Court stated that it would take judicial notice of the date on which a State ratified a proposed constitutional amendment. Accordingly the Court consulted the State journals to determine the dates on which each house of the legislature of certain States ratified the Eighteenth Amendment. It, therefore, follows that the date on which the governor approved the ratification, or the date on which the secretary of state of a given State certified the ratification, or the date on which the Secretary of State of the United States received a copy of said certificate, or the date on which he proclaimed that the amendment had been ratified are not controlling. Hence, the ratification date given in the following notes is the date on which the legislature of a given State approved the particular amendment (signature by the speaker or presiding officers of both houses being considered a part of the ratification of the "legislature"). When that date is not available, the date given is that on which it was approved by the governor or certified by the secretary of state of the particular State. In each case such fact has been noted. Except as otherwise indicated information as to ratification is based on data supplied by the Department of State.

[2] Brackets enclosing an amendment number indicate that the number was not specifically assigned in the resolution proposing the amendment. It will be seen, accordingly, that only the Thirteenth, Fourteenth, Fifteenth, and Sixteenth Amendments were thus technically ratified by number. The first ten amendments along with two others which failed of ratification were proposed by Congress on September 25, 1789, when they passed the Senate, having previously passed the House on September 24 (1 *Annals of Congress* 88, 913). They appear officially in 1 Stat. 97. Ratification was completed on December 15, 1791, when the eleventh State (Virginia) approved these amendments, there being then 14 States in the Union.

position to which appointed" are substituted for "same compensations, as are prescribed for men".

This subsection was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title, but is not repealed.

Subsection (c) is added on authority of former sections 1072 and 1072a, which are codified in section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 7154 to reflect the repeal of the source statute of that subsection by Public Law 89-261, 79 Stat. 987.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

1972—Subsec. (b). Pub. L. 92-392 included reference to subchapter IV of chapter 53 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after the 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title; title 10 sections 4540, 7212, 9540.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

(Added Pub. L. 95-454, title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.)

PRIOR PROVISIONS

Provisions of this section were contained in section 7102 of this title prior to the general amendment of chapter 71 of this title by Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1191.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1002.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

SUBCHAPTER III—POLITICAL ACTIVITIES

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

SUBCHAPTER V—MISCONDUCT

AMENDMENTS

1980—Pub. L. 96-191, § 8(e)(2), Feb. 15, 1980, 94 Stat. 33, added item 7328.

1968—Pub. L. 90-351, title V, § 1001(b), June 19, 1968, 82 Stat. 235, substituted "Employment Limitations" for "Loyalty, Security, and Striking" as the subchapter II heading and added item 7313.

1967—Pub. L. 90-83, § 1(46), Sept. 11, 1967, 81 Stat. 209, inserted "Gifts and" preceding "Decorations" in the heading for subchapter IV, deleted item 7341, and added item 7342.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3374 of this title; title 39 section 410; title 42 sections 2991c, 3522.

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

The President may prescribe regulations for the conduct of employees in the executive branch.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 631 (last 16 words).	R.S. § 1753 (last 16 words).

The words "employees in the executive branch" are substituted for "persons who may receive appointments in the civil service".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Minor offenses tried by United States magistrates as excluding offenses punishable under this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 3401 of this title.

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770; Sept. 19, 1962, Pub. L. 87-664, § 6(a), 76 Stat. 551; Oct. 15, 1970, Pub. L. 91-452, title IX, § 903, 84 Stat. 947; Sept. 30, 1976, Pub. L. 94-435, title I, § 105, 90 Stat. 1389.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 241a, (Mar. 4, 1909, ch. 321, § 135a, as added Jan. 13, 1940, ch. 1, 54 Stat. 13; June 8, 1945, ch. 178, § 2, 59 Stat. 234).

Word "agency" was substituted for the words "independent establishment, board, commission" in two instances to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

REFERENCES IN TEXT

The Antitrust Civil Process Act, referred to in text, is Pub L. 87-664, Sept. 19, 1962, 76 Stat. 548, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables volume.

AMENDMENTS

1976—Pub. L. 94-435 struck out reference to "section 1968 of this title" following "Antitrust Civil Process Act", inserted "withholds, misrepresents" following "willfully", "covers up" following "conceals", "answers to written interrogatories, or oral testimony", following "any documentary material", and "or attempts to do so or solicits another to do so;" following "such demand".

1970—Pub. L. 91-452 added reference to section 1968 of this title.

1962—Pub. L. 87-664 substituted the catchline "Obstruction of proceedings before departments, agencies, and committees" for "Influencing or injuring witness before agencies and committees" and punished the willful removal, concealment, destruction, mutilation, alteration or falsification of documents which were the subject of a demand under the Antitrust Civil Process Act if done with the intent to prevent compliance with a civil investigative demand.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 as effective on Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as an Effective Date of 1976 Amendment note under section 1311 of Title 15, Commerce and Trade.

CROSS REFERENCES

Bribery of public officials or witnesses, see section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 201 of this title; title 12 section 1457; title 29 section 1111.

§ 1506. Theft or alteration of record or process; false bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 233 (Mar. 4, 1909, ch. 321, § 127, 35 Stat. 1111).

The term of imprisonment was reduced from 7 to 5 years, to conform the punishment with like ones for similar offenses. (See section 1503 of this title.)

Minor changes were made in phraseology.

CROSS REFERENCES

Concealment, removal or destruction of records, see section 2071 of this title.

Embezzlement or theft of records, generally, see section 641 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1111.

§ 1507. Picketing or parading

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States,

utilized or occupied by any foreign government or international organization, by a foreign official or official guest, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(b) Whoever, willfully with intent to intimidate, coerce, threaten, or harass—

(1) forcibly thrusts any part of himself or any object within or upon that portion of any building or premises located within the United States, which portion is used or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest; or

(2) refuses to depart from such portion of such building or premises after a request—

(A) by an employee of a foreign government or of an international organization, if such employee is authorized to make such request by the senior official of the unit of such government or organization which occupies such portion of such building or premises;

(B) by a foreign official or any member of the foreign official's staff who is authorized by the foreign official to make such request;

(C) by an official guest or any member of the official guest's staff who is authorized by the official guest to make such request; or

(D) by any person present having law enforcement powers;

shall be fined not more than $500 or imprisoned not more than six months, or both.

(c) For the purpose of this section "foreign government", "foreign official", "international organization", and "official guest" shall have the same meanings as those provided in section 1116(b) of this title.

(Added Pub. L. 92-539, title IV, § 401, Oct. 24, 1972, 86 Stat. 1073, and amended Pub. L. 94-467, § 7, Oct. 8, 1976, 90 Stat. 2000.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-467, § 7(b), added subsec. (b), and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 94-467, § 7(a), redesignated former subsec. (b) as (c), and as so redesignated, struck out reference to section 1116(c) of this title.

CHAPTER 47—FRAUD AND FALSE STATEMENTS

AMENDMENTS

1974—Pub. L. 93-406, title I, § 111(a)(2)(B)(iii), Sept. 2, 1974, 88 Stat. 852, substituted "Employee Retirement Income Security Act of 1974" for "Welfare and Pension Plans Disclosure Act" in item 1027.

1967—Pub. L. 90-19, § 24(e)(1), (2), May 25, 1967, 81 Stat. 28, included "Department of Housing and Urban Development" in item 1010 and substituted the same for "Public Housing Administration" in item 1012, respectively.

1962—Pub. L. 87-420, § 17(d), Mar. 20, 1962, 76 Stat. 42, added item 1027.

1951—Act Oct. 31, 1951, ch. 655, § 25, 65 Stat. 720, substituted, in item 1012, "Public Housing Administration" for "United States Housing Authority".

1949—Act May 24, 1949, ch. 139, §§ 18, 19, 63 Stat. 92, corrected spelling of "1016. Acknowledgment etc.", and substituted "officers" for "offices" in "1019. Certificates by consular officers."

CROSS REFERENCES

Alien registration, fraud and false statements, see section 1306 of Title 8, Aliens and Nationality.

Carriers' reports to Interstate Commerce Commission, false entries, see section 20 of Title 49, Transportation.

China Trade, false or fraudulent statements prohibited, see section 158 of Title 15, Commerce and Trade.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 78o, 80b-3.

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749.)

priate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(k) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122, and amended Pub. L. 97-258, § 3(a)(2), Sept. 13, 1982, 96 Stat. 1063.)

AMENDMENTS

1982—Subsec. (j). Pub. L. 97-258 substituted "section 1105 of title 31" for "section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)".

§ 1206. Authority and responsibilities of the Special Counsel

(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(b)(1) In any case involving—

(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation; or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation; or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (3) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

(2) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

(3)(A) In the case of information received by the Special Counsel under paragraph (1) of this section, if, after such review as the Special Counsel determines practicable (but not later than 15 days after the receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety, the Special Counsel may, to the extent provided in subparagraph (B) of this paragraph, require the head of the agency to—

(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

(ii) submit a written report setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel.

(B) The Special Counsel may require an agency head to conduct an investigation and submit a written report under subparagraph (A) of this paragraph only if the information was transmitted to the Special Counsel by—

(i) any employee or former employee or applicant for employment in the agency which the information concerns; or

(ii) any employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(4) Any report required under paragraph (3)(A) of this subsection shall be reviewed and signed by the head of the agency and shall include—

(A) a summary of the information with respect to which the investigation was initiated;

(B) a description of the conduct of the investigation;

(C) a summary of any evidence obtained from the investigation;

(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

(E) a description of any corrective action taken or planned as a result of the investigation, such as—

(i) changes in agency rules, regulations, or practices;

(ii) the restoration of any aggrieved employee;

(iii) disciplinary action against any employee; and

(iv) referral to the Attorney General of any evidence of a criminal violation.

(5)(A) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in paragraph (3)(A)(ii) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General—

(i) the report shall not be transmitted to the complainant; and

(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(6) Upon receipt of any report of the head of any agency required under paragraph (3)(A)(ii) of this subsection, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the agency's report under paragraph (3)(A)(ii) of this subsection contains the information required under paragraph (4) of this subsection.

(7) Whenever the Special Counsel transmits any information to the head of the agency under paragraph (2) of this subsection but does not require an investigation under paragraph (3) of this subsection, the head of the agency shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

(8) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by any agency or any person which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(9) In any case under subsection (b)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(c)(1)(A) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved, and to the Office, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken.

(B) If, after a reasonable period, the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may order such corrective action as the Board considers appropriate, after opportunity for comment by the agency concerned and the Office of Personnel Management.

(2)(A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

(B) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel may proceed with any investigation or proceeding instituted under this section notwithstanding that the alleged violation has been reported to the Attorney General.

(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

(A) that the head of the agency has personally reviewed the report; and

(B) what action has been, or is to be, taken, and when the action will be completed.

(d) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsections (b)(3)(A) and (c)(3) of this section, together with—

(1) reports by the heads of agencies under subsection (b)(3)(A) of this section, in the case of matters referred under subsection (b); and

(2) certifications by heads of agencies under subsection (c)(3), in the case of matters referred under subsection (c).

The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that

information be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking, and

(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(f) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

(A) after any investigation under this section, or

(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

(2) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection, together with any response by the employee, shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

(h) If the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters which are not otherwise appealable to the Board under section 7701 of this title, the Special Counsel may seek corrective action by filing a written complaint with the Board against the agency or employee involved and the Board shall order such corrective action as the Board determines necessary.

(i) The Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board and the Special Counsel shall not have any right of judicial review in connection with such intervention.

(j)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

(k) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

(l) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

(m) The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1125.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1207, 2303, 7502, 7512, 7521, 7542 of this title; title 22 section 4139.

§ 1207. Hearings and decisions on complaints filed by the Special Counsel

(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title is entitled to—

(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) be represented by an attorney or other representative;

(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title and designated by the Board;

(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(b) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1206, 3393 of this title.

§ 1208. Stays of certain personnel actions

(a)(1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this section for a period of not more than 30 calendar days.

(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130.)

§ 1209. Information

(a) Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

(b) The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1131.)

CHAPTER 13—SPECIAL AUTHORITY

AMENDMENTS

1978—Pub. L. 95-251, § 2(c)(1), Mar. 27, 1978, 92 Stat. 183, substituted "Administrative law judges" for "Hearing examiners" in item 1305.

§ 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(1) (function of Civil Service Commission).	Jan. 16, 1883, ch. 27, § 2(1) (function of Civil Service Commission), 22 Stat. 403

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4703 of this title.

§ 2301. Merit system principles

(a) This section shall apply to—
(1) an Executive agency;
(2) the Administrative Office of the United States Courts; and
(3) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:
(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
(5) The Federal work force should be used efficiently and effectively.
(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
(8) Employees should be—
(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
(A) a violation of any law, rule, or regulation, or
(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—
(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and
(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1113.)

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title; title 22 section 3902, title 31 section 732.

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.
(2) For the purpose of this section—
(A) "personnel action" means—
(i) an appointment;
(ii) a promotion;
(iii) an action under chapter 75 of this title or other disciplinary or corrective action;
(iv) a detail, transfer, or reassignment;
(v) a reinstatement;
(vi) a restoration;
(vii) a reemployment;
(viii) a performance evaluation under chapter 43 of this title;
(ix) a decision concerning pay, benefits, or awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and
(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;
(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—
(i) a position which is excepted from the competitive service because of its confiden-

tial, policy-determining, policy-making, or policy-advocating character; or

(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

(C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

(i) a Government corporation;

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit

system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 2301, 2303, 4703, 7116, 7121, 7701 of this title; title 22 sections 3905, 4115; title 31 section 732.

§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1117.)

§ 2304. Responsibility of the General Accounting Office

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) the [1] General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

(1) significant actions taken by the Board to carry out its functions under this title; and

(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.)

§ 2305. Coordination with certain other provisions of law

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes", approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled "An Act to amend the Internal Security Act of 1950", approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835).

[1] So in original. Should be "The".

OFFICE OF THE SECRETARY OF DEFENSE

7 October 1970

MEMO FOR: SECRETARY PACKARD

Sometime ago you and I discussed the role of the Defense contract auditor. I think the attached memorandum is along the lines you would like. I have discussed it with Bob Moot and he is in accord with it as written. Your signature is recommended.

BARRY J. SHILLITO

In view of Mr Colardi's memo attached, action on the reinstatement matter in this file are considered closed.

S/A Collins
3/1/71

3/6/71

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

OCT 9 - 1970

MEMORANDUM FOR Assistant Secretary of Defense (Comptroller)
Assistant Secretary of Defense (I&L)

SUBJECT: Role of the Defense Contract Auditor

I am concerned that there be a clear understanding of the advisory role the contract auditor has in support of the contracting officer.

The independent professional advice of auditors is essential to good Defense contracting. The contracting officer must consider such advice. Nevertheless, contracting officers' decisions on matters of contract pricing have to take into account many factors in addition to those presented by the auditors. It is, therefore, necessary that all those responsible for furnishing support to the contracting officer understand the advisory role they should play.

We should avoid actions by auditors in their advisory capacity which appear to dispute or question specific decisions of contracting officers. I want our contracting people to exercise judgment in their day-to-day work. The escalation of possible disputes relative to specific decisions should be avoided. If, however, such decisions or judgment have general application and, in the professional opinion of the auditor, indicate a change or trend in pricing or costing policy, the auditors may, of course, transmit the appropriate information through audit command channels.

David Packard

Senator GRASSLEY. Thank you, Mr. Fitzgerald.

You are one of the most famous of the whistleblowers, and with your track record, I would be surprised if your advice is not sought out by those people who are concerned about waste, fraud, and abuse, and about things not being right. I would guess they probably do.

Do you have people who are whistleblowers, or who are prompted to enter into the world of whistleblowing seek your advice?

Mr. FITZGERALD. Yes, sir. This happens very frequently, several times a week on the average. Some concerned Government employee will call and recite a horror story of waste or mismanagement. Invariably, these people say the same thing, namely, that they would do the right thing if they could get away with it. Now, that to me in itself is a very, very sad commentary on the state of our motivational system and our system of real values in the Federal bureaucracy.

George Spanton was one of those people. I had known George and had done business with him when I was in the Department of Defense, in the Air Force, before being fired. He called me in March of 1982, when he first began encountering difficulties with his labor audit report. That was the reason that I became very interested in the Spanton matter. As we pursued it, we found that Mr. Spanton's views on excessive labor rate escalation—and "labor" is a term of art that embraces the executive salaries and benefits, as well, not just the blue collar people—we found that Mr. Spanton was the only person in the field with significant responsibility in the area who was supporting the views of our Secretary, the Secretary of the Air Force, Verne Orr, who as Mr. Spanton testified, had separately arrived at the same conclusion.

So we tried to get support within the Department of Defense and within the Department of the Air Force for Mr. Spanton's views—by we, I mean my office—on the grounds that we had very few supporters for the Secretary's views, and it was unwise, it seemed to me, to allow the cannibals to eat our missionaries, and that was what was happening. It was obvious that our chief missionary, Mr. Spanton, was being severely harassed by the people who wanted to preserve the status quo.

Senator GRASSLEY. I would like to have you relate for us some of your experiences and the sort of resistance you have encountered up to the present. And correct me if I am wrong, but I think you have been a Government employee at least since President Johnson, and under every President since then. I would also like to have you relate to us whether it is any different under one President or another, whether he happens to be a Republican or Democrat or the different personalities of the different Presidents.

Mr. FITZGERALD. That is correct. I joined the Government service as a civilian employee. I had been in the military as a youngster. In 1965, under President Johnson—and as a matter of fact, I first got in trouble, as Senator Heflin may remember from the reaction of my family down in Alabama—in 1968, under Lyndon Johnson, and I have been in varying degrees of difficulty ever since. I think that the stewardship performance in the Pentagon has declined steadily as a matter of historical tendency regardless of party. Each successive administration in the Pentagon seems to get

weaker in regard to controlling the costs and controlling the appetites, generally, of the giant contractors who consume so much of the Nation's resources and sometimes do not give us the best product.

I do not think it is a partisan matter. I do think it is a matter of patronage run wild and overwhelming the considerations of getting the best equipment at the lowest sound price, which has always been the stated policy of the Pentagon.

The reason for this, I think, is very simple. You can ask yourself, "Why not?" Why should you do otherwise than to allow nature to take its course and not buck the trend and face the difficulties that Mr. Spanton has faced and others have faced even less successfully than he. The *Spanton* case is unusual only in that, I think, due to a peculiar set of circumstances and his own strong character, Mr. Spanton will come out all right. Among other things he is eligible to retire. But we see others who are just utterly crushed, or who fire and fall back and go along with the gag, as we say in the Pentagon.

Senator GRASSLEY. Do you see this matter getting, as you said, progressively worse?

Mr. FITZGERALD. Yes, sir.

Senator GRASSLEY. You are talking about up to and now, the present?

Mr. FITZGERALD. Yes, and I should quickly add that I believe that our Secretary, Mr. Orr, would like very much to do something to change the direction that we have been going for the last 20 or 30 years, to my knowledge. I believe his desire is shared by my boss, Assistant Secretary Hale, and certainly it is, as you know, Senator Grassley, from talking to them by my associates. I believe you have met them, and you can sense their determination.

We have a very large number of excellent people in the Department of Defense, military and civilian, and I truly believe that most of them would do the right thing if they could get away with it, just as the would-be whistleblowers, whom we call closet patriots, tell me.

Senator GRASSLEY. What do you mean, "if they could get away with it"? They are in charge, right?

Mr. FITZGERALD. Well, unfortunately, the people who seem to display the best motivations are not in charge.

Senator GRASSLEY. Well, then, who is in charge?

Mr. FITZGERALD. That is hard to say.

Senator GRASSLEY. Well, are the civilians in charge?

Mr. FITZGERALD. Well, I think in the sense that civilians appropriate the money for the budget, you would have to say in the final analysis, "Yes." But I do not believe that we have adequate civilian control of the military procurement bureaucracy in the Pentagon.

Senator GRASSLEY. In other words, what Secretary Orr and his counterparts would like to accomplish is not carried out by military subordinates, or civil servant subordinates below him?

Mr. FITZGERALD. I believe that is often the case. Mr. Spanton, I think, referred in his testimony to an April 15, 1982, memorandum by Secretary Orr, regarding excessive wages and salary increases by the defense contractors and requesting that something be done about it. I do not believe that memorandum in its original, unblem-

ished form, was ever transmitted to the procurement officers who would have to take action on it. Somewhere along the line, it was sidetracked, and we find——

Senator GRASSLEY. The person who sidetracks it will not be fired?

Mr. FITZGERALD. Well, I do not know who that person is. I suppose one could find out, but we have great difficulty getting information from the military acquisition community. I have what amounts to a court-guaranteed contract that gives me the right to direct access to that kind of material, and it is simply flaunted by the military. They do not do it.

Senator GRASSLEY. The military people are ignoring a court order involved with your position?

Mr. FITZGERALD. It certainly seems that way to me, Senator, yes, sir.

In those instances where I have taken matters directly to Secretary Orr, we have gotten some momentary relief in a couple of cases, but the problem resurfaces and has to be dealt with on a continuing basis—which, again, diverts your attention and saps the energies that should be applied to doing something about the stewardship problems. It is another case of changing the subject, just as the Federal personnel system changes the subject and does not deal with the underlying problems, which I perceive to be a waste of money and acceptance of shoddy product.

Senator GRASSLEY. In regard to our present hearing is it at the lower levels, below the political appointees, where the obstacle to whistleblowers' protections are found?

Mr. FITZGERALD. I cannot make that as a general statement, but it appears to me that our Secretary does want to do something about the problem. I am not sure that that view is shared by the other political appointees. I just do not know; I do not know them. You have got to be very careful in looking at public statements. As I indicated earlier, the official view of the Department of Defense in these matters always, as far back as I can remember, has been to obtain the necessary equipment at lowest sound price. But the actual behavior of the system is quite different. And this is not unusual. It is so usual that management writers have given it a name. It is called adumbrations, which is a coined word, which means communicating your true intent by your actions rather than your words. And oftentimes, the true intent of an organization is diametrically opposed to what they pronounce for public consumption. That is why I think the *Spanton* case is so important. The rewards and punishment system could be exercised properly at this moment. We do not need to wait until all of this long, drawn-out hearing takes place. Mr. Spanton could be rewarded; people who have not done their stewardship jobs correctly could be punished or retrained or something, today. We do not need to wait to take these corrective actions.

Senator GRASSLEY. Thank you.

Senator Heflin.

Senator HEFLIN. Mr. Fitzgerald, you have given some rather shocking testimony. As I wrote down from it, you in effect have testified that Mr. Spanton, an auditor, is suffering from rocking the boat because he brought out irregularities.

Mr. FITZGERALD. Yes, sir, that is correct. That is what I feel to be the case.

Senator HEFLIN. To me, an auditing agency is like the police. They are supposed to do investigations, they are supposed to audit, they are supposed to point out irregularities. And if by pointing out an irregularity, you are rocking the boat, then something is wrong. And it seems to me that the agency, the structure, ought to be carefully reviewed.

In regard to general whistleblowing, your statement was that you thought that the average civil servant would do the right thing if he could get away with it, as if doing the right thing is something that is wrong, in effect, within the establishment. This is rather shocking to me. It seems to me that from a structural viewpoint, there needs to be changes made. Perhaps Secretary Orr wants to. But if he cannot, then there is something wrong with his review structure and mechanism.

Now, we created the Inspector General's Department of the Department of Defense, and there was quite a battle as to whether or not it was going to be an independent Inspector General's Department, and it was finally created as being one that was under the Secretary of Defense, and not independent.

Will an independent Inspector General's Department, in the Department of Defense, in your judgment, aid in bringing out irregularities and preventing fraud and abuse?

Mr. FITZGERALD. I think it would have a beneficial effect, at least for a short time, Senator. But I do not see that it is a permanent fix. The independence of evaluation groups is very difficult to maintain, as you understand, and they themselves tend to be discouraged. One of the shocking things to me was to learn that relations with contractors was a matter on which people like Mr. Spanton were graded by their superiors. Now, you know, I personally do not really care whether Mr. Spanton gets along with the contractors or not. He would, he is a gentlemanly type, and most of his associates are the same. You can be firm without being too objectionable. But these bureaucratic pressures seem to wear down the critical agencies. The independence of the Defense Contract Audit Agency should definitely be increased. They come under the Comptroller of the Department of Defense, administratively, and they are not the least bit independent of the procurement people. I can furnish for the record a memorandum about 10 years old that took to task the DCAA for being too tough on procurement and suggested that they should restrain their criticism of procurement actions. Now, you know, I do not think that is right. I think they should be straightforward, and if the procurement community needs criticizing, they should be criticized.

The DCAA was only created in the late 1960's after the General Accounting Office was eased out, in effect, of auditing defense contracts. This was done by the Congress, primarily, the House Committee on Government Operations, which held what I consider a shameful series of hearings in the summer of 1965, which brought about this debacle that we are dealing with now. The General Accounting Office now primarily relies on defense auditing, for their auditing results, by the Defense Contract Audit Agency, which is

far from independent. They just do not have a semblance of independence you would require of an auditor.

So I quite agree with you that should be reviewed, but I think it needs to go beyond just establishing an independent Inspector General. We certainly need to review the congressional actions that have debilitated and dehorned the General Accounting Office.

Senator HEFLIN. Well, this Defense Contract Audit Agency—how is it organized? What layers are involved in it? Let us say Mr. Spanton's West Palm Beach office, are there then regional offices, or how is it structured?

Mr. FITZGERALD. I am not intimately familiar with that, Senator, but I can give you my general knowledge of what I know about it.

There are at the plants of a number of major contractors—I think there are some 25 under Air Force jurisdiction and a lesser number in the other services—resident offices staffed by Air Force people in the case of the Air Force and parallel offices staffed by Defense Contract Audit Agency people, of which Mr. Spanton is one. He is the head of one of those 25 offices. They in turn report to a regional office. Mr. Spanton reports to the office in Atlanta, Ga. And they in turn report to the national headquarters here in northern Virginia. There are in some cases subordinate layers, but I am not too clear on those between the regional offices and some of the plant representative offices.

Senator HEFLIN. Then, who does that agency operate under—what division?

Mr. FITZGERALD. Normally, under the Office of the Secretary of Defense.

Senator HEFLIN. Well, does he have a Deputy Secretary or a Deputy Assistant Secretary?

Mr. FITZGERALD. Yes, sir. The Assistant Secretary of Defense Comptroller has a sort of policy oversight office of that, and he has a Deputy Assistant Secretary who is responsible for audit oversight and followup, that sort of thing—audits generally, including DCAA.

But the DCAA, as Mr. Spanton testified, is mostly responsive to the procurement community. Now, I should explain that that community is perceived by those of us who work in the business as being not only the Government procurement people, but the contractors as well. And it really does not go well for the auditors if they are too pushy and alienate the giant contractors. You can beat up on the little guys, but it is not considered good form to beat up on the big contractors. And we have results every day that speak to that. I saw in the paper this morning an article in the Washington Post alleging illegal work reported at a missilemaking plant. This was allegedly taking place at the Hughes plant out in Tucson, Ariz. Now, we have been forbidden by court order to talk about this. Hughes went into court over here in Alexandria, Va., and got an order forbidding us from talking about this. I found indications that something was amiss at this plant more than a year ago. Other people have seen the same indications. The DCAA found no evidence whatsoever, none whatsoever. They have come to specialize, I think—this is not too harsh a statement—in finding no evidence. That is what they do best.

Senator HEFLIN. Well, then, what suggestions would you make as to the structure of the audit division of the Department of Defense?

I assume that you feel there is an inherent danger because of its connection with procurement and that therefore that ought to be separated. Is that your feeling?

Mr. FITZGERALD. Yes, sir, but I would go beyond that, because of the nature of the organization over its history—and it is not that old; you know, the republic survived for nearly 200 years without a Defense Contract Audit Agency—I would suggest that we abolish the Defense Contract Audit Agency, because I do not think you could readily clean house with the staff without doing that and divide the functions either amongst the service audit agencies and the General Accounting Office, or perhaps, create a new agency under the Inspector General, as is done in other departments of the executive branch.

My understanding is that in other departments of the executive branch, the auditing function is part of the Inspector General. It is not, in our case. But anything you could do, Senator, to increase the independence of the agency and to clean house of the staff of people who have grown up through successive selection of compliant, noninquisitive auditors, would help.

Senator HEFLIN. Well, is there an inherent weakness in having resident auditors who, in effect, live day-by-day with the defense contractor and who deal only with that one defense contractor over a period of time, as opposed to a methodology of auditing by which the defense contractor, who might not know on Monday what auditor will be coming in, like traveling auditors or some sort—in your judgment, is the methodology of resident auditors which sometimes brings about a coziness that can exist—do you have any suggestions as to changes that could occur in that?

Mr. FITZGERALD. Yes, sir. We have severe problems with resident people, both in our military representative offices and on occasion in the Defense Contract Audit Agency offices. The problems are so common that they have acquired a name. It is called going native. These people come to view the contractor as their client, and, at least in my observation, often represent the views of the contractor to the higher levels of the Government and to the taxpayers, indirectly, rather than representing the interest of the taxpayers and the higher levels of the Government to the contractor.

We have rules requiring rotation of the Defense Contract Agency auditors, and I think that is generally a good rule.

Unfortunately, in the *Spanton* case, it is quite obvious that Mr. Spanton had not gone native. The agency sought to invoke these rules in order to move Mr. Spanton prematurely. We have gotten statistics that showed that compliant officers—ones who did not find evidence of waste or other problems—are given extensions in their tour of duty. But there was an attempt to move Mr. Spanton prematurely.

So again, you have got to look at the motivations of the people at the top. It would obviously be better to have all surprise audits and visits by traveling auditors, if you could arrange it, but there is also something to be said for familiarity with the contractor's operation.

So I think I would tend to reduce the resident staffs, but not do away with them altogether.

Senator HEFLIN. Let me ask you this. Is there a need for an improvement in the liaison between the whistleblower and the auditor, or the person or agency that can do something about it? A whistleblower may make a phone call or reveal something on this hotline. Does it depend on the hotline and the agency as to whether or not that information gets to the proper person that can take action?

What is your observation of the liaison between the Federal employee who sees something going on, who wants to report it? Does it get mired down into the layers of bureaucracy?

Mr. FITZGERALD. It often gets mired down in the layers of the bureaucracy, Senator. The general feeling of the people that I talked to, the so-called closet patriots and an occasional whistleblower, is that nothing happens as a result of the hotline calls in most cases.

It is my observation that allegations of a relatively minor nature—that is, relatively minor in their financial and political impact—are sometimes followed up rather vigorously. If you look at the cases that have been taken to conclusion by the Department of Defense IG, you will find that the vast majority of them are relatively small items. You can report your office-mate for cheating on a travel voucher and get away with it, probably. But it is not clear that you can get away with or have anything done about a disclosure that would seriously embarrass and hurt financially a giant military contractor. There is a matter of degree there in what you can get something done about and what you cannot.

In those cases where we have been able to take specific items to our Secretary, we have sometimes gotten things done about them. Senator Grassley was on television this morning, and the introductory part used a little stoolcap that goes on a navigator's stool legs on Boeing airplanes. We had been paying over $900 apiece for these little plastic caps, and one of the sergeants in the Air Force, Sergeant Kessler, noticed that the contractor was requesting an increase of more than $200 apiece for them, and he thought it was outrageous. He reported it to the hotline, and nothing happened until the matter was taken directly to the Secretary of the Air Force. In this case, the Secretary saw to it that Sergeant Kessler got a bonus and a commendation letter, and that the company was called on the carpet.

Now, I do not know that we have done anything about spare parts pricing generally as a result of that, but I thought that was the right action, and I think if we could get more cases like that, we could eventually turn around the perception that the top people do not care about saving money.

Senator GRASSLEY. And then, in turn, encourage people below that to be more diligent in seeking out fraud, waste, and abuse.

Mr. FITZGERALD. I think it had a momentary good effect. I do not know that it is going to last. We have got to follow through and systematically correct the overpricing of not only spare parts, but big articles, as well. Otherwise, isolated actions like that come to be viewed as show business. So you need to follow through and correct the big stuff, also.

Senator GRASSLEY. I have a couple wrap-up questions, and then I will not hold you anymore. I know Mr. O'Connor has been so patient through this entire hearing, so we will get to him right away.

I just wondered, as one final wrap-up in regard to Mr. Spanton. You told about the problems he has had up to this point. Do you anticipate that he is going to have greater problems in the next few weeks or months as he remains in Government employment—and hopefully, he will—and pursues what his audits show should be pursued?

Mr. FITZGERALD. I anticipate he will continue to have difficulties. I think that Mr. O'Connor and his investigators, Mr. Tyrell and Mr. Gordon, have done an excellent job in the *Spanton* case, and that is the most hopeful thing we have, is the fine work done by the Special Counsel's Office and the very impressive documentation they pulled together on it. And if that could be made widely known outside this little hearing room where the thing will be judged by, I guess, an administrative law judge, I think that the *Spanton* case could have a happy outcome, and not only Spanton, but the people who have stuck their necks out for him could be protected and we would send the right signal to all Government employees.

It is hard to think of Government employees not watching the *Spanton* case. If it turns out as I think the Special Counsel sees it, I think it will be a very constructive signal to the rest of the Government employees. If, on the other hand, the administrative law judge contrives some tortured reasoning to rule that the people who put Spanton down were within their rights, well, then, the wrong signal will be sent.

Senator GRASSLEY. Just by way of summary I would like to have a statement from you about what you believe the consequences are over a period of time of our failure to heed the warnings of whistleblowers.

Mr. FITZGERALD. We have turned the rewards and punishment system on its head. The people who make waves are discouraged, put down; their careers are destroyed, even if they win, as I have been said to have done. My career was ended effectively, or advancement of my career was ended, when I committed truth over in this building. No one wants to have their career nipped in the bud. Now, the secondary consequences of this, I believe, are the stupendous prices that we are paying for sometimes shoddy hardware for the operating forces in the Department of Defense and the consequent burden on the taxpayers. I do not think that is going to change until we go back and set the rewards and punishment system rightside up.

Senator GRASSLEY. I thank you for being so patient and so diligent in your work and for your desire to want the best out of our Defense Department, and for seeking that goal. Your testimony is appreciated by this subcommittee, but more importantly, I think it is appreciated by the public. Your service to the public is appreciated, as well. You may not know that, but I think it has been.

Thank you.

Mr. FITZGERALD. Thank you, sir.

Senator GRASSLEY. I would now like to call our final witness, Mr. William O'Connor. Mr. O'Connor is the Federal Government's Special Counsel. As such, it is his job to investigate whistleblower complaints. I want to thank you again for the second time, Mr. O'Connor, for being so patient, and I would ask you to proceed with your testimony as you see fit.

STATEMENT OF K. WILLIAM O'CONNOR, OFFICE OF THE SPECIAL COUNSEL, U.S. MERIT SYSTEMS PROTECTION BOARD

Mr. O'CONNOR. Thank you, Senator Grassley, for inviting me to be here, and Senator Heflin, thank you for your patience in waiting to hear whatever I had to say.

I would say, Senator Grassley and Senator Heflin, that I did not bring a prepared statement because I felt that it would be appropriate for me to respond to the questions of the subcommittee, and I would be glad to do that. I will only insert one caveat, and that is that I will not discuss or mention any case presently in litigation before my Office. As a lawyer, I feel that you can appreciate that, and you can understand why I cannot.

Senator GRASSLEY. Yes, I can.

I heard Mr. Spanton refer to what he called certain legal protections afforded by your Office. Can you elaborate on those protections?

Mr. O'CONNOR. Well, they are incidental, actually, sir. The Office is charged with the responsibility of dealing with prohibited personnel practices and for taking actions in the event of the determination that such a thing has occurred. The Office was established to protect the merit system rather than to protect the individuals who are employees in the Federal Government, the theory being that the protection of the merit system would produce protection for individuals. Thus, my Office does not represent and is not constituted to represent any individual at all, and instead represents only the system. It is in that sense like a prosecutor's office, which deals with the enforcement of the law rather than representing private clients. And so the protections are, as I say, incidental to the enforcement of the law.

Senator GRASSLEY. Well, then, is anyone in the Federal government specifically charged with protecting the employee's interests?

Mr. O'CONNOR. Yes, sir. The Assistant Secretaries for Administration and Management throughout the agencies of the executive branch have the responsibility for insuring fair treatment of the employee within the various executive departments. There is, of course, a variety of grievance procedures and mechanisms set up, and those gentlemen and ladies are charged with that responsibility.

Equally, Inspectors General are charged with some areas of responsibility for investigation and bringing to the attention of the Secretaries or directors or administrators of their respective agencies any kind of misconduct which relates to or is done by an employee. So to that extent, one might say that there are protections built into the executive branch.

Senator GRASSLEY. Well, would you yourself ever be a whistleblower, knowing what you know about the system?

Mr. O'CONNOR. If I were as a counsel approached by an individual who asked me as a lawyer in the private practice of law whether or not he or she should become a whistleblower, I would say that the cost-benefit analysis was counterindicated. [Laughter.]

Senator GRASSLEY. Thank you for being so candid.

Now, as an attorney, do you believe that an employee's interest can ever be adequately protected by an agency which, by the very

nature of the employee's revelations, is placed in an adversarial position?

Mr. O'CONNOR. Well, I think that it comes to how much information and how proper the information is that is brought to the head of the agency. It seems to me that in the selection of executives and in the appointment of them, we go through a pretty complex process that is intended to insure probity among other things, but singularly, probity in the leadership of the Government. If properly informed, yes, I think the Secretary of an agency can insure that an individual is properly protected, and I would say that on a number of occasions where my Office has interceded, or other predecessors in my Office have interceded, Secretaries or administrators have taken appropriate corrective action to insure that what had been determined to be improper practices were stopped. So, yes, the Secretary of the agency may do that without being required to do so in a litigated mode. However, that is a very arduous process, a very difficult process, time-consuming, expensive, and not readily effective.

Senator GRASSLEY. From the standpoint that you say the system does provide protection, even in the adversarial position that the employee might find himself with his administrative head, does that happen very often, in the vein that you would say that it could be done?

Mr. O'CONNOR. As always is the case in the practice of law, the theory and the fact are often somewhat different. So the answer to your question is "Sometimes."

Senator GRASSLEY. Does the process mandate that the employee provide counsel at his or her own expense to insure that his own or her own rights are protected?

Mr. O'CONNOR. Are we speaking of whistleblowers, sir?

Senator GRASSLEY. Yes.

Mr. O'CONNOR. There is no provision for counsel for whistleblowers.

Senator GRASSLEY. So, then, it would have to be at the employee's own expense?

Mr. O'CONNOR. Well, an agency in some circumstance or other might decide that it should appoint a counsel for an individual who is identified as a discloser susceptible to making protected disclosures as defined in the statute. That would be a discretionary act by the executive in charge of the agency or perhaps delegated to the general counsel of the agency. It could happen. It need not. There is no provision of law for it.

Senator GRASSLEY. Even considering the employee as an incidental beneficiary of the system, what mechanisms exist through your Office to safeguard the employee's rights?

Mr. O'CONNOR. There are two. The first is the process which my Office may undertake to seek corrective action in the event, for example, that something in the nature of a reprisal were taken, something in the nature of a prohibited personnel practice were being asserted and were in fact being done by an agency toward an employee. We could seek and obtain from the Merit Systems Protection Board a stay of that action, and then we would advise the Secretary or the administrator and so forth of the agency of the problem and we would ask the individual who was the head of the

agency to take internal corrective action, and he or she very well may do that. If, on the other hand, he or she does not, then the option arises as to whether or not my Office should bring an action before the Merit Systems Protection Board to seek an order compelling that action to be taken. That process is attenuated, and it is an administrative law process. It would constitute first an application for appropriate relief being filed with the Board; that would be assigned to an administrative law judge; the administrative law judge in due course would hold a hearing and render an opinion, and in due course, that would be appealed to the Board, and in due course, the Board would render a decision. At that point, administrative finality would attach.

Senator GRASSLEY. Is the protective order the best tool that your office has to protect the rights of an employee?

Mr. O'CONNOR. Yes.

Senator GRASSLEY. In 1980, the President signed into law a Code of Ethics consisting of 10 canons that any person in Government service must follow. Who is in charge of investigating allegations of action contrary to the code?

Mr. O'CONNOR. I think that I would say that is a distributed responsibility. The Office of Government Ethics has certain responsibilities for that area of enforcement. The Inspectors General all have responsibilities in that area, and so do, in most cases, the Assistant Secretaries for Management in the agencies. My Office would pick up on something like that only in the event that it related to a prohibited personnel practice in which we were otherwise interested, because my Office has a limitation of jurisdiction to prohibited personnel practice actions.

Senator GRASSLEY. Do sanctions exist for actions in violation of the code?

Mr. O'CONNOR. When I was an Inspector General, we Inspectors General discussed that sort of question extensively in this administration, and in some of the agencies there are—perhaps now in all—standards of sanction for violations of those ethical standards. However, any sanction that is imposed for violation is under the administrative procedures which are available, susceptible, if it is more than a very trivial sanction, to appeal, reappeal, reevaluation, and so forth, through the agency and ultimately to the Merit Systems Protection Board. So if the idea was to have prompt discipline for a violation, I think that is pretty hard to do.

Senator GRASSLEY. Do you know of any congressional efforts underway to strengthen your Office?

Mr. O'CONNOR. There was a bill proposed by Senator Stevens. It is called S. 1662, as to which there were hearings held recently, and that bill is replicated to some extent by another bill, the number of which I do not know, which was pending in the other House, but I understand those portions which relate to my Office in the other House are no longer being pursued.

Senator GRASSLEY. Do you believe that these efforts ought to be underway, or would you encourage them to be underway?

Mr. O'CONNOR. I think that there ought to be a change, Senator Grassley, Senator Heflin. My Office has 80 people, and there are about 3 million civilian workers in the Federal system. And I think that one of two things ought to happen. And now, I am speaking as

Bill O'Connor. I am not speaking for the administration. This is not A–19 testimony; it has not been cleared. But if I were looking at this as a political philosopher, as a student of government, I would take this organization that I run and remove it from the MSPB and probably place it within the Department of Justice. I think it would do better as a barnacle on a battleship than it does as a free-floating anemone. And it could be the latter, but to have it as part of the MSPB seems to me to be not the best role for it, and I do not think that the resources which replicate those for litigation and for investigation of the Department of Justice should be reestablished in another freestanding agency. I think that redundant agency-forming is not a desirable thing for government to do.

Senator GRASSLEY. Would you have any other recommendations for improving it—and of course, that one you just suggested is a very major change.

Mr. O'CONNOR. Well, if it is expected that my Office will have opportunity to provide protections of various kinds, we need access to a Federal court system as well as to the Merit Systems Protection Board, because the Merit Systems Protection Board by its very nature has limited jurisdiction, and that limitation on jurisdiction of the Merit Systems Protection Board means that my Office, in the event, for example, we were seeking witness protection, could not get it from the Merit Systems Protection Board, which—let us be very blunt—does not even have contempt power in its own statute. If an order of the Merit Systems Protection Board were entered, then that order would have to be brought to a district court, which would have to be then asked to provide a contempt sanction in order to enforce the order of the Merit Systems Board.

So what we have is no real access to any available sanction to provide protection for anybody in my Office. We have an administrative process which goes as I have described.

Senator GRASSLEY. Whose decision, or who is responsible that you do not have access to the courts?

Mr. O'CONNOR. Well, that is the Congress, sir. That is how the statute reads.

Senator GRASSLEY. Are you curtailed by OMB in any way in anything you do in fulfilling your responsibilities that the law gives you?

Mr. O'CONNOR. Well, the Deputy Director of OMB is the Chairman of the President's Council on Integrity and Efficiency, and I am part of that Council, so we have a good relationship there. A–19 review of the Office of Special Counsel's proposals for legislation may or may not be required. There seems to be some question about that, and some of my predecessors have fought for one, and some the other, and budget, of course is tied to the MSPB budget practice, but OMB has review there, too, and we have generally not had a problem with OMB about such things, because they understand the function of the Office. But the review process is there.

We do not have what is called in the argot, budget bypass or legislative bypass authority clear in the statute under which I operate.

Senator GRASSLEY. Senator Heflin?

Senator HEFLIN. Do you have any idea what percentage of the cases that are handled by the Merit Systems Protection Board are whistleblower-related?

Mr. O'CONNOR. Infinitesimal, sir. The Merit Systems Protection Board would get whistleblower cases from me. My Office has had very, very few, and the output of my Office is probably something like 20 or 30 cases a year, not all of which are whistleblowers, and the output of the Merit Systems Protection Board, for example, in the past year was, I think, around several thousand.

Senator HEFLIN. That brings up the question of whether or not a person who wanted to seek the remedies that your Protection Board gives would be the employee, would be the whistleblower, and if after trying, he gives up and is willing to acquiesce, he does not seek your protections, I suppose—there could be a lot of people who would like to do it, but eventually just acquiesce and do not move forward.

Mr. O'CONNOR. Well, Senator, there is more than one road available through my office for whistleblowers. One road works pretty well. We have a statutory provision which makes it possible for me to keep secret the information source. If someone comes to me and says, "We have information about a bad thing being done in Agency X," I can keep information of that type source secret and pass on the information, which I do, generally speaking, to the Inspector General of the agency or to the appropriate Cabinet officer, under B–2 or B–3 referrals, as they are called.

Those things work pretty well. Of course, if a person is effective in targeting a particular kind of abuse, it does not take much to run a back azimuth to that person's place of business to find out who it was. I think I could do it in most cases, if I had worked in an agency for a little while.

So the protection of anonymity is a limited one, but that does permit a piece of information to be passed on, and often it turns out that good remedies are imposed by the secretaries. We are not talking about reprisal, now. We are talking about correction of the problem to which the whistleblower addresses his disclosure.

Senator HEFLIN. It could be both ways. Some people might express the idea, or use the idea that they, in effect, reveal something on a superior or something else as their defense or excuse, but since there are very few that are related, you do not have many of those instances?

Mr. O'CONNOR. Well, that comes up, sir. The legal problem, if I may digress for a moment—well, I can state it fairly simply. Under the law as it is now applied, the Office of Special Counsel enforcement process is analogous to the National Labor Relations authority type enforcement. That is to say we have what might be described as mixed motive cases. We have an individual who is perhaps susceptible to reprisal for a particular action; at the same time, the individual may also be susceptible to a sanction or an action which the agency was going to take because he or she was incompetent or because he or she was in some way inappropriately disposed and susceptible to discipline within the agency. Under the status of the law, if the reprisal composes part of the motive, and if the retaliatory action or disciplinary action or whatever it may be is also an action which would have been taken by the agency even

if the disclosure had not been made, then the rule of law would be that the individual who had made the disclosure would be subject to the sanction, even if the disclosure were right, and even if the retaliation were partly based upon the disclosure. That is the outcome of the decisions of the Supreme Court in *Mount Healthy* v. *Doyle* and of the National Labor Relations Board in what is called *Wright Line* case, from Massachusetts. That is the status of the law. It makes litigation of this type complex, because even though you win, you often lose.

Senator HEFLIN. No further questions.

Senator GRASSLEY. Thank you, Senator Heflin.

I have one final question, and it refers back to your answer to my question that protective orders were the best tool that you have to protect employees. Are these protective tools readily issued?

Mr. O'CONNOR. A protective order may be issued by the Board in three ways, sir. There is what we call an A stay, a B stay, and a C stay. The A Stay is essentially granted by the Merit Systems Protection Board on less information than it would take to sustain a search warrant, and it is a 15-day stay. The B stay is 30 days, usually, and that requires a little higher threshold. For a C stay, the Board really has to agree with me that there is something wrong before they will grant it. So the level of ease with which such orders are obtained for the Merit Systems Protection Board depends on the effectiveness with which the burden of persuasion is carried and received by the respective entities. In order to obtain the ultimate order of corrective action from the Board after protracted litigation, that can take 3 or 4 years.

Senator GRASSLEY. Do you mean it would take 3 or 4 years to get a protective order?

Mr. O'CONNOR. Well, in most cases, the Board would probably leave the C stay in place—that is to say, the third level of stay, which would be a protective order, in place—while the litigation ran its course. But it takes a long time for administrative litigation to run its course, and in some cases, has taken up to 3 years for it to get through the pipeline to the end. In a recent decision, the *Mortonson* decision, it was a case in which the Board finally rendered a decision in favor of the agency, although retaliatory intent was found, and they applied the *Mount Healthy* test as I described. I think the stay was in effect for 2 or 3 years.

Senator GRASSLEY. Well, thank you. I ran across an article by Tom Diaz in the Washington Times, saying how difficult your job is. If that article is an accurate description of your position and your job, I would like to include it in the record, if you do not object.

Mr. O'CONNOR. I do not object at all, Senator. I would just ask somebody to light a candle for me.

Senator GRASSLEY. Mr. O'Connor, I think the article says a prayer.

[The following was received for the record:]

[From the Washington Times, Nov. 1, 1983]

"Whistleblowers" Hard to Sort Out

(By Tom Diaz)

Let us pray for K. William "Bill" O'Connor.

O'Connor is the federal government's Special Counsel. As such, it is his job to protect "whistleblowers" (who are sometimes also known by such less noble names as "fink," "squealer" and "rat"). He does this by investigating when a whistleblower complains that his boss is doing bad things to him (such as firing him) as retaliation for his committing truth.

If O'Connor finds that bad things are in fact being done to someone who is legally entitled to protection by virtue of being a true whistleblower, he can ask the Merit Systems Protection Board (a sort of civil service court) to intervene and stop the bad things. If the board agrees with O'Connor, it sometimes has the power to help. Sometimes it is helpless to stop what is going on. Whether it has power to intervene or not in a given case is one of those questions over which lawyers were invented to haggle. And they do.

Back to O'Connor. He has an important job, but one that is guaranteed to be thankless. Many who fashion themselves "whistleblowers" are nothing more than ankle-biting crackpots—malcontents and incompetents whose last refuge before being fired is a well-timed toot on a penny whistle. It falls to O'Connor to sort out the nuts from the bolts, the screwballs from the straight arrows.

The nature of truth being what it is, this is at best a difficult task. My own observations lead me to believe that about nine out of every 10 "whistleblowers" are simply loose cannons, people who never grasp the big picture, can't get things their own way and set about destroying their more talented superiors through the press.

Yet whistleblowers as a class are indiscriminately revered by the press and congressional opportunists alike. In the press they often find kin in spirit, for the skepticism inherent in the craft of journalism feasts on doubts about the honesty and competence of public servants. In the Congress, whistleblowers often find their intellectual peers, an observation which—lest it be misunderstood—reflects to the credit of neither.

All of this puts O'Connor in a "no win" position. If he declares in favor of a putative whistleblower against a high-level official, then he is accused by the incumbent administration of trashing its officers for darkly suspect reasons. On the other hand, if he finds that one of these self-anointed whistleblowers is really nothing but a pious pain in the perimeter, than he is accused by the other side of being incompetent himself and betraying his oath of office.

No matter how O'Connor does his job, he is bound to make someone angry.

A good example of the perpelexity of his problem is provided by the case of one Bertrand Berube, who was fired from a high-level job at the General Services Administration some weeks ago by Gerald Carmen, the agency's chief.

Berube says he was fired because he was trying to blow the whistle on GSA by exposing dangerous neglect in the agency's maintenance of federal buildings. Carmen says he canned Berube because he was insubordinate and was merely seeking sensational press coverage about problems for which he had no constructive solutions.

After an investigation, Special Counsel O'Connor agreed with Carmen.

I don't know which version of the events surrounding Berube is the truth. I have read a good bit of material about the case, and I specifically suspend judgment. It is a complicated matter, full of shadowy factual meanderings wrapped in self-serving gloss by both sides. At bottom, I suspect that only two men know the truth—Carmen and Berube. And the truth is quite likely different for both of them.

However that may be, I do know that O'Connor has suffered an orchestrated trashing ever since he did his duty as he saw it. For example, Rep. Barney Frank, D-Mass., held a show trial hearing to rake O'Connor and his decision over the coals.

A related event is scheduled to happen today in the House subcommittee on civil service, whose chairman is that irrepressible oddball, Rep. Patricia Schroeder, D-Colo.

Schroeder is holding hearings on a bill that would put O'Connor and other government personnel agencies—the MSPB, the Office of Personnel Management, and the Federal Labor Relations Authority—on a short leash. Schroeder wants to authorize them to exist for only three years at a time. This is so Congress would be able to constantly second-guess their decisions.

This scheme is about as transparent a political ploy as has come down the pike. What Schroeder really wants is to ram the highly political views of the Democrats

on the House Post Office & Civil Service Committee down the collective throat of the executive branch.

Schroeder and Frank run in a crowd that are constantly bellyaching about the reputed "politicization" of the federal work force. But by interfering with the work of supposedly independent personnel officials such as O'Connor, they are really playing the same game of retaliation they profess to abhor when it is done to "whistleblowers."

Senator GRASSLEY. Well, thank you, Mr. O'Connor. I appreciate your testimony very much.

Before we close, I have a few comments and observations I would like to make. This has been a preliminary exploration of a serious matter in the administrative process of Federal Government. I have seen striking similarities in the cases of Mr. Fitzgerald and Mr. Spanton. There are disturbing signs that this pathology is an enduring one.

The term, "bureaucrat," is not a dirty word, nor are the people who are bureaucrats to be considered malicious or undermining. They do bear a responsibility, however, the responsibility of running the day-to-day affairs of the Federal Government. The Congress also bears a responsibility. It is the responsibility of determining the context in which the bureaucrat works. If there is a mismatch between what we proclaimed as our Code of Ethics and how the work of Government is executed, then we will destroy any high-minded sense of purpose in our bureaucrats and feed a cancer of cynicism.

Based on what I have heard here this morning, I do not like what I see so far. I fully intend to look at it more. There are several issues that come into play, but the most important issue is that of trust. Trust is the glue which holds a free government together. We cannot demand trust unless we are prepared to earn it, and that relationship holds true not only in the bureaucracy, but also in the relationship between the people of this country and their Government.

I wish to thank those who testified here today for contributing to a broader understanding of the administrative process, and before closing, I would like to ask Senator Heflin if he has anything in closing.

Senator HEFLIN. No, I have no closing statement, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Heflin.

The meeting is adjourned.

[Whereupon, at 12:22 p.m., the subcommittee was adjourned.]

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