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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1671

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House Judiciary Subcommittee on Courts

Ceremonial Courtroom
Federal Courthouse
601 Market Street
Philadelphia, Pennsylvania

Thursday, August 20, 1998 - 10:20 a.m.

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BEFORE:

Honorable Daniel Clark, Majority Chairperson
Honorable Joseph A. Petrarca

IN ATTENDANCE:

Honorable Thomas Caltagirone

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1 **ALSO PRESENT:**

2

3 **Brian Preski, Esquire**
4 **Majority Chief Counsel**

5 **David L. Krantz**
6 **Minority Executive Director**

7 **David Bloomer**
8 **Majority Research Analyst**

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24	Stephanie L. Franklin-Suber, City Solicitor, City of	
25	Philadelphia.)	

1 CHAIRPERSON CLARK: Good morning. I'd
2 like to welcome everybody to today's hearing.
3 I'm Representative Dan Clark. I am the Chairman
4 of the Judiciary Committee's Subcommittee on
5 Courts; and I'll be conducting today's hearing on
6 House Bill 1671, which is the False Claims Bill.

7 That bill was introduced by George
8 Kenney, a Representative in the Philadelphia
9 area. And George unexpectedly couldn't be with
10 us this morning, so we're going to put his
11 statement in the record.

12 And also the City of Philadelphia's
13 solicitor was not able to be with us, but she has
14 submitted testimony for the record and we'll also
15 add those comments and concerns to the
16 proceedings.

17 With that, I believe what we'll do is
18 get right to our -- well, I'd like to have
19 Representative Caltagirone introduce himself.

20 REPRESENTATIVE CALTAGIRONE: Thank you,
21 Mr. Chairman. Representative Tom Caltagirone,
22 the City of Reading, Berks County, Democratic
23 Chairman of the House Judiciary Committee.

24 CHAIRPERSON CLARK: And with that, I
25 think we will call upon our first panel of

1 individuals to present testimony on House Bill
2 1671, which is commonly known as the False Claims
3 Act.

4 And we'd like to introduce the Honorable
5 Lynne Abraham. She is the District Attorney of
6 Philadelphia; Lenny Deutchman, who is the
7 Assistant District Attorney of Philadelphia,
8 District Attorney's office; and Sue
9 McDonald -- Kathy McDonald, also with the
10 District Attorney's office in Philadelphia. You
11 may proceed.

12 MS. ABRAHAM: Thank you, Representative.
13 Good morning, Representative Clark, Members of
14 the Committee, and other interested parties. I
15 am Lynne Abraham, the District Attorney of
16 Philadelphia.

17 I'm here in a dual capacity as the
18 District Attorney of Philadelphia and as the
19 Legislative Chair of the Pennsylvania District
20 Attorney's Association.

21 I want to thank the Members of the
22 Committee for inviting us here today to speak on
23 behalf of this bill, Pennsylvania's, we hope to be,
24 the False Claim Act.

25 I'm also thankful to Marc Raspanti who

1 has ceded his first-up turn to me. And I
2 appreciate Mr. Raspanti's courtesy to me, and I
3 hope I won't abuse the privilege. You'll cut me
4 off if I'm going on too long.

5 While I had abbreviated remarks I wanted
6 to make, I thought in reviewing my testimony in
7 full that it would be appropriate that I cover
8 all the points today. And, of course,
9 Ms. McDonald, Mr. Deutchman are here to help the
10 Committee answer any questions it might have on
11 this Act.

12 It's my firm belief that if this
13 legislation is enacted it will be one of the best
14 tools and weapons that we have for combating what
15 is unfortunately a problem that has become of
16 grave importance to Pennsylvania; and that is,
17 fraud against our government.

18 Combating fraud will save state and
19 local governments millions or more each year.
20 And by encouraging private citizens to bring
21 antifraud suits on behalf of the government, it
22 will save state and local governments millions
23 more in the cost of fighting fraud.

24 A similar law has proven to be a huge
25 success for the Federal Government, and the

1 number of states adopting false claims bills is
2 growing. I believe that Pennsylvania should be
3 in the front of this trend, and I strongly urge
4 this Committee and the Legislature to pass this
5 legislation.

6 The problem that the bill addresses is
7 severalfold; but generally speaking, the bill
8 attacks vendors who defraud the government and
9 the government workers who help them.

10 Fraud against the government is an
11 age-old problem, one probably as old as the
12 government itself. People defraud the government
13 because, as Ben Franklin said, "There is no kind
14 of dishonesty into which otherwise good people
15 more easily and frequently fall than that of
16 defrauding the government."

17 In short, government is an easy target.
18 People perpetrate frauds against the government
19 out of greed; and the greed is manifested because
20 the government has not heretofore in general paid
21 close attention to it. Therefore, the government
22 does become an easy target.

23 It's frequently rationalized as a
24 victimless crime. And the victim, the government,
25 which as we all know is really we the people of

1 Pennsylvania, has so much money the theory goes,
2 that just a little bit of it being gone won't be
3 missed.

4 But the real victim is every taxpayer
5 whose taxes are higher to make up for the fraud;
6 every child whose classes are large or whose
7 books are out of date; every street missing a
8 police officer on patrol; every senior citizen
9 waiting hours for the paratransit; and a whole
10 host of other victims whose victimology is
11 brought about by budget cuts in part because of
12 some of the taxpayer money raised has been lost
13 to fraud.

14 Since the Federal Government has had a
15 False Claims Act, it has generated statistics
16 which I believe show the problem and how the
17 False Claims Act can help to solve.

18 Our United States Department of Justice
19 has estimated that as much as 10 percent of the
20 Federal budget is lost to fraud. It is an
21 astounding figure. Tens of billions of tax dollars
22 each year.

23 If we by extrapolation take 10 percent
24 of Pennsylvania's budget for fiscal year 1999,
25 that would amount to \$3.5 billion lost to fraud.

1 And 10 percent of Philadelphia's budget would for
2 the same period of time be \$260 million: Money
3 that could be used for schools, for crime
4 fighting duties, for police equipment and
5 manpower, for services, for infrastructure.

6 We are now paying that much more than we
7 had to to obtain the level of services we now
8 enjoy. If we would cut the fraud -- and I believe
9 that this bill will go a long way to doing
10 that -- we perhaps would have some of that money
11 to return to the taxpayers, increase services
12 without increasing taxes, or sometimes a
13 combination of both.

14 Fraud against the government is more
15 than a raid on the public treasury. Vendors who
16 defraud the government harm the citizens of
17 Philadelphia and Pennsylvania by delivering
18 services poorly or not at all.

19 The road contractor who defrauds the
20 government will leave the state with an unsafe
21 road. The health care professional who defrauds
22 Medicare hurts elderly and other patients by not
23 providing the care needed while representing that
24 care has been provided.

25 This piece of legislation briefly

1 described will I think work to change the way
2 government and vendors do business. I'm sure
3 that all of you have received detailed analyses
4 of the Act's provision, but I want to talk about
5 the most important or salient features of this
6 bill.

7 The bill's key feature is that it will
8 encourage enforcement of its provisions by giving
9 financial incentive to "whistle-blowers" to come
10 forward with proof of fraud against the
11 government.

12 The government, the state, the local, or
13 both entities may bring civil suits against the
14 vendors committing the fraud. Or the
15 whistle-blowers themselves, known as qui tam
16 plaintiffs may, in fact, sue on behalf of
17 themselves as well as the government.

18 This plaintiff in turn stand to gain a
19 benefit, a financial benefit, of anywhere between
20 20 to 33 percent of the monies recovered. When
21 you recall that the False Claims Act will allow
22 recovery of treble damages plus an additional
23 punitive damage of 5,000 to \$10,000 per false
24 bill, you can see that it gives great incentives
25 for whistle-blowers to come forward and a strong

1 incentive for vendors to deal honestly with the
2 Commonwealth and its subdivisions.

3 By making use of whistle-blowers, by
4 allowing them to sue on behalf of the government
5 as well as themselves, and through the relief
6 which the Act afforded, the Act can restore
7 stolen money to the government as well as pay for
8 its own enforcement.

9 Given the amount of fraud in which our
10 state and local governments suffer now, to combat
11 it by hiring more lawyers and investigators to
12 bring all of the suits would be too expensive and
13 I'm not sure would work as well as this Act
14 would.

15 By encouraging whistle-blowers
16 themselves to bring suit, we save the taxpayer
17 the cost of prosecution while at the same time
18 recovering the taxpayer money. Furthermore, the
19 relief which the Act creates provides for
20 restitution to the victim and cost of the
21 investigation for the Commonwealth.

22 The treble damages provision ensures
23 that the defrauded governmental agency gets its
24 money back and the civil penalty provisions will
25 underwrite the efforts of state and local

1 prosecutors to combat fraud. In short, the Act
2 encourages whistle-blowers to come forward,
3 guarantees restitution, and pays for itself.

4 This works in a variety of ways; but let
5 me speak to specifically not of theory, but how
6 it has worked in the real world. The Federal
7 Government has such an act in various forms and
8 in various incarnations since the Civil War.

9 The Federal Government's experience with
10 its acts tells us two things: First, that it
11 does work; and second, that the linchpin of the
12 Act is allowing recovery by qui tam plaintiffs,
13 the whistle-blowers.

14 Congress passed the first Federal
15 Claims Act in 1800 and 63 at the height of the
16 Civil War and at the prompting of President
17 Lincoln who saw the Union's effort being
18 undermined by war profiteers who sold the Army
19 crates of saw dust instead of muskets.

20 It provided for double damages, and it
21 also allowed the qui tam plaintiff to sue and
22 awarded that plaintiff a 50 percent share of all
23 the penalties. However, in 1943 during
24 interestingly enough the Second World War,
25 Congress severely restricted the False Claims

1 Act.

2 It eliminated the 50 percent share and
3 gave the court the discretion to allow the qui
4 tam plaintiffs only as much as 25 percent or
5 perhaps even nothing.

6 It also restricted the qui tam
7 plaintiffs from bringing suit if the government
8 possessed the same knowledge which the
9 whistle-blower had even if the government wasn't
10 acting on it.

11 The result of these restrictions and
12 other was that False Claims Act suits during and
13 after the Second World War and subsequent thereto
14 virtually stopped.

15 The government did not have the
16 resources or often the evidence from the inside,
17 from the whistle-blower's knowledge to bring the
18 suits on its own and the restrictions removed any
19 incentive for whistle-blowers or others to come
20 forward to write suits themselves.

21 In 1985, the year before the qui tam
22 provisions were restored by Congress, nine out of
23 ten top defense contractors were under
24 investigation for defrauding the Federal
25 Government; yet not one of them faced the

1 potential of a False Claims Act suit.

2 In nineteen hundred and eighty-six,
3 however, Congress restored the whistle-blower
4 provisions of the False Claims Act; and false
5 claims suits arose immediately. Congress was
6 responding to the cries against the \$600
7 wrenches, a \$400 ashtray, and a variety of other
8 raids on the Treasury which we have seen.

9 And, of course, this is particularly but
10 not exclusively limited to the Defense industry
11 and has, of course, more recently been revealed
12 in the health care industry.

13 Recognizing that it simply could not
14 afford to hire thousands of more assistant United
15 States attorneys and even more investigators and
16 that whistle-blowers needed a financial incentive
17 to come forward, Congress restored a guaranteed
18 share of 15 to 30 percent to the qui tam
19 plaintiff as well as expenses and attorneys fees.

20 It also prohibited retaliation against
21 whistle-blowers. With these changes, the False
22 Claims Act was restored. While in nineteen
23 hundred and eighty-seven only 33 false claims
24 suits were filed, by mid-nineteen hundred and
25 ninety-six, 360 such suits had been filed in that

1 year alone.

2 And from 1986 when the False Claims Act
3 qui tam provisions were restored to nineteen
4 hundred and ninety-six, the United States
5 recovered approximately \$1.13 billion through qui
6 tam actions.

7 As much as the revision of the False
8 Claims Act has recovered monies fraudulently
9 obtained, it has restored or prevented
10 countless billions of being stolen in the first
11 place because it has deterred vendors from
12 seeking to perpetuate fraud in the first place.

13 The Taxpayers Against Fraud study in
14 nineteen hundred and ninety-six estimated that
15 from between '86 and '96 the Federal False Claims
16 Act saved taxpayers over a hundred and
17 forty-seven billion dollars up to maybe even 259
18 billion and that from 1996 through 2006, it
19 estimates that taxpayers will save an additional
20 240 to \$280 billion.

21 This study conservatively estimates the
22 qui tam provisions alone saved taxpayers between
23 35 and \$71 billion from 1986 to 1996 and projects
24 that in the years 1996 to 2000 will save an
25 additional 105 to 210 billion. You know, a

1 billion here, a billion there, pretty soon it
2 adds up.

3 The great success that the Federal False
4 Claims Act has been since the qui tam provision
5 shows how effective it is. And if you needed
6 proof -- and I want to digress from my prepared
7 notes -- just this morning a little teeny article
8 in the Daily News indicates by a headline title,
9 Contractors Whine about the Fraud Law.

10 Contractors are complaining that the
11 False Claims Act has led to overly-aggressive
12 lawsuits against such contractors as AT&T,
13 Boeing, General Dynamics, ITT, Litton, North
14 Gruman, United Technology, and another host of
15 other defense contractors. So you know it must
16 be effective if the major defense contractors are
17 complaining.

18 Interestingly enough -- and I know this
19 little article doesn't cover it all -- the health
20 care industry which has suffered billions of
21 dollars in fraud through Columbia Health Care's
22 ripping off of billions of dollars from Medicare
23 and Medicaid and other health providers and, of
24 course, locally the SmithKline Beecham case that
25 was settled with Mr. Raspanti's help for \$344

1 million, including \$9 million in interest.

2 So the health care industry is
3 noticeably absent from the complaint. Also the
4 University of Pennsylvania's settlement for
5 additional overbilling was \$109 million. There
6 are many, many others; and I don't mean to single
7 out those few. Just as a representative sample.

8 A small percent of that money recovered
9 by the SmithKline Beecham settlement went to 43
10 percent -- 43 states. Pennsylvania got a small
11 amount; but because we didn't have a False Claims
12 Act, our recovery was in the thousands rather
13 than in the millions of dollars.

14 The simple truth is that when a Federal
15 false claims suit involves both Federal and state
16 money, the state share is larger when the state
17 has a false claims act which provides for
18 multiple damages. As you can see, this case
19 shows -- the SmithKline Beecham case -- that the
20 time to enact such legislation has come.

21 In other states, whereas in nineteen
22 hundred and ninety-eight, there are four states
23 now with a false claims act, in nineteen hundred
24 and ninety-six, only four states had them.

25 Now, I don't mean to say that four

1 states to eight states out of 50 is a quantum
2 leap; but it shows the popularity and the wisdom
3 that states have that embarked upon enacting this
4 legislation. And that's why I encourage
5 Pennsylvania to be the next state to do so.

6 These states are California, Florida,
7 Illinois, Michigan, Tennessee, Texas, Utah, and
8 the District of Columbia.

9 In Pennsylvania, the need for false
10 claims legislation has always been great. Each
11 year the Commonwealth loses millions in
12 restitution and penalties it could have recovered
13 from fraudulent vendors.

14 As important as it has always been to
15 have a State False Claims Act, the need for this
16 legislation has never been greater as it is right
17 now.

18 Every day, for better or for
19 worse -- mostly for worse -- government at all
20 levels and especially local and state government
21 is becoming increasingly involved in providing
22 more and more services to our citizens and
23 especially our most impoverished citizens.

24 To provide these services, the
25 Commonwealth has more and more turned to private

1 vendors: Health care, day care, elder care, care
2 for neglected and abused children and so forth.

3 But government cannot support these
4 services if it is paying for services never
5 rendered or paying for the same services twice or
6 three times; in other words, if its vendors
7 submit fraudulent bills for payment.

8 Instead, to pay for these claims,
9 government has had to restrict the services of
10 the vendor to those most in need of them. The
11 proposed false claims legislation will help
12 police this process and keep down the cost to the
13 government of this substantial police effort.

14 I don't know anyone who will come
15 forward specifically with objection to the
16 proposed legislation, but I'll address a few
17 which I anticipate may be made.

18 Perhaps the biggest objection which has
19 traditionally been made to the false claims
20 legislation is allowing the whistle-blower to
21 recover. Critics have said that it encourages
22 greedy tattletales to betray their employers and
23 acts as a lottery ticket for plaintiffs.

24 I think recent cases indicate that but
25 for whistle-blowers a lot of corporate America

1 would not have mended its ways. And indeed with
2 respect to these qui tam plaintiffs, lots of
3 things in government would never have changed but
4 would have gone unchecked.

5 Criticism of whistle-blowers or
6 so-called whistle-blowers is not only overblown,
7 but it's unwarranted. To answer that, you must
8 remember the basic truth which the history of the
9 Federal legislation reveals with the
10 whistle-blower provisions in the false claims
11 legislation is effective and devastatingly so in
12 attacking fraud.

13 Without it, the fraud goes more or less
14 unchecked. The so-called greed which the
15 whistle-blowers provisions provide and the False
16 Claims Act in general indicates that it attacks
17 the greed of the vendors, the so-called
18 greed -- and I use that in quotes of the qui tam
19 plaintiff -- is at worst minor compared to the
20 greed which it combats.

21 And indeed in the SmithKline case, there
22 was no greed at all. It was an honest -- I
23 believe it was a billing clerk as my memory
24 serves. And I know Mr. Raspanti will speak of
25 this.

1 But as I recall, it was a billing clerk
2 who brought these overbillings to his or her
3 supervisor and the supervisor in effect said, you
4 know, Mind your own business. Just go back and
5 do what you're supposed to do and don't put your
6 nose in other peoples' business.

7 This person was not involved in any
8 fraud at all. This person wanted to bring to the
9 attention of his or her employers or supervisors
10 that something was amiss. So I think it's really
11 wrong to say that all whistle-blowers are greedy
12 or out for themselves.

13 Many good citizens over the course of
14 history have seen their employers do wrong and
15 say, This is wrong. It's not that they have
16 participated in it.

17 They're innocent people who are caught
18 in the web of perpetuating the fraud by not
19 paying attention to the detail that the so-called
20 whistle-blower did in the SmithKline Beecham and
21 other cases.

22 I mean, this is really a bad thing to
23 call an honest citizen greedy just because they
24 get a reward for the vilification, the ostracism,
25 and the firing that they get as being a

1 whistle-blower.

2 And we don't have to go any further than
3 just our local example to show how good, small
4 people within the corporate structure can be the
5 linchpin of turning a monumental fraud into a
6 great benefit for all citizens and rate payers
7 and other folks who are affected by these
8 activities.

9 These conditions are typical for the
10 whistle-blower: The ostracism, the firing, the
11 snickers behind their backs, and general
12 destruction of their life.

13 And it is also not uncommon,
14 parenthetically, for whistle-blowers to lose
15 their families and their children over the
16 aggravation suffered by bringing bad things to
17 light that others might want to keep hidden.

18 In any event, I don't believe that the
19 price that the whistle-blower has to pay is
20 equally covered by any recovery that might
21 obtain. There is a strong incentive for people
22 to come forward: The honest people as well as
23 some who might not be so honest with blowing the
24 whistle.

25 Any other objection may be that the

1 proposed legislation allows the prosecuting
2 authority to recover a percentage of civil
3 penalties. This objection too ignores reality.

4 The prosecuting authority, whether it's
5 a local prosecutor's office or the State Attorney
6 General's office, must be allowed to recoup a
7 percentage of the civil penalties in order to
8 finance the investigation and prosecution of
9 these cases.

10 In an era of downsized government, it's
11 just this kind of self-financing which the
12 government should encourage. And it's also
13 important to note that wherever there is
14 objection of -- for example, our local city
15 solicitor. City solicitors are uniquely
16 unqualified, especially in smaller counties, to
17 bring these kinds of suit and the prosecutor
18 along with the State Attorney General's office
19 is.

20 In conclusion, I wish to stress that the
21 Philadelphia District Attorney's office and the
22 Pennsylvania District Attorney's Association,
23 both of whom I represent here today, strongly
24 support this proposed legislation.

25 And we also want to know that -- want

1 the Committee to know that law enforcement is
2 becoming more creative in trying to eradicate
3 crime.

4 One of the lessons we have learned over
5 the past few decades is the best way to stop
6 people who are committing economic degradations
7 is to take away their money.

8 That will punish them more than the
9 distant threat -- and it is a distant threat for
10 economic crimes almost anywhere in this
11 country -- of the possibility of imprisonment.

12 The proposed legislation uses civil
13 procedures and penalties to do just that: To rob
14 defrauders of their rewards and make them pay
15 severely and dearly for their efforts.

16 This also will have the additional
17 incidental benefit of discouraging the potential
18 cheat. And it's far better to discourage the
19 person that's cheating than to try to catch
20 the cheater after the fraud had been completed.

21 I believe that the False Claims Act is
22 innovative, it's tested, it's proven, and it's a
23 great way to combat this age-old problem. It is
24 a solution or at least part of a solution that is
25 long overdue, and I urge this Committee and the

1 entire House and Senate to pass this bill.

2 I'll be happy to answer any questions if
3 the Committee has any. Mr. Deutchman is the
4 assigned assistant to the False Claims Act as he
5 is the head of our Economics Fraud Unit. And, of
6 course, Kathy McDonald and I will be happy to
7 supplement.

8 CHAIRPERSON CLARK: We thank you very
9 much for your testimony this morning. We've had
10 a new member of the Judiciary Subcommittee join
11 us -- the Subcommittee on Courts, Representative
12 Petrarca. I'd like you to introduce yourself.
13 Do you have any questions?

14 REPRESENTATIVE PETRARCA: Thank you,
15 Mr. Chairman. No questions at this time. I
16 appreciate the testimony though.

17 CHAIRPERSON CLARK: Our Chief Counsel,
18 Brian Preski, has some questions for you.

19 MR. PRESKI: I guess this is more
20 directed toward Mr. Deutchman. One of the
21 concerns that we've heard or one of the
22 objections that you didn't talk to, Ms. Abraham,
23 was that existing statutes already covered this
24 theft by deception, for example.

25 In your experience, have you been able

1 to use that Statute to prosecute these types of
2 crimes? And what's the benefit from this new
3 Statute that's not already covered by that? I
4 understand the qui tam part of, but what about as
5 far as the criminal action goes?

6 MR. DEUTCHMAN: Well, a few things:
7 First, not to jump over the qui tam aspect of it,
8 one of the benefits here of this Statute is that
9 it should simply ferret out more of the fraud to
10 begin with because it gives incentive for those
11 who know about it -- financial incentive for
12 those who know about it to come forward.

13 In a typical criminal action, the
14 investigation is initiated by law enforcement.
15 And unless there is someone who is a
16 whistle-blower or already who wants to draw
17 attention to law enforcement of a problem, it
18 generally begins with law enforcement more or
19 less like a -- even though this wouldn't be a
20 street crime -- analogous to somebody on patrol
21 looking for a crime and coming across it and just
22 like somebody on a patrol that if somebody's
23 going down the street and there's a whole
24 bunch of houses, there could be crimes
25 going on in the houses, and unless they spill

1 out onto the street you're simply not going to
2 see them.

3 So similarly -- and these are crimes
4 that are committed in secret. And the incentives
5 in the qui tam plaintiff to come forward is going
6 to lead to simply a increased volume of crimes
7 that we're going to be able to uncover or fraud
8 that we're going to be able to uncover.

9 But in addition to that, the criminal
10 statutes have the problems inherent in criminal
11 statutes: They provide for criminal penalties;
12 on the other hand, they also come with them, as
13 they must, the protections for the criminal.

14 Since this is a fraud -- a civil fraud
15 statute, the Fifth Amendment protection that
16 exists for the criminal does not exist. We found,
17 practically speaking, that it's very -- that the
18 benefit of the criminal statute, which is to say
19 the risk that the person once convicted goes to
20 prison, has been to a large degree mooted out by
21 experience; that with the number of people in
22 prison now, the high number of people in both
23 county prison and in state prison, that judges
24 are very loath to put anybody in prison.

25 At best at the end of a long criminal

1 investigation and trial, which you end up coming
2 up with at best usually is probation and an order
3 for restitution and a fine and so forth.

4 What this Statute allows is for the
5 government to arrive at essentially the same
6 place at a far less cost both in terms of
7 manpower and time. And it should allow us to do
8 so easier in addition because of the civil
9 investigative demand and the other discovery
10 tools which the Statute allows.

11 And as you I'm sure understand, these
12 are discovery tools which are allowed because
13 this is a civil situation and not a criminal
14 situation. You can't put interrogatories on a
15 criminal defendant and expect them to answer
16 questions.

17 You can't expect a criminal defendant to
18 hand over documents. You have to have search
19 warrants and so forth. Under this Statute, you
20 simply don't have to have that. You simply have
21 to have an action initiated or at least an
22 investigation initiated in order to do that.

23 And as well, the treble damages and the
24 5 to \$10,000 penalties are far higher than
25 anything that we have on the books now with

1 regard to the penalties for criminal violations.

2 So they would bring in a tremendous
3 amount of money to the public funds. Just to
4 give an example, in the SmithKline case or the
5 University of Pennsylvania case, in both of those
6 cases, each time a bill is submitted, each bill
7 is a false claim.

8 If somebody sends in 20 false bills,
9 each of those 20 false bills may be false in a
10 hundred dollars' worth of actual damages. That
11 would mean \$300 in treble damages for a hundred
12 bills. And 300 times a hundred is \$30,000, I
13 think. And that would be -- I'm getting a nod
14 from somebody there; so I guess I must be right.

15 And that's a fair, nice chunk of change.
16 However, each one of those hundred bills would
17 get a minimum of \$5,000 for false claim. And I
18 think that's \$5 million.

19 MR. PRESKI: Okay. Let me ask you this
20 question then: How recoverable is all of the
21 money that you just talked about? Or the
22 question is, in other words, Who's the defendant
23 in the University of Pennsylvania False Claims
24 case that you talked about, in the SmithKline
25 case, who was the defendant on the civil

1 side -- was it the corporation themselves and the
2 officers or was it the individual who said just
3 keep overbilling?

4 MR. DEUTCHMAN: It was the corporation
5 itself.

6 MR. PRESKI: So it's far easier to
7 recover then from the corporation than from the
8 individual?

9 MR. DEUTCHMAN: Right. Right. And that
10 also leads to another point that I should make
11 with regard to those two cases. I think those
12 two cases really do illustrate another problem
13 with the criminal law that makes this, the False
14 Claims Act, something that we need.

15 And that is, is that the law of
16 prosecutions of corporations for criminal
17 activities is still not a particularly clear
18 area. To prosecute a corporation for a criminal
19 violation is not particularly easy.

20 Sometimes when it's a corporation where
21 you have one individual and that individual is
22 clearly involved in a criminal activity, you can
23 prosecute the individual and the corporation, the
24 individuals using the corporation. And that kind
25 of prosecution is relatively easy.

1 But in the University of Pennsylvania
2 case, it was relatively difficult to find one,
3 two, three or "x" number of people that you would
4 identify as traditional criminal defendants. And
5 the criminal prosecution in that case would not
6 have yielded particularly good results.

7 However, the fraud prosecution under the
8 False Claims Act was exactly -- that case was
9 exactly what the False Claims Act was for: A
10 situation where false claims were being
11 presented, but they were not being presented
12 necessarily with what you might think of as
13 criminal intent.

14 And, therefore, the Act remedied the
15 problem at hand without having to prove something
16 that you would have to prove in the criminal
17 context and something which probably didn't exist
18 in that case, which was criminal intent.

19 MS. ABRAHAM: If I could add one other
20 thing to what Mr. Deutchman said, to go back to
21 your first question about theft by deception,
22 usually those cases come in at all only in small
23 numbers and they come after the fact and there's
24 no incentive for anybody to tell us anything.

25 We have had numbers of cases where

1 defendants are not frightened of courts any
2 longer, so there's no incentive for them to come
3 forward. after all, in the case of most economic
4 crimes, there is not jail but probation with
5 restitution. There's very little incentive to
6 cooperate.

7 Second of all, the ongoing nature of the
8 offense. When a whistle-blower finds something,
9 for example, from within and allows the Attorney
10 General to know about that by filing, let's say,
11 a qui tam suit, the Attorney General and/or the
12 local prosecutor can together ferret out the
13 offenses while it is going on without being
14 burdened by the extraordinarily high burden of
15 proof.

16 And, as Mr. Deutchman indicated, we have
17 other tools available to us which we would not
18 have through the traditional means of law
19 enforcement. So I think all in all we have a
20 great tool to combat this very real threat to the
21 well-being of the Commonwealth and its treasury.

22 MR. PRESKI: And I guess one last
23 question: From an experience or from a
24 practitioner's point, which action would you want
25 to proceed first -- the civil qui tam or

1 whistle-blower action or the criminal action?

2 MR. DEUTCHMAN: The civil action from a
3 practitioner's point because it would again
4 allow us discovery and it would allow us to
5 determine whether there was some particular
6 criminal action involved.

7 Lots of times there's a loss and the
8 loss is fraudulent from the point of view of
9 civil fraud, not necessarily criminal fraud. And
10 it's not always good to involve people in
11 criminal investigations just to find out at the
12 end of a long criminal investigation that they're
13 not guilty of any crime.

14 The very investigation itself can have a
15 deleterious effect on the individuals. This will
16 allow us to pursue a civil investigation without
17 all of the bad publicity or the bad ramifications
18 that go along, the bad implications that come
19 along with a criminal investigation and see if
20 the civil wrong is the only wrong involved.

21 It would give us -- as I said before,
22 the discovery tools would give us the opportunity
23 to see exactly what was going on. If there was
24 something criminal, if it developed into
25 something criminal, then we would pursue

1 something in a criminal light.

2 But we would assume in these situations
3 that it wasn't, that it was civil, and we would
4 act accordingly.

5 MR. PRESKI: The reason I ask that
6 question is because there's no provision now that
7 requires -- that doesn't allow for the civil
8 action not to be stated.

9 One of the strategy points of an office
10 like the District Attorney's office is that when
11 there's an ongoing criminal prosecution and you
12 get sued for the underlying civil claims, you
13 would often run into Federal court and ask that
14 case be stayed pending the outcome of the
15 criminal action.

16 Do you think that needs to be addressed
17 by the legislation?

18 MR. DEUTCHMAN: I think, yes, we
19 definitely should take a look at that. There are
20 a few things I want to relate looking through the
21 bill we probably should look at, and that would
22 certainly be one of them. Yes, I think it's
23 something that should be put in here so that if
24 it turns out that the -- I mean, this can be used
25 in both ways.

1 It's a civil -- the civil discovery
2 procedures which we would like to be able to use
3 might be turned around against law enforcement.
4 And defendants might then say I want to depose
5 the investigators during the course of the civil
6 investigation.

7 So we certainly would want to have
8 discovery provisions that would allow that at
9 least the discovery provisions be stayed pending
10 a criminal investigation.

11 I should also add just since I brought
12 that up that there were other issues that were
13 discussed. And this might be in terms of things
14 that were left out of the Act.

15 And one of the things that we might
16 think about too -- and, again, this might be
17 something the Attorney General might want to
18 address and other counties might want to
19 address -- and that is the issue of
20 whether -- the way that the referrals go here,
21 the Attorney General gets first bite at the
22 apple, so to speak.

23 And if the Attorney General looks and
24 sees that there are no Commonwealth funds, only
25 municipality or local funds involved, then they

1 turn things over to the local prosecutor who
2 might want to include a provision which would
3 allow the local prosecutor to hand it back to the
4 Attorney General along the lines of what exists
5 now criminally in the Commonwealth's Attorneys
6 Act to allow those situations in a smaller
7 municipality, Philadelphia not being one, but in
8 lots of other municipalities where the prosecutor
9 simply is not going to be able to conduct this
10 kind of investigation and the Attorney General
11 will be in a better position.

12 I don't know what the Attorney General's
13 feeling is about that and what the
14 municipalities' are, but I'm sure you'll find out
15 soon enough.

16 MR. PRESKI: Thank you.

17 CHAIRPERSON CLARK: Seeing no additional
18 questions, I would like to thank you for coming
19 this morning and presenting us with your
20 testimony and your insight and answering our
21 questions.

22 We're going to have Pennsylvania's
23 Attorney General, the Honorable Michael Fisher,
24 testify next; and you're certainly welcome to
25 stay and --

1 MS. ABRAHAM: Thank you very much,
2 Representative Clark.

3 MR. DEUTCHMAN: Thank you very much.

4 CHAIRPERSON CLARK: Good morning,
5 General. How are you today?

6 ATTORNEY GENERAL FISHER: Mr. Chairman,
7 good morning, Members of Committee.

8 CHAIRPERSON CLARK: And I understand
9 that Kirk Wiedemer is with you today?

10 ATTORNEY GENERAL FISHER: Kirk is a
11 Senior Deputy Attorney General who's in charge of
12 our Insurance Fraud Section in our Criminal Law
13 Division. And Mr. Wiedemer is here and also will
14 be available to answer any questions that the
15 Committee may have.

16 CHAIRPERSON CLARK: Would you like
17 Mr. Wiedemer to spell his name?

18 THE COURT REPORTER: (No audible
19 response.)

20 MR. WIEDEMER: K-I-R-K, W-I-E-D-E-M-E-R,
21 Wiedemer.

22 CHAIRPERSON CLARK: Those formalities
23 taken care of, why, we're ready for your
24 testimony.

25 ATTORNEY GENERAL FISHER: Thank you,

1 Mr. Chairman, and thank you for the opportunity
2 to appear before you today on House Bill 1671,
3 which is the proposed Pennsylvania False Claims
4 Act.

5 At the outset, I'd like to congratulate
6 and commend Representative Kenney for introducing
7 this very important piece of legislation which, if
8 enacted into law, will enable my office and
9 district attorneys across Pennsylvania to recover
10 thousands and, in some cases, millions of dollars
11 from individuals or businesses who have submitted
12 fraudulent claims to Pennsylvania and its local
13 governments.

14 We've had the opportunity to meet with
15 Representative Kenney in the past prior to the
16 time he introduced this legislation and had given
17 some of our input into the bill before because
18 this was an issue that I was personally
19 interested in as was Mr. Wiedemer and other
20 members of my staff for the reasons which we'll
21 talk about here in a few moments.

22 The authority granted under a false
23 claims act will be an important addition to my
24 office's financial enforcement, contract review,
25 Medicaid fraud, and public protection programs.

1 These programs all have the goal of
2 recovering monies due the Commonwealth and they
3 ensure the agencies of the Commonwealth are doing
4 business with reputable, law-abiding vendors and
5 businesses.

6 I strongly believe that a State False
7 Claims Act is an important fraud fighting tool
8 which will lead to substantial recoveries of
9 taxpayers' dollars. Unfortunately, state and
10 local governments are easy targets for those who
11 want to to make an easy buck off the taxpayers.

12 In an article entitled, Fighting Fraud
13 with a State False Claims Act, special counsel to
14 the Florida Attorney General's office, Mark
15 Schlein, notes that there are at least three good
16 reasons why government is such an easy target:

17 First, most governments have a lot of
18 money and eventually money that could be stolen;
19 second, governments are not good generally at
20 catching people who steal from them; and third,
21 in an unlikely event that you do get caught, as
22 long as you use an invoice instead of a gun, the
23 odds are good that you'll never see the inside of
24 a prison cell.

25 This observation is particularly

1 pertinent when we consider that more and more
2 government programs and services are being
3 offered at the state level as opposed to the
4 Federal.

5 The General Accounting Office estimates
6 that at least 10 percent of the Federal budget is
7 lost as a result of overbilling and fraud. Now,
8 if this statistic is accurate and if it held
9 true -- and this is just an example that we're
10 just using the 10 percent as an example -- that
11 we could potentially recover \$1.8 billion of our
12 1998-99 General Fund Budget, which as you know is
13 approximately \$18 billion.

14 So I believe it's important that we take
15 proactive steps to detect and prevent this
16 pervasive fraud, waste, and abuse. That's why I
17 believe we should enact statute in Pennsylvania
18 modeled after the successful Federal False Claims
19 Act.

20 I want to also note as District Attorney
21 Abraham did, a growing number of states including
22 California, Florida, Illinois, Tennessee, Texas
23 and Utah have enacted similar measures to protect
24 against fraud.

25 These hard-hitting statutes not only

1 recover millions of dollars of lost revenue but
2 also create a significant deterrent against
3 future fraudulent conduct.

4 In fact, it is estimated that the
5 enforcement of the Federal Statute has resulted
6 in a dramatic decrease in fraudulent claims
7 resulting in a net savings estimated at somewhere
8 between a hundred and fifty billion to 300
9 billion between '86 and '96.

10 It's also estimated that during the next
11 ten years the savings could be as high as \$480
12 billion. Before I discuss the highlights of the
13 legislation being considered, I want to provide
14 you with a brief history behind the highly
15 successful Federal False Claims Act.

16 I don't know if you've heard this
17 history before this morning or not, but -- we had
18 we yes. Perhaps we'll skip some of the Lincoln
19 Law specifics. But they're there, and there was
20 a Civil War precedent, suffice it to say, for the
21 initial enactment.

22 But as you know, in 1986 at the height of
23 an exploding Federal deficit, skyrocketing health
24 care costs, and \$7,000 coffee makers at the
25 Pentagon, Congress amended the False Claims

1 Statute to again provide whistle-blowers with
2 easier access to the courts and for the first
3 time it allowed private attorneys to participate
4 directly in the process.

5 As a result, the Federal Government has
6 made tremendous strides in combating fraud
7 through the use of the Act. The Statute now
8 provides for the recovery of three times the of
9 amount of damages sustained by the Federal
10 Government plus a civil penalty ranging from 5 to
11 \$10,000 for each false claim submitted.

12 Since 1986 -- and I think these
13 statistics are very important -- the United
14 States has obtained over \$3 billion in false
15 claim recoveries, about one-third of this amount
16 as a result of whistle-blower litigation.

17 The success of the Federal model is
18 evident when one compares this \$3 billion figure
19 to an estimated 25 to 27 million recovered
20 annually by the Federal Government prior to the
21 1986 amendments.

22 That tells me that something significant
23 changed. And the one thing that I think we can
24 point to is the Federal False Claims Act. I
25 firmly believe that if Pennsylvania had its own

1 false claims law we could expect to recover a
2 significant amount of money lost to fraudulent
3 claims.

4 Although there's a natural delay from
5 the time the Statute's enacted of any significant
6 return, California, which was the first state to
7 enact the False Claim Act in '87, has realized an
8 estimated \$20 million recovery since 1991.

9 California will acknowledge that without
10 appropriations they had a relatively slow
11 start-up, but their act has become much more
12 successful for them since the early '90's.

13 The proposed legislation has a broad
14 reach to recover any request or demand for money,
15 property, or services made to an employee,
16 officer, or agent of the Commonwealth or any of
17 its political subdivisions.

18 For example, the Act would cover a
19 construction agreement with PennDOT as well as
20 demands for payment by a sanitation company
21 collecting trash pursuant to a contract with a
22 municipality.

23 Firms doing environmental clean-up work
24 with state funds would also be covered.
25 Hospitals and universities receiving state

1 research grants, physicians, home health care
2 agencies, and testing laboratories submitting
3 claims to Medicaid and vendors to the state and
4 municipal governments likewise would be subject
5 to the Act.

6 Currently, we do not have in my opinion
7 sufficient remedies to combat fraud occurring in
8 many of these areas. But let me address some of
9 the key provisions.

10 House Bill 1671, as we've said, provides
11 for treble damages. The individual business
12 caught filing a false claim could be liable for
13 up to three times the amount of the actual
14 damages; individuals or businesses would be
15 liable for a substantial penalty -- 5 to 10,000
16 for each false claim; the legislation would
17 enable a measure of clemency for those who
18 voluntarily disclose a false claim.

19 The Bill did not require government to
20 prove that the individual business has specific
21 intent to defraud; in other words, a person
22 cannot hide behind a claim of ignorance or
23 recklessly disregard the business practices which
24 result in overbilling;

25 A substantial portion of the funds

1 recovered under the proposed Statute would be
2 returned to the General Fund of the state or to
3 local government;.

4 At the heart of the proposed legislation
5 is the qui tam, or the whistle-blower provisions.
6 An examination of its tremendous success on the
7 Federal level exemplifies why this is a necessary
8 part of the law.

9 The Bill would allow any individual who
10 has an independent knowledge of fraud against the
11 government to bring a lawsuit on behalf of
12 government.

13 The suit itself is filed ex parte, under
14 seal, to protect the identity of the
15 whistle-blower as well as to avoid alerting the
16 accused, who might try to destroy any evidence.

17 Once the suit is filed, the Attorney
18 General or the District Attorney would have 90
19 days to review the claim and determine whether to
20 intervene and prosecute the case.

21 If the prosecuting attorney's successful
22 in bringing the action, the whistle-blower would
23 be entitled to collect anywhere from 20 to 33
24 percent of the proceeds.

25 In addition, the Attorney General or

1 District Attorney would be entitled to retain a
2 third of the recovered monies to support future
3 investigation and prosecution of these kinds of
4 complaints.

5 The Pennsylvania False Claims Act would
6 greatly enhance the ability of the Commonwealth
7 and its political subdivisions to combat fraud
8 and to significantly expand their resources.
9 Once implemented, the Commonwealth and its
10 political subdivisions will have a proven,
11 comprehensive program to recover money wrongfully
12 paid out due to any false claim, regardless of
13 its nature.

14 Mr. Chairman and Members of the
15 Committee, both Mr. Wiedemer and I will be glad
16 to answer any questions that the Committee may
17 have.

18 CHAIRPERSON CLARK: We thank you very
19 much for your testimony. And do we have any
20 questions of the Attorney General's office?

21 (No audible response.)

22 CHAIRPERSON CLARK: Our Chief Counsel,
23 Brian Preski, has a question.

24 MR. PRESKI: General, at this time, let
25 me direct this to Mr. Wiedemer. You sat here

1 during Mr. Deutchman's comments about some of the
2 proposed changes that he had thought of,
3 basically an ability of the DAs to hand this back
4 to the AG if you kick it to down to them.

5 Do you have any comments about that?

6 MR. WIEDEMER: I think it's an
7 interesting proposal. I think that if we had the
8 personnel to handle those cases that we would
9 welcome that.

10 I know Attorney General Fisher has been
11 working with a lot of the DAs from the smaller
12 counties and taking cases that either they don't
13 have the resources or where there's a conflict.
14 So I think that it would be consistent with the
15 policy and practice that's already in place.

16 ATTORNEY GENERAL FISHER: And
17 Mr. Preski, it would be consistent -- although it
18 probably would need to be covered specifically,
19 it would be consistent with the Commonwealth with
20 the Attorney's Act and the current process, as
21 was said by the previous witnesses, particularly
22 in the small counties because of the lack of
23 resources or when there's a conflict of interest,
24 the cases are referred to us for criminal
25 prosecution.

1 Likewise, in counties, you know, that
2 don't have the resources that Philadelphia or
3 Allegheny or some of the larger counties have,
4 they may feel that a case like this could be
5 better handled by our office. Certainly we would
6 do that.

7 We would -- you know, there is a process
8 however in the Act as I currently read it that
9 really allows the DA to participate in name, with
10 us perhaps taking the lead. So that the DA may
11 want to stay involved.

12 If our office was similarly involved,
13 I'm sure that we do the lion's share of the work.
14 And that way the DAs in even the smaller counties
15 if the case involved a local municipality could
16 stay participants and would be able to perhaps
17 give some resources eventually that would help
18 them staff some small units.

19 MR. PRESKI: I guess the next questions,
20 General, then is -- a question I had asked before
21 you arrived of the DAs was which action if you
22 were going to bring it to, the civil action under
23 the whistle-blower and then the subsequent maybe
24 a Theft by Deception Action, which one would you
25 want to go first?

1 Their response was that they wanted the
2 civil action to go first because of the ability
3 to have greater discovery. My question is -- and
4 I wish I had asked it of them -- Do you think
5 there's any constitutional problems or any other
6 types of problems by doing that?

7 If I'm a defense attorney, my argument
8 is going to be, sure, they want to go along with
9 the civil action first because then they'll be
10 able to get all the jewels from me.

11 When it's time for the criminal action
12 to come around, there's no need for me to plead
13 the Fifth Amendment because they already know
14 everything that I was going to say. Do you have
15 any comment on that or just any kind of response
16 to that?

17 ATTORNEY GENERAL FISHER: I think once,
18 you know, once you -- if the remedies available to
19 prosecutors are expanded and you'd be creating a
20 civil remedy, it would be a tougher call. But I
21 think each case would have to be determined on a
22 case-by-case basis.

23 If there was a clear violation of the
24 criminal statutes, I think as a prosecutor we
25 would have a responsibility to bring that charge,

1 not to sit back and wait to utilize for the
2 discovery.

3 But in some cases, it may not be that
4 clear. In some cases, you may not have the
5 evidence available to you. But throughout the
6 course of a civil case, if additional information
7 was determined, you can make a new determination;
8 but you'd have to be awfully careful as to how
9 you utilized it.

10 You couldn't utilize a criminal
11 prosecution. You're not allowed to under the
12 law, you're not allowed to under the Code of
13 Professional Responsibility to get a larger civil
14 settlement, for instance.

15 MR. PRESKI: And my last question is
16 this: As I heard your testimony, I thought
17 immediately of your other proposals concerning
18 the change from nonprofit organizations to profit
19 organizations.

20 Could you comment briefly on -- well,
21 what I see is I see there's some kind of
22 similarity here where if there's greater ability
23 for your office to look at when a nonprofit
24 switches to a profit, you'll certainly be able
25 to under the passage of this Statute for them to

1 go in when you do find something wrong and
2 actually work upon it. Any comment on that,
3 General?

4 ATTORNEY GENERAL FISHER: Well, that's
5 a good assessment, Mr. Preski. You know,
6 currently our role in dealing with the
7 supervision of nonprofits comes from *parens*
8 *patriae* power which the Attorney General
9 has and which the Attorney General exercises.

10 Generally, that's exercised in the
11 Orphan's Court, the division, and it takes place
12 when there's a fundamental change in the
13 structure, where there's a sale -- where there's
14 a sale of a significant asset.

15 This remedy would allow the Office of
16 Attorney General, would allow district attorneys
17 access to the civil courts. And, you know, that
18 wouldn't make a significant difference. It could
19 be used.

20 That's not to say that, you know, this
21 Statute is only -- it would be needed to
22 supervise nonprofits. But it certainly is an
23 additional remedy. It's particularly needed in
24 the health care area.

25 I've spoken to a lot of people who have

1 said to me, you know, this is a tool that would
2 be very important in trying to ferret out fraud
3 in the health care area. And I think that's
4 probably one of the major areas that it could be
5 helpful to Pennsylvania.

6 MR. PRESKI: I guess my concern is more
7 is one could be the vehicle for the other.

8 ATTORNEY GENERAL FISHER: It's
9 conceivable, that's right.

10 MR. PRESKI: Thank you.

11 CHAIRPERSON CLARK: Any additional
12 questions of the Attorney General?

13 (No audible response.)

14 CHAIRPERSON CLARK: We want to certainly
15 thank you this morning for coming down and
16 providing us with your testimony and answering
17 our questions.

18 ATTORNEY GENERAL FISHER: Thank you.
19 And I commend the Committee for taking interest
20 in this legislation. I would hope that you would
21 be able to move it forward sometime before the
22 end of this session. Thank you, Mr. Chairman.

23 CHAIRPERSON CLARK: Thank you. The
24 next individual to provide testimony to the
25 Committee is Marc S. Raspanti, Esquire, from

1 Miller, Alfano & Raspanti. And along with him is
2 Andrew Stone, Esquire. So also if you'd like to
3 provide your testimony, why, we'd certainly
4 appreciate that.

5 MR. RASPANTI: Good morning, Members of
6 Committee. Thank you for allowing me to speak
7 today. I would like to introduce my colleague.
8 To my left, Tammy Traynor, Esquire, who works
9 with me and has worked with me on these cases.

10 My name is Marc Raspanti, and I'm a
11 partner in a law firm here in Philadelphia,
12 Miller, Alfano & Raspanti. I'm honored to
13 provide you with my thoughts and insight into
14 proposed House Bill 1671, which was introduced by
15 Representative Kenney and, as I understand it, 33
16 other legislators.

17 I'm going to refer to the bill as the
18 Pennsylvania False Claims Act. And before
19 getting into specifics, I was asked to produce
20 you with some brief background on myself.

21 I began my career in public service as
22 an assistant District Attorney here in
23 Philadelphia serving under then District Attorney
24 and now Mayor Edward Rendell. After leaving the
25 District Attorney's office, I spent a number of

1 years in two large Philadelphia firms and ten
2 years ago formed my own law firm with two other
3 partners.

4 Most of the principals of our law firm
5 are state and Federal prosecutors, and that is
6 the background to which we have brought to this
7 practice.

8 I've had extensive experience over the
9 last, actually, 12 years with the Federal False
10 Claims Act; and I'm now starting to have some
11 experience with State False Claim Act cases
12 throughout the United States.

13 We've represented qui tam plaintiffs, or
14 whistle-blowers, who have come forward sometimes
15 at tremendous personal and familial expense and
16 sacrifice to uncover fraud, waste, and abuse
17 within the Federal system.

18 I was honored to have represented the
19 lead whistle-blower, Robert J. Merena, in a
20 whistle-blower suit filed here in the Eastern
21 District of Pennsylvania in November, 1993,
22 against SmithKline Beecham Clinical Laboratories.

23 That case led the Federal Government to
24 the largest qui tam health care recovery in the
25 history of the United States. That was \$344

1 million. There was only one other larger case
2 that preceded that, but it was not brought under
3 the qui tam statute.

4 I was honored to have been asked by
5 Representative George Kenney, the Pennsylvania
6 Attorney General's office, and the Philadelphia
7 District Attorney's office to consult and assist
8 in their drafting of the proposed Pennsylvania
9 False Claims Act.

10 The Committee has before it a statute
11 that there is no question will significantly
12 enhance and expand the fraud fighting
13 capabilities of the Commonwealth of Pennsylvania.

14 The issue to me in my mind is not should
15 Pennsylvania pass this Statute; it's a matter of
16 when it will pass the Statute. Will we be on the
17 forefront of this legislation or will we trail
18 behind all the other states as they're beginning
19 to pass their statutes?

20 It would place Pennsylvania in an
21 ever-growing number of states passing their own
22 false claim statutes and enlist the considerable
23 resources, insight, and knowledge of private
24 citizens who I predict with the appropriate
25 protections and inducements will come forward as

1 they have under the Federal Statute and uncover
2 fraud, waste, and abuse for the citizens of the
3 Commonwealth.

4 The proposed Statute, as you've heard
5 from the previous speakers, will also serve as a
6 significant deterrent against those who might
7 consider defrauding the Commonwealth and its
8 political subdivisions in ways that the current
9 criminal statutes have never acted as a deterrent
10 for the reasons that the speakers before me have
11 given.

12 It's very difficult to not only detect
13 and prosecute a white-collar individual,
14 particularly in some of these complex crimes, but
15 to send one of those individuals to jail.

16 I'll skip some of the history of the
17 Statute. And we've touched upon the history of
18 the Statute going back to the Civil War. Not to
19 duplicate that, there's actually some interesting
20 history that precedes the Civil War by about a
21 hundred years.

22 The qui tam provisions of the False
23 Claims Statute actually go back to English Common
24 Law. And when this country was being formed,
25 there were 24 separate laws, many of them passed

1 here in Philadelphia, that had qui tam provisions
2 in them borrowing from the English Common Law.

3 The reasons for that was there was no
4 law enforcement in the 1700s, none to speak of.
5 So they borrowed from their English cousins and
6 brothers and had qui tam provisions there.

7 As law enforcement started to develop
8 in the United States, those provisions were
9 thought not to be needed until President Lincoln
10 a hundred years later saw that there was nothing
11 that was working; that the Civil war, like in
12 World War II and World War I, provided millions
13 of dollars that were placed into buying
14 armaments.

15 And as District Attorney Lynne Abraham
16 and Attorney General Fisher have indicated,
17 obviously, with that kind of money there was
18 always the ability to have fraud and abuse.

19 During the twelve years that the Federal
20 Statute has been passed, the Federal recoveries
21 of the Act have skyrocketed from millions per
22 year to over \$600 million per year.

23 The most current statistics right up to
24 date that I've been able to obtain from the
25 Justice Department, from 1986 to the current

1 time, there's been in excess of \$2.3 billion that
2 have been recovered directly to the United States
3 Treasury as a result of the 1986 amendments to
4 the False Claims Statute.

5 California, Michigan, Utah, Florida,
6 Illinois, Louisiana, Tennessee, and the District
7 of Columbia have introduced and have been
8 instrumental in passing this legislation.

9 A number of other states as we speak
10 are considering this Statute, including New York,
11 Massachusetts, Washington, New Jersey, Delaware
12 and, of course, Pennsylvania.

13 And I was struck with an interesting
14 scenario that may happen if Pennsylvania lags
15 behind. And District Attorney Abraham mentioned
16 the mechanics of what happens when there's a
17 Federal case.

18 When a Federal case moves forward and
19 state money's involved, those states who don't
20 have their own false claims statutes because they
21 don't have the ability, a statutory framework to
22 argue, generally get 20 cents, 30 cents on the
23 dollar.

24 We could end up with a scenario where
25 Delaware and New Jersey pass their own statutes

1 and Pennsylvania, which is much larger, if it
2 lags behind will actually get less in recoveries
3 although more money is actually going to the bulk
4 of the Pennsylvania budget.

5 My firm prediction that there's no
6 question that within the next few years many if
7 not most of 50 states will pass their own
8 versions of the False Claim Statutes and that
9 state prosecutors in those states will set up a
10 permanent civil litigation units which will place
11 individuals who are devoted to working on these
12 complex types of cases.

13 And these are fraud cases. Although
14 we're talking about a civil statute, they are
15 investigated by fraud cases and they are fraud
16 cases.

17 Just a brief overview of some of the
18 other states: California was the first to pass
19 the statutes one year after the Federal model.
20 And there was some mention of the lag time.

21 There is a lag time because these cases
22 are filed and remain under seal for some time to
23 allow the appropriate prosecuting authorities to
24 determine whether or not it is a valid case or
25 not. And the benefit for the matter remaining

1 under seal is twofold:

2 One is, The prosecuting authorities get
3 the benefit of not having the target know that
4 they're being investigated. If the matter does
5 not turn out to be meritorious, the case may be
6 dismissed before it ever surfaces.

7 And that's beneficial to the potential
8 defendant or target because if it isn't a
9 meritorious case, there's no reason for the
10 defendant or the target to be besmirched by an
11 investigation. It's kind of the way a grand jury
12 investigation is supposed to work, putting aside
13 current matters.

14 The California Statute's now up and
15 running. I've had extensive discussions with
16 some of the law enforcement people there. They
17 are now starting to reap the rewards of the
18 Statute.

19 And, quite frankly, all of the concerns
20 that the California statutes had in their early
21 times have been addressed by the current Statute
22 before you.

23 For example, some of the sharing -- and
24 I'm allowed to because I'm not a member of
25 government -- or perhaps turf battles that

1 develop when you don't have clearly-defined goals
2 for various prosecuting authorities, we've
3 resolved that in this Statute.

4 That delayed a lot of the activity going
5 forward in California because they were
6 constantly having infighting until people knew
7 how to go forward.

8 Clear levels of demarcation, extended
9 periods of time for investigation, all of these
10 things have been addressed because we've had the
11 benefit of watching some of the other state
12 models and the Federal Statute in the current
13 proposal.

14 1992, Illinois passed the Illinois
15 Whistle-blower Award and Protection Act; Florida
16 passed the False Claims Act in 1994; District of
17 Columbia in 1997; Tennessee passed the first
18 statute which was directed solely to Medicaid
19 claims.

20 And as you know, 50 percent of every
21 dollar across the board into the Medicaid Program
22 is coming from the State and from the
23 Commonwealth of Pennsylvania.

24 In 1997, Louisiana passed the Medical
25 Assistance Program Integrity Law to combat and

1 prevent fraud and abuse committed by health
2 care providers.

3 And there were some questions that were
4 asked by Mr. Preski that I want to address
5 because Louisiana has a quirk in their statute
6 that appears nowhere else, and maybe it
7 demonstrates what District Attorney Abraham was
8 mentioning.

9 Louisiana allows for a fraudulent doctor
10 who has defrauded the state on a criminal statute
11 to actually be shackled and chained as part of
12 the imprisonment.

13 But there have only been three or four
14 criminal prosecutions under that Statute. You
15 would think that that would be a great deterrent.
16 They needed to pass a civil statute because the
17 shackle and chains provision that only appears in
18 Louisiana hasn't done what it needed to do in
19 combating fraud. They decided it was better to
20 go after their pocketbook than to put a ball and
21 chain around their feet.

22 Texas has passed legislation, very
23 strong legislation, which both takes care of
24 Medicaid programs and other state-funded
25 programs.

1 Each year, the taxpayers of the
2 Commonwealth of Pennsylvania fund billions of
3 dollars in programs which involve contracts of
4 all types from the state contribution to the
5 Medicaid Program, which I mentioned earlier, to
6 state funded construction projects, primary and
7 secondary schools, institutions of higher
8 learning, road building, local and regional
9 development authorities, block grants, local
10 health clinics, research grants, agricultural
11 subsidies, state hospitals, environmental and
12 natural resource management, wildlife
13 preservation, and a complex framework of
14 procurement which leads to the purchases every
15 day of billions of dollars of goods and services
16 anywhere from a typewriter to a school bus every
17 day.

18 Every day those provisions are hitting
19 your desks. But you have to ask yourselves, What
20 can I do to know whether or not the taxpayers of
21 this state really are getting the benefit of what
22 it is that we're giving them?

23 All of these contracts rely implicitly
24 on the good faith and integrity of the entities
25 and individuals doing business with the

1 Commonwealth and its many political subdivisions.

2 Unfortunately when that trust is
3 misplaced, there is little that can be done to
4 effectively punish those wrongdoers where it
5 really counts; in their pocketbooks.

6 Under existing Pennsylvania law, while
7 there has been significant strengthening of some
8 statutes such as the Insurance Fraud Statutes,
9 over the last few years, no other statute
10 currently on the books provides the law
11 enforcement community with the significant fine
12 and penalty provisions of the proposed
13 legislation and, more importantly, the ability to
14 enlist private citizens to help the Commonwealth
15 ferret out fraud.

16 And I make those comments as a former
17 prosecutor. When we would sit there and look at
18 a case and try and figure out, What statute do we
19 have, we would often fall short because we never
20 had the firepower to really address the harm that
21 was before us.

22 The newspapers every day are filled with
23 large recoveries. In fact, on a daily basis now
24 the feds are logging recoveries. That's why I
25 had to struggle to get you the most up-to-date

1 statistic because it changes every day.

2 The problem is -- or the opportunity for
3 the Legislature is most of the money is not
4 flowing into the Federal Government but it is
5 flowing into the 50 states.

6 They just are hidden to some degree in
7 smaller programs that are not as easily
8 recognizable and, quite frankly, are not as easy
9 to detect fraud in such as the Medicare,
10 Medicaid, and other large Federal systems.

11 The Federal False Claims Statute simply
12 has no jurisdiction over the great majority of
13 the money that's flowing into the states,
14 including the Commonwealth of Pennsylvania.

15 The Commonwealth and its subdivisions
16 disperse billions of dollars out every day.
17 Taxpayers asked to fund these programs. But in
18 reality, they have very little meaningful
19 protection against unsavory contractors who
20 defraud the Commonwealth.

21 House Bill 1671 strikes the appropriate
22 balance of providing prosecutorial authorities
23 with significantly enhanced ability to uncover,
24 investigate, and prosecute those individuals or
25 entities who have defrauded the Commonwealth.

1 It not only allows prosecutors to recoup
2 monies fraudulently obtained but to exact fines
3 and penalties against the very perpetrators of
4 the fraud.

5 It also provides, in my opinion, a
6 well-thought-out structure of sharing
7 responsibility which is tailored to the
8 uniqueness of the Commonwealth of Pennsylvania.

9 There are a few other provisions that
10 have not been touched upon. And if I can share
11 some of the insight from the other states, which
12 are very, very important:

13 It's one thing to commence an
14 investigation of someone defrauding the
15 Commonwealth, it's one thing to have the ability
16 to have whistle-blowers assisting you; but if you
17 determine that an ongoing entity is defrauding
18 the Commonwealth on a daily basis, the Statute
19 provides prosecuting authorities with strong
20 mechanisms to stop through injunction abilities,
21 which we've never had in this Commonwealth, with
22 the ability to pull licenses and registrations
23 from those abilities so you can not only go after
24 that entity and prosecute it, but you can stop
25 that entity in an injunction hearing before you

1 have to wait a year or two for the case to be
2 solved.

3 In Florida, the Florida model is
4 tremendous health care fraud with a lot of
5 fly-by-night organizations. They can never hope
6 that that organization will be there at the end
7 of the prosecution.

8 They are now moving under their statute
9 to try and stop through injunction powers the
10 fraud at the beginning as opposed to allowing it
11 to continue for years to the end.

12 Today's fraud schemes are as complicated
13 and complex as the individuals and entities who
14 commit these serious offenses. Computer is the
15 Internet and a new generation of more
16 sophisticated criminals make fraud detection and
17 prosecution increasingly difficult.

18 We don't have the paper we used to have
19 to build the cases. For example, in the
20 SmithKline case, my client examined national
21 billings. He was an analyst. He was a low-level
22 analyst for the company, but it never appeared on
23 paper.

24 There would be glitches on a computer
25 screen. They would mean nothing to any of us

1 other than to him. He was able working with law
2 enforcement authorities to take those codes and
3 turn them into a prosecutable case as a result of
4 the Federal Statute that brought him to the
5 Federal Government.

6 Insiders have the ability to provide the
7 Commonwealth with a road map to uncovering the
8 fraud and prosecuting the responsible
9 individuals.

10 It's one thing to say I think something
11 bad is happening there. It's another thing armed
12 with the whistle-blower inside information to
13 say, This guy's involved in the fraud. The
14 documents are on the third drawer on the second
15 right. And by the way, they just destroyed a
16 whole bunch of them on Saturday. You can find
17 out what the computer backup is.

18 That's what insiders bring to the table.
19 The Statute provides the Commonwealth with a
20 generous statute of limitations similar to the
21 Federal Statute; broad remedies under section
22 705 which will allow prosecutorial authorities to
23 take meaningful and immediate steps to stop false
24 claims from being filed against the Commonwealth,
25 including the injunction provisions that I

1 mentioned; and will allow prosecutors to divest
2 ill-gotten gains from cheats by tracing some of
3 those monies as a result of the civil and
4 investigative demand aspects and other aspects of
5 the Statute.

6 The last aspect of the Statute which is
7 directly taken from the Federal model is the
8 civil investigative demand. And that would work
9 to many degrees like a subpoena allowing
10 prosecutors under a lower burden of proof to be
11 able to request documents and testimony from
12 potential cheats without having to wait for the
13 normal types of procedures to do that.

14 Now, some discussions were raised about,
15 well, would a Federal -- would a state
16 case go -- would a criminal case go first? Would
17 a civil case go first?

18 I direct the Members of the Committee to
19 some protections that are already built-in, and
20 let me maybe use the Federal model as an example.
21 When a whistle-blower case comes into a U.S.
22 Attorney's office anywhere in the United
23 States -- and there's 94 of them now -- they
24 triage with a criminal assistant and a civil
25 assistant every case that comes in.

1 They make a determination whether this
2 case should move on a criminal track or on a
3 civil track. And they go from there. Because
4 obviously the burdens of proofs were different.
5 The preponderance under this proposed Statute is
6 beyond a reasonable doubt.

7 A potential target, to address a
8 question you raised, Mr. Preski, still has all
9 constitutional protections intact. If a
10 potential target decides that he does not want to
11 participate in the civil investigative demand, he
12 is not stripped of his Fifth Amendment rights.
13 But he will suffer the consequences; i.e., a
14 civil default perhaps against the corporation
15 with the Commonwealth being the benefit of that
16 default because they would be able to move in and
17 then take some of those ill-gotten gains.

18 Lastly, I believe that the Statute is
19 well thought-out; it breaks down all of the
20 problems -- or any of the problems that have
21 occurred in the past, it provides the proper
22 incentives and protection for both the
23 whistle-blower and for law enforcement
24 communities, and will provide the taxpayers of
25 the Commonwealth of Pennsylvania with not only an

1 ability to recoup some of the losses of their tax
2 dollars but a strong deterrent against those type
3 of health care fraud and other types of cheats
4 committing their crimes to begin with.

5 Thank you very much for allowing me to
6 appear before you. If you have any questions,
7 I'd be happy to answer them.

8 CHAIRPERSON CLARK: No, we thank you
9 very much for your insightful testimony. Are
10 there any questions?

11 (No audible response.)

12 CHAIRPERSON CLARK: Mr. Stone, do you
13 have testimony for the Committee?

14 MR. STONE: Members of the Committee, my
15 name is Andrew Stone. I'm a partner in the law
16 firm of Stone and Stone and I have -- from
17 Pittsburgh. And for the last several years, I've
18 been involved in litigation in this area
19 representing qui tam plaintiffs.

20 The prior testimony has been articulate
21 and extensive, and I don't think there is much
22 that I would like to add at this point. I'm
23 happy to be here today, and I'm honored to be
24 invited to participate. And, obviously, I support
25 this legislation. I think it's well thought-out

1 and I think it's needed. Thank you.

2 CHAIRPERSON CLARK: I thank you.

3 Questions?

4 REPRESENTATIVE PETRARCA: Yeah.

5 Mr. Raspanti, you certainly have a knowledge of
6 the other laws around the country. I know from
7 your testimony that you were asked to assist in
8 the drafting or at least review of the
9 legislation that we have before us.

10 Is there anything that's not in here
11 that you would have liked to have seen in here,
12 maybe something else that's going on in any of
13 the other states aside from the shackle?

14 MR. RASPANTI: Actually, it's the
15 converse. We have things in our law that other
16 states wish they had in their laws. In fact, in
17 talking with -- and I know that the Attorney
18 General's office has had discussions and the
19 District Attorney's office.

20 And what we tried to do was to eliminate
21 the problems that the other states were having
22 and also to tailor this particular law to the
23 uniqueness of the Commonwealth.

24 So personally, I don't see anything -- I
25 mean, the Statute will have a start-up period.

1 And I think that not to increase expectations,
2 but if you file a case today, it takes some time
3 before it's investigated and moves forward.

4 But, no, I don't think so. I think really
5 the implementation of the Statute is where law
6 enforcement authorities now have the benefit of
7 twelve years under the Federal guidelines and as
8 far as ten years under the state guidelines to
9 know where some of the other states went wrong.

10 And I was talking to some of the
11 attorney generals, both who were looking at
12 statutes and who had passed statutes. And as
13 they were telling me, gee, I wish we had this;
14 well, it's in there. I wish we had this. Well,
15 it's in there. Well, it sounds like a great
16 statute. I hope you can convince the Legislature
17 to pass it.

18 The only other thing that I think does
19 need to be addressed at some point in time -- and
20 I don't think it needs to be addressed in a
21 massive way because to some degree the Statute
22 takes care of it.

23 And I'm sure if this is more of an
24 implementation or a legislative function -- when
25 a statute is passed, you do need to have some

1 resources that are either devoted or if I can use
2 the word "diverted" within the respective
3 prosecutorial offices to allow the Statute to
4 grow and nurture within those offices.

5 We need to develop, as the Federal model
6 has, prosecutors who want to make these type of
7 cases, who want to be involved in what in many
8 respects is affirmative civil litigation. We're
9 not reacting as a normal criminal prosecutor
10 does. We are trying to stop systemic fraud both
11 in a particular industry or a particular
12 wrongdoer.

13 So I think that the implementation often
14 is where the statute has gone wrong or has taken
15 some delays. I know that Florida had some
16 problems in the beginning because, again, they
17 were fighting with the Federal Government over
18 some of the same -- this particular Statute, we
19 even take care of that to the extent there was a
20 Federal money and Commonwealth monies, it can be
21 filed in a Federal court.

22 But as I mentioned, as the Statute is
23 utilized -- and when I looked at it a couple
24 days ago. I just took the Pennsylvania budget
25 and I tried to go down every line item that you

1 know better than I do.

2 And I was amazed at how many programs
3 I'd never even heard of, quite frankly, that are
4 being funded to the tune of millions of dollars
5 that no one has ever brought a case -- I know
6 from the work I do every day that there's all
7 kinds of abuse going on; but there's never been
8 any incentive for someone to come forward.

9 The second last vignette if you would
10 permit me is in looking at cases. And I look at
11 cases now nationwide I have received many, many
12 calls over the last five years of
13 whistle-blowers bringing only state claims; but I
14 don't have a statute to bring those.

15 And I say, Look -- I direct them to the
16 Attorney General's office. I direct them to the
17 District Attorney's office. But there is no
18 statute to address what are only state claims.

19 And they get frustrated because they
20 read the papers. They said, Well, the feds are
21 doing it. You send them over to the Federal
22 Government and they say this is a state matter.
23 There's no Medicaid money; there's no commingled
24 funds; we can't touch it; we're sorry.

25 I know the fraud is out there. It's a

1 matter of having a statute to redress what that
2 fraud is.

3 REPRESENTATIVE PETRARCA: Thank you.

4 MR. RASPANTI: Thank you.

5 CHAIRPERSON CLARK: Okay. We're going
6 to take a ten-minute break, and we'll be back at
7 ten minutes of 12 and hear from two more
8 witnesses and we'll wrap this hearing up. Thank
9 you.

10 (At which time, a brief break was taken.)

11 CHAIRPERSON CLARK: All right. I want
12 to bring this Committee hearing back to order.
13 And the next individual scheduled to testify
14 before the Committee is Larry Frankel. He is the
15 Executive Director of the American Civil
16 Liberties Union. Mr. Frankel, it's always a
17 pleasure to see you.

18 MR. FRANKEL: Always a pleasure to see
19 you, Representative Clark, particularly in
20 Philadelphia.

21 CHAIRPERSON CLARK: I've been to
22 Philadelphia more times this summer than anyplace
23 else.

24 MR. FRANKEL: So it must be the best
25 summer of your life. In any event, I did not

1 prepare written testimony today. I hope you will
2 indulge me.

3 First of all, I just want to make it
4 clear that, if there's any doubt, we do not support
5 the filing of false claims or fraudulent acts.
6 And both before I got here today and based on
7 what I heard here today, certainly think it is
8 worth the Commonwealth having some kind of false
9 claims act of the ability to pursue some of this
10 fraud in the manners that are described.

11 But prior to today, my organization did
12 have a particular concern about the bill, or a
13 set of concerns -- some of which have been
14 reenforced today -- which I think requires some
15 consideration, hopefully, by the Committee before
16 this bill is enacted.

17 And that concern really relates to more
18 to what the bill empowers prosecutors, local
19 district attorneys, to do what they cannot do now
20 as far as I understand; and that is to bring a
21 civil action for damages.

22 That is something to my knowledge that
23 we have not permitted prosecutors to do. They
24 can bring criminal actions. They may be involved
25 in some kind of civil lawsuits where maybe

1 their office is sued or involve prison
2 conditions; but I am unaware of extending that
3 kind of authority to the local district attorneys
4 in this state.

5 And we raise that as a concern not
6 necessarily as an objection to the bill, but
7 something that the Committee I think should
8 properly consider whether they want to go into
9 this area.

10 To the extent this is modeled after the
11 Federal Act, well, U.S. Attorneys have both
12 criminal and civil divisions. They've had them
13 for a while. And it may be it's easier to
14 understand how they might deal with these kinds
15 of matters because of their years of experience.

16 The State Attorneys General's office,
17 most of the attorneys involved in that office are
18 civil attorneys; they're not criminal attorneys.
19 And they may be more particularly equipped to
20 deal with cases and they may not want to handle
21 the smaller cases or cases that only involve low
22 political subdivision funds.

23 But this is not so far from some of
24 their traditional activities and powers and
25 authority. And I also recall because I received a

1 few press calls that just this week the
2 Pennsylvania version of the Prison Litigation and
3 Reform Act went into effect, which means that
4 there presumably will be fewer lawsuits brought
5 by prisoners; therefore, I think the Attorney
6 General's office has some lawyers who probably
7 are looking for some more work to do since they
8 don't have to answer prisoner lawsuits any
9 longer.

10 And, you know, this may not require that
11 they need to hire new attorneys to handle new
12 powers under the Act. Well, I do believe that
13 local prosecutors may have to or may use this as
14 justification to request an increase in their
15 staff herein creating other larger bureaucracies.

16 Again, this isn't to object to the bill,
17 but to raise a concern that I have seen over the
18 last few years that the General Assembly has
19 passed a number of laws that have increased the
20 authority and power of the district attorneys.

21 And in reality, you have less oversight
22 over them than you have over the attorneys in the
23 Attorney General's office. And I respectfully
24 believe that is a consideration that you should
25 keep in mind.

1 And this was a concern before we talked
2 here today. And some of the interchange over the
3 use of the civil side versus the criminal side in
4 the investigations and the answers were given I
5 think provide more reason for pause.

6 It's not clear to me or at least if one
7 of these civil demands was served on my client
8 and I knew that there might be a criminal
9 investigation, well, if you decide not to
10 cooperate, then there's going to be a default
11 judgment, that sounds a little coercive and it's
12 not really sorting out, making sure you're not
13 using the civil powers for something on the
14 criminal side.

15 I don't have enough experience in the
16 area. I don't know any attorneys who really do
17 because we don't allow our local prosecutors to
18 do this.

19 Again, there is some caution; but it
20 sounded as someone sitting listening to some of
21 these answers that we want these additional
22 powers because it will allow us to not only
23 engage in more effective prosecution but possibly
24 really squeeze people a little harder possibly
25 potentially in violation of their constitutional

1 rights.

2 I'm not absolutely saying this. I'm not
3 being declarative of this. But I heard some
4 answers that would give me pause to say, What
5 restrictions are there going to be on this use of
6 civil powers to make sure you're not obtaining
7 civilly what you could not obtain in a criminal
8 proceeding? So I raise that as an issue, an
9 issue of considerable concern for us.

10 I also would like to make sure that it
11 doesn't go unnoticed. I read the testimony
12 submitted by the City Solicitor of Philadelphia.
13 And on the last page, she does state that she has
14 some concerns about some of the bill's provisions
15 that are currently being pursued in discussion
16 with the Philadelphia District Attorney's office.

17 We're not privy to what those concerns
18 may be, and I don't know whether they will be
19 brought to your attention or not. But certainly
20 that stuck in my mind when I heard the District
21 Attorney Abraham say, well, the solicitors can't
22 handle these cases.

23 I don't know what that was supposed to
24 mean. I don't know what tensions there may be
25 between the solicitors who generally handle the

1 civil work, particularly in a city like
2 Philadelphia with a very large office and large
3 staff, what those tensions mean and where that's
4 going; but it does reenforce the concerns I
5 previously expressed about expanding the District
6 Attorney's office into a -- giving it some civil
7 powers that it doesn't already have. And there
8 may be some tension there that needs to be looked
9 at more closely.

10 I also was a little surprised to hear
11 what sounded to me like a gratuitous attack on
12 solicitors, you know, when indeed for some of us
13 in Philadelphia at least we do not believe that
14 the District Attorney's office has been very
15 effective at rooting out fraudulent activity on
16 the part of local police officers among other
17 individuals.

18 And nobody's got the greatest record in
19 terms of some of that in the City of
20 Philadelphia. And I don't know what's going on
21 between the Solicitor and the District Attorney;
22 but I would caution you that maybe some more, you
23 know, questions about that investigation may
24 reveal some aspects of this legislation that
25 maybe should concern you as well.

1 I will say, however, that -- with no
2 objection that I think it was with the Attorney
3 General, the District Attorney that if they
4 recover some of the proceeds it is used to fund a
5 unit to pursue these activities is certainly
6 better than having the insurance industry funding
7 units with the prosecutor's office.

8 But still, What is the accountability?
9 I don't see anything in the bill that requires
10 some kind of reporting to the Legislature about
11 how much was recovered, how it's being used
12 within the budgetary process.

13 I think that if I had one specific
14 recommendation to make to improve the bill so
15 that the General Assembly can maintain oversight
16 over this Act once it passes is having both the
17 Attorney Generals and the district attorneys
18 required to provide some kind of report about how
19 many cases were brought; how much was recovered;
20 in general, how much was retained by the district
21 attorneys, how much by the prosecutors, how much
22 went to the qui tam plaintiffs, how much was
23 returned to the General Fund, and what it meant
24 for their budgets and their staffing level so you
25 can make sure that this isn't merely a device to

1 expand the staffing of offices but is really
2 being used to pursue fraud in the most efficient
3 manner for the Commonwealth.

4 And then there are times when I think,
5 well, I know I'm paid to be paranoid. I think
6 that's our organizational rule. And I'm really
7 speaking about fears that have no grounding in
8 reality.

9 And then whenever I think I've gone off
10 into the deep end in fantasy world, I get jerked
11 back into reality I think. And it was recently
12 reported in the local newspaper and I actually
13 obtained a copy of the audit -- and I'm not
14 meaning to bash the Philadelphia District
15 Attorney's office.

16 It just happens to be I'm in
17 Philadelphia and that's the one I read more
18 about. But there were concerns raised in that
19 audit about the purchase of a computer that was
20 not done under the normal procurement procedures,
21 was done with money obtained from the forfeiture
22 proceedings.

23 And I'm not prepared to evaluate the
24 claim that the District Attorney's office made
25 that they did this for confidentiality reasons

1 and they didn't want, you know, anybody to know
2 certain computer secrets that they thought would
3 happen if they went through the normal
4 procurement process.

5 It does appear they didn't even get an
6 approval to say we think we need to do this for
7 confidentiality reasons. Once I read that, that
8 again raises my concern.

9 Are we setting up another branch of
10 government that really feels it's got some
11 independence from the oversight of the other
12 branches? And, again, I don't think that's a
13 reason to stop this bill.

14 Certainly would like to see fraud rooted
15 out, but I also believe that as the policymakers
16 of the Commonwealth, the Members of the General
17 Assembly do have a responsibility to look at the
18 creation of a new set of powers, entirely new set
19 of powers in this bill that I don't believe
20 exists already and make sure that those powers
21 are not misused.

22 Thank you for providing me this
23 opportunity to testify. If you have any
24 questions, I will attempt to answer them.

25 CHAIRPERSON CLARK: We thank you,

1 Mr. Frankel; and we certainly appreciate your
2 comments on the efficient marshall (phonetic) and
3 the resources of the Attorney General's office
4 that you alluded to at the beginning of your
5 testimony.

6 Two things struck me: No. (1), if these
7 cases are filed under seal, then the Attorney
8 General or the District Attorney has a certain
9 amount of time to look at those to decide whether
10 to pursue them or not.

11 When you talk about the Solicitor's
12 offices, you would replace the Solicitor's office
13 with the Attorney General's or the District
14 Attorney's as far as the people who would be
15 contacted to come in and expend the time
16 necessary to look at those complaints under seal?
17 Is that what you were saying?

18 MR. FRANKEL: I don't think that's what
19 I was saying. I was raising the issue that at
20 least the Philadelphia City Solicitor has some
21 concerns here.

22 Solicitors generally handle the civil
23 business for the city, the township, or whatever.
24 This is taking a piece of the civil work, putting
25 it in the District Attorney's office. And there

1 may be very valid and good reasons for that, but
2 it is a different kind of animal than I think
3 we've seen in Pennsylvania.

4 And I note that at least one solicitor
5 has some concerns, the particulars of which I'm
6 not privy to and I don't know if anybody in the
7 room is privy to. And I would hope that the
8 Committee will try and find out what those
9 concerns are before passing the bill.

10 With regard to it being under seal, that
11 could be under seal with the Solicitor if that's
12 the way the legislation was passed. I don't
13 think -- the Attorney General and District
14 Attorney are capable of maintaining
15 confidentiality.

16 CHAIRPERSON CLARK: I was saying that
17 the city solicitor -- you know, the school board
18 has a solicitor, the township has a solicitor,
19 the city has a solicitor. And your question is
20 why aren't they more involved in this process as
21 opposed to the District Attorney's office or the
22 Attorney General's office?

23 MR. FRANKEL: That's correct.

24 CHAIRPERSON CLARK: You feel they would
25 be as capable as the District Attorney's office

1 to be called in to look at this complaint under
2 seal?

3 MR. FRANKEL: They may be. We're not
4 hearing -- I'm not hearing enough today to know.
5 I did hear enough today to reenforce my concern
6 about having somebody -- an office that
7 traditionally and solely prosecutorially taking
8 on some of these functions, however.

9 CHAIRPERSON CLARK: And another item
10 that you alluded to is that let's say the
11 District Attorney's office or the criminal
12 section of the Attorney General's office proceeds
13 with a discovery against a proposed defendant.

14 When that defendant receives those
15 discovery papers, do they immediately indicate
16 that they're not going to answer those because of
17 there's a possibility that this would be switched
18 over to the criminal section within the District
19 Attorney's office or the Attorney General's
20 office and they're going to have to waive some
21 kind of right to have those civil discoveries
22 used against them to be developed in a criminal
23 action down the road? Would you like to comment
24 on that concern?

25 MR. FRANKEL: Well, I can see a

1 situation -- and, again, I don't have particular
2 experience here. But I can see a situation where
3 the matter's first pursued civilly and somebody
4 gets a stack of interrogatories with a Request
5 for Production of countless numbers of documents,
6 knows that there's some incriminating information
7 in there and does not want to disclose it.

8 Without some kind of immunity agreement
9 or some order from a court, a failure to provide
10 that discovery could lead to a default judgment
11 when there may very well be a good defense to
12 what is going on.

13 I don't -- maybe the experience from
14 other states and the Federal Government
15 demonstrates that this doesn't occur; but I don't
16 see the protections in the Statute as proposed
17 that a potential defendant in a civil action,
18 slash, target of a criminal investigation would
19 have to be able to go to court and say, you know,
20 I don't want to answer this discovery because
21 there may be criminal consequences if I do so.

22 And maybe some kind of clear language in
23 the Act would address that particular problem.
24 But as a potential attorney for the defendant,
25 slash, target, I think that the answer would be

1 we're going to have to get some immunity before
2 you can provide any information.

3 And if there is a hardball approach from
4 the other side with regard to immunity, then we
5 possibly have trampled on some constitutional
6 rights.

7 CHAIRPERSON CLARK: Now, Attorney
8 Raspanti, you're still with us today.

9 MR. RASPANTI: Yes.

10 CHAIRPERSON CLARK: Could you comment
11 for us on that prospect? I get these discovery
12 documents or interrogatories from a district
13 attorney or an Attorney General's office wanting
14 to know about billings, et cetera; I answer
15 those; they later use those against me in a
16 criminal prosecution.

17 Does the Federal Government run into
18 that? Do they make the decision up front that
19 this is going to be civil or that's going to be
20 criminal or offer immunity or do you have any
21 experience --

22 MR. RASPANTI: I think I've had
23 experience from all sides of it. Let's deal with
24 the Federal Government first. Here are the
25 advantages of the Federal False Claims Statute as

1 the feds have implemented it:

2 With strong qui tam provisions, the feds
3 are able to determine much quicker whether
4 they're going to elect to move -- proceed
5 civilly or criminally. That's not to say that
6 they don't often go both ways, because they have
7 the right to as does any prosecutor to proceed.

8 The qui tam aspects of the Statute in
9 some respects eliminates the need for the Grand
10 Jury. Because if you have an insider, for example,
11 providing the Federal Government with
12 information, you don't need a Grand Jury
13 investigation and everything that goes with a
14 Grand Jury investigation.

15 It also allows for a lot more
16 flexibility because most of the cases do go
17 civilly, quite frankly, and not criminally
18 because the Federal Government has found that the
19 real hammer is on the civil side.

20 Now, the reason why the example is a
21 little bit skewed is that the Federal Government
22 has very strong criminal statutes that are
23 counterparts to the civil.

24 For example, there is a Criminal False
25 Claims Act under the Federal model, which we

1 don't have in the Commonwealth and which many
2 states don't have.

3 In the Commonwealth model, it would be
4 more likely to elect and to elect to proceed
5 civilly because there's no strong
6 countermeasure to go with. There's no, for
7 example, mail fraud statute that I'm aware of
8 under the Federal or Health Care Fraud Statute
9 that would move forward.

10 To get to Mr. Frankel's paranoia, and to
11 some degrees it is and to some degrees it isn't,
12 if a person under the Commonwealth-proposed bill
13 believes that he or she has criminal liability
14 and is served criminal documents, put it aside
15 because there's not the same privilege for
16 documents -- I think you're more concerned about
17 testimonial privilege which would invoke the
18 Fifth Amendment -- well, maybe that person should
19 explore with the appropriate prosecutorial
20 authority because only that person knows whether
21 he or she has a criminal exposure whether
22 immunity can be granted.

23 And that's part of the process, quite
24 frankly, sir, because by cutting that type of deal
25 or a concern, quite frankly, that the target may

1 have about exposure -- that's how these cases
2 work -- they then go to the prosecutor and say,
3 well, look, I would like to help you in your
4 investigation of this or that corporation.

5 So in many respects that becomes part of
6 the entire cycle with regard to moving the cases
7 forward. If a person has a privilege and
8 believes he or she has committed a crime, that
9 privilege exists anywhere in any litigation.

10 If I sued you for an auto accident and I
11 asked you questions about fraudulently submitting
12 a claim to your insurance company, the same thing
13 would happen. You may choose not to answer that
14 because you know that you committed a crime.

15 So I don't know if that's answered your
16 question, but that problem or possibility would
17 exist in any civil context if a person has
18 potential for criminal liability, whether it be
19 with the District Attorney, the Attorney General,
20 or a private litigant suing that individual if
21 that person has committed a crime.

22 I think to put -- if I'm listening to
23 Mr. Frankel correctly, to stick something in
24 the bill that says you can proceed even with
25 criminal exposure -- and I'm not sure if that's

1 what you mean -- and continue to provide
2 fraudulent documents to the government and to
3 hide documents and to take testimony under oath
4 and we can't use it against you would be
5 ridiculous, quite frankly.

6 And I don't think any state in the Union
7 has worked that way, could work that way. The
8 Federal Government doesn't work that way. I
9 mean, they look at these cases as a parallel
10 prosecution in that they're deciding which way to
11 move toward; they make an election and they move
12 forward.

13 If it were the other way around, the
14 inverse, and there was a criminal prosecution of
15 a defendant under some existing Pennsylvania
16 law -- and there really is no law that's exactly
17 like this one -- and a civil suit were filed,
18 well, obviously, that conviction would be used in
19 a civil suit as collateral estoppel res judicata.

20 And that would be the end of the civil
21 suit, and feds do that too. But I don't know
22 how -- I mean, there are concerns to the extent
23 that someone who is a target or subject of an
24 investigation may have criminal exposure; but
25 that person always has the ability to decide

1 whether he wants to either get immunity from the
2 appropriate prosecuting authority, maybe cut a
3 deal with regard to somebody who is worse
4 off -- I mean, that's how prosecutors work -- or
5 decide not to participate in the process.

6 But I don't know what the middle ground
7 is. I don't know how you participate in the
8 process. And if you've done something wrong,
9 protect yourself without exposing yourself
10 to other criminal problems. I don't know how you
11 would do that.

12 CHAIRPERSON CLARK: Mr. Frankel.

13 MR. FRANKEL: If I may, I think when I
14 was commenting I was reacting somewhat to
15 something Mr. Raspanti said in response to an
16 earlier question which was about default
17 judgments.

18 That's I think with individuals or
19 corporations where some of the concern comes in.
20 And I will again be frank; I don't know having no
21 practical experience in this area.

22 But I thought I heard that the person
23 could, you know, also take the risk of not
24 answering and letting the interrogatories or the
25 discovery and letting a default judgment be

1 entered.

2 And I don't know that that's a realistic
3 alternative for some people as opposed to, you
4 know, taking the Fifth Amendment.

5 MR. RASPANTI: Well, there is a middle
6 ground which I think, quite frankly, is weaker
7 but might address -- in a context of a Federal
8 litigation, if a witness were to decide not to
9 testify and the jury would be told that there
10 would be an adverse inference that would attach
11 to that failure to testify -- now it wouldn't be
12 a default, the Commonwealth would get the benefit
13 of the adverse inference -- I think it weakens
14 the Statute.

15 But perhaps as opposed to -- and there's
16 nothing in the Statute that says the default. I
17 was kind of connecting the dots. Where are we
18 going if you decide not to participate in a
19 lawsuit and you file pleadings and nobody answers
20 under the Rules of Civil Procedure? In this
21 state and every other one that would lead to some
22 sort of a default, right? I think we're all in
23 agreement with that.

24 Perhaps if you don't want that reaction,
25 although I think it is appropriate, you could

1 simply say, If you fail to participate, to the
2 extent there is any other subsequent proceeding,
3 that failure to participate would be an adverse
4 inference against that individual. If that makes
5 sense. I don't know if it does.

6 MR. FRANKEL: The reason I don't think
7 it makes necessary sense, what if you file the
8 answer to the Complaint but then you get what you
9 might consider intrusive discovery or abusive --

10 MR. RASPANTI: Did you commit this
11 fraud -- you either say you did or you didn't.
12 If you decided you don't want to answer it --

13 CHAIRPERSON CLARK: And I think in the
14 back of our mind is, you know, we have people who
15 are being prosecuted for one thing; but then when
16 they're actually charged, you know, they aren't
17 going to charge for something that was never the
18 focus of the investigation to begin with.

19 MR. RASPANTI: I've heard that happen,
20 yeah.

21 CHAIRPERSON CLARK: You've heard that
22 happening? And I'm assuming that they picked
23 that up along the way. And I figure so, you know,
24 you answer this discovery innocently, you know,
25 trying to clear yourself from this thing and they

1 come back in and say, oh, well, you misreported a
2 payroll -- we were looking at the chapter
3 of your payroll and you misreported something
4 so obscure, now we're going to charge you for
5 this. That's what I was --

6 MR. RASPANTI: It is an interesting
7 dynamic. But let's assume that it were Medicaid
8 funds, all right, someone is accused of stealing
9 Medicaid funds.

10 If you were to I think improperly weaken
11 the Statute to address, quite frankly, a concern
12 that I'm not sure is a legitimate concern and you
13 had a situation where the Statute were filed
14 involving Federal money and state money, the feds
15 could do exactly what Mr. Frankel is saying can't
16 be done; but the state prosecutors couldn't.

17 So the person would come in, Look, I don't
18 want to answer that discovery. Don't answer it.
19 Don't worry about it. It's intrusive. I don't
20 want to talk to you about it. Don't worry about
21 it.

22 The feds could then say, Are you going
23 to answer this or not? And if not, we're going
24 take a default against you. And to the extent
25 that there are going to be cases that straddle

1 Federal and state money, I think that's an
2 interesting dimension that you should consider if
3 you were to choose to have a safety valve, quite
4 frankly, built into it.

5 But I do understand your point. You're
6 saying if somebody comes in, lies, doesn't get
7 prosecuted for fraud but then gets prosecuted for
8 perjury, which I think is open on every possible
9 case -- I mean, that's always a concern one has
10 to have when they are giving testimony under
11 oath.

12 Now, the benefit of the Civil Statute as
13 it appears before you which, quite frankly, gives
14 the potential witness target subject more
15 protections than, say, a Grand Jury proceeding if
16 it were -- if this were the criminal flip side of
17 it, is that under the Statute before you the
18 target subject or defendant gets to have his
19 lawyer there next to him, the lawyer gets to be
20 involved in the process, the lawyer gets to
21 communicate and deal with the prosecuting
22 authority, which was built in, quite frankly, as
23 a measure of protection for that individual which
24 that individual wouldn't have if it were a Grand
25 Jury investigation. That person would be called

1 in and wouldn't have all of the same kinds of
2 protections. So (pause) --

3 CHAIRPERSON CLARK: I thank you.

4 MR. FRANKEL: If I can, one more --

5 CHAIRPERSON CLARK: One more. In
6 Harrisburg, Larry always gets the last word.

7 MR. RASPANTI: We're in Philadelphia
8 though.

9 CHAIRPERSON CLARK: Oh, he does in
10 Philadelphia too.

11 MR. FRANKEL: I would agree that there
12 is more protection for this individual with his
13 attorney there in any civil proceeding as opposed
14 to being before the Grand Jury, but I don't want
15 this all to get lost on just this concern about
16 the individuals who might be involved in
17 fraudulent activity.

18 I'd like to get back to the other
19 concern I raised which is probably where more of
20 my paranoia is; that although this is supposed to
21 be a self-funding program, some funds are going
22 to have to be expended straight out.

23 But I can see that we'll probably have
24 prosecutors go to their county authorities and
25 say, Now I've got this new authority to pursue

1 fraud crimes. You better give me more attorneys.
2 I need a bigger office. I need more this. I
3 need more that.

4 And that's a concern that we have
5 that, is this used as a justification for, again,
6 increasing the powers of prosecuting attorneys
7 which is, you know, the concern that I raised about
8 having them start going into civil work for
9 damages where they haven't done it previously.

10 It's a policy question for you, and I
11 think it gets a little lost in some of the
12 discussion about the amounts of money that might
13 be recovered.

14 And hope that -- you may say, We heard
15 you fine. Good-bye. Go get out of here. But at
16 least I've raised the concern. And I'm not sure
17 exactly how you build in some protection to make
18 sure this doesn't become a basis for just a
19 continuing growth of what is in many instances a
20 rather independent branch of government.

21 MR. RASPANTI: Could I just address that
22 issue as to how other states have done it?
23 Because there are two points that I think that
24 are important.

25 You talk about implementation. Let's

1 assume you pass the Statute this fall. In my
2 experience, it would probably take 18 months,
3 maybe more, maybe less, before you really had
4 recoveries that were significant enough to fund
5 it.

6 What other states have done is to
7 initially fund or to divert funds to get a, let's
8 call it a union, up and running. And as
9 recoveries start to come in, they supplant
10 treasury money.

11 So as opposed to taxpayers pays money
12 into the treasury, treasury goes out to the DA's
13 office, now to the extent you have a \$10,000
14 recovery, that's \$10,000 less I have to ask from
15 the treasury to fund that.

16 And I think would -- because I don't
17 think there's any objection from Mr. Frankel with
18 regard to the self-funding. It's the
19 aggrandizement, if you will -- if I can use that
20 term, because I'm not in the government -- that
21 he's concerned about.

22 And that's how other people have done
23 it. As long as everybody realizes you don't turn
24 the statute in and money flows in. It just
25 doesn't.

1 And lastly, just as one last
2 example -- and it has nothing to do with
3 Mr. Frankel. But to give you one example of a
4 strong statute that was passed but to the extent
5 it never had the appropriate implementation and
6 it didn't have the benefit of the whistle-blower,
7 take a look at the Rico Statute (phonetic).

8 Can you count on your finger how many
9 Rico prosecutions we've had in Pennsylvania who
10 aren't recovered in money? It has all of the
11 same powers; and, in fact, it has provisions that
12 are in this bill.

13 But because no one could ever figure out
14 how to use it and we never had the benefit of
15 inside information, there's been very little in
16 the way of any Rico prosecutions even though we
17 have a tremendous, strong statute on the book and
18 we've had it for a number of years. Thank you.

19 CHAIRPERSON CLARK: Thank you. Any
20 additional questions of these gentlemen?

21 (No audible response.)

22 MR. FRANKEL: Thank you.

23 CHAIRPERSON CLARK: Thank you very much.
24 And the last individual to provide testimony
25 before the Committee today will be Alan

1 Shusterman. He's with the Taxpayers Against
2 Fraud from the False Claims Act Legal Center.
3 Mr. Shusterman, how are you?

4 MR. SHUSTERMAN: I'm fine. I enjoyed
5 the exchange here. Mr. Chairman and Members of
6 the Subcommittee, I thank you for inviting me
7 here today.

8 My name is Alan Shusterman, and I am the
9 Associate Director of Taxpayers Against Fraud,
10 the False Claims Act Legal Center, a nonprofit,
11 public interest organization based in Washington,
12 D.C., where as you might imagine, the False
13 Claims Act is not a major topic of discussion
14 this week.

15 Being the last person then to testify
16 before you today, I will be echoing some of what
17 you heard District Attorney Abraham and Attorney
18 General Fisher and Mr. Raspanti say; but that
19 said, I promise you that I will keep my remarks
20 to under 10 minutes.

21 As District Attorney Abraham stated
22 earlier, none other than Benjamin Franklin is
23 quoted as saying, "There is no kind of dishonesty
24 into which otherwise good people more easily and
25 frequently fall than that act of defrauding the

1 government."

2 It is a response to this unfortunate
3 reality that Taxpayers Against Fraud exists.
4 That is, our organization is dedicated to
5 combating fraud committed against the Federal
6 Government through the promotion and use of qui
7 tam or whistle-blower provision of the Federal
8 False Claims Act.

9 As you've already heard, in 1986,
10 prompted by reports of widespread and undetected
11 and unremedied fraud being perpetrated against
12 government, the U.S. Congress substantially
13 strengthened the False Claims Act, which was
14 originally passed during the Civil War at the
15 urging of President Lincoln.

16 House Bill 1671, the proposed
17 Pennsylvania False Claims Act, has been modeled
18 largely after the Federal False Claims Act.

19 Among other things, Taxpayers Against
20 Fraud serves as a False Claims Act information
21 clearinghouse. In that role, we are in a
22 position to report on how well the amended Act
23 has been working. That is why I was asked to
24 testify here today.

25 In short, the amended False Claims Act

1 has proven to be an undeniable success. Marking
2 the 10th anniversary of the 1966 False Claims
3 Act Amendments, Senator Charles Grassley,
4 Republican from Iowa, and Congressman Howard
5 Berman, Democrat from California, the original
6 sponsors of the 1986 Amendments, reflected upon
7 their success.

8 Senator Grassley stated, "No one can
9 question the effectiveness of Howard Berman's
10 work and how we worked together. We are equally
11 proud parents of this legislation. And for me,
12 its passage is the single greatest accomplishment
13 that I want to refer to in my years in the
14 Senate."

15 The Senator explained, "My philosophy
16 regarding qui tam is simple. It works because
17 it's a true partnership. It's a partnership
18 between private citizens and the Government. It
19 joins private resources with government resources.
20 It's a successful formula that we honor Lincoln
21 for."

22 In his wisdom, President Lincoln knew
23 that you could create a team of public servants
24 and private citizens and that they would work
25 together for a common good serving the American

1 taxpayer.

2 Likewise, Congressman Berman stated, "I
3 take great pride in being involved with this
4 legislation and what, most importantly, people
5 have done with the law since we passed it.

6 "Nothing can more quickly undermine
7 peoples' faith in government than the notion that
8 inefficiencies, waste, fraud and cheating goes
9 on and takes the taxpayers' money. So in my
10 sight for me, the False Claims Act Amendments
11 affirm my belief in what an honest government
12 and a vigilant government dealing with the people
13 it does business with can do on behalf of the
14 public's relationship to that government."

15 Also marking the 10th anniversary,
16 former U.S. Attorney General Edwin Meese lauded
17 the success of the Amended Act which was signed
18 into law by President Reagan.

19 "It was my privilege to have been
20 Attorney General of the United States at that
21 time, and I've continued to appreciate the
22 significance of this important legislation."

23 According to Mr. Meese, the law has been
24 "an excellent example of privatization in the
25 public interest." Likewise, Vice President Al

1 Gore in trumpeting the success of the Amended Act
2 and, in particular, the qui tam provision stated,
3 "Certainly this represents the kind of
4 public-spirited participation in government that
5 needs to be encouraged and applauded."

6 A year earlier upon total qui tam
7 recoveries under the Amended Act passing the \$1
8 billion mark, Assistant Attorney General Frank W.
9 Hunger summed up the Justice Department's views:

10 "This is a remarkable achievement for
11 the taxpayers of this country. Senator Grassley
12 and Representative Berman must be commended for
13 their leadership and vision in sponsoring the
14 legislation that has been used so effectively in
15 the nine years since its enactment.

16 "The public/private partnership
17 encouraged by the Statute works and is an
18 effective tool in our continuing fight against
19 the fraudulent use of public funds."

20 In April of this year, the U.S. House
21 Judiciary Committee Subcommittee on Immigration
22 and Claims held a hearing on health care
23 initiatives pursued under the False Claims Act.

24 At that hearing, Donald K. Stern, the
25 U.S. Attorney for the district of Massachusetts

1 and the Chair of the Attorney General's Advisory
2 Committee spoke about the critical importance of
3 the False Claims Act.

4 Mr. Stern stated that "The Act has
5 become the Justice Department's primary civil
6 enforcement tool to combat fraud, and is "a
7 critical tool in fighting and deterring fraud
8 and other false billing in the health care
9 industry."

10 Likewise, Lewis Morris, the U.S. Health
11 and Human Services Assistant Inspector General
12 for Legal Affairs, called the False Claims Act
13 "invaluable" and "the most important tool we have
14 in stemming the tide of health care fraud."

15 So what I'm here to talk to you about
16 today is a law that has withstood the test of
17 time, a law that the United States Congress can
18 actually take pride in having passed. It is a
19 law that has become a critical tool for the
20 Federal law enforcement community. It is a law
21 that works.

22 Let me share with you some statistics
23 indicative of the success. In fiscal year 1985,
24 a year before passage of the '86 Amendments, the
25 Government civil fraud recoveries totaled

1 approximately \$27 million.

2 In fiscal year 1997, as a result of qui
3 tam cases alone, over \$600 million was returned
4 to the U.S. Treasury with hundred of millions
5 more recovered through government-initiated
6 actions.

7 The upward trend in qui tam recoveries
8 is striking. Qui tam recoveries from 1989 to
9 1991 totalled about a hundred and thirty million
10 dollars. For the next three years, they totalled
11 about \$690 million. And from 1995 through 1997,
12 they totalled almost \$1 billion.

13 Total qui tam recovery since 1986
14 recently passed the \$2 billion mark. Total civil
15 fraud recoveries since 1986, including qui tam,
16 are well over \$4 billion.

17 Moreover, as District Attorney Abraham
18 mentioned earlier, a 1996 economic study by
19 former U.S. Senate Budget Committee Chief
20 Economist William L. Stringer projects that total
21 fraud recoveries through the year 2006 can be
22 expected to exceed \$21 billion.

23 According to the Stringer Study, which
24 was commissioned by Taxpayers Against Fraud,
25 total qui tam recoveries from 1996 to 2006 are

1 expected to equal between 6.9 and \$9.3 billion.

2 As Congress anticipated, the Amended Act
3 has been applied to remedy a wide variety of
4 fraud schemes that have ripped off a wide variety
5 of Federal programs. That said, the first big
6 wave of post-1986 cases primarily involved
7 defense contract fraud. In recent years, health
8 care fraud has become the FCA's No. 1 target.

9 Let me try to give a sense of the types
10 of successful cases that have been brought under
11 the Act. From 1995 through 1997, the top
12 Government recoveries through qui tam cases
13 included, among many other:

14 \$88 million in a case alleging false
15 testing of military components and the provision
16 of defective parts; \$5.9 million in a case
17 alleging overcharging for materials used to
18 maintain and repair railroad crossing; \$182
19 million in a case alleging false claims submitted
20 to Medicare, Medicaid, and CHAMPUS for medically
21 unnecessary laboratory tests; \$4 million in a
22 case alleging the falsification of documents
23 concerning the medical condition of Medicare
24 beneficiaries; \$7.2 million in a case alleging
25 the manufacturing of faulty transmission parts

1 for Army helicopters and resulting flight
2 failures; \$15.5 million in a case alleging the
3 submission of false information in connection
4 with a federally-sponsored research grants and
5 contract; and, as you've already heard, in a case
6 of special local interest, \$334 million in a case
7 filed in the Eastern District of Pennsylvania
8 involving false billing of Medicare and Medicare,
9 CHAMPUS, and the Federal Employees Health Benefit
10 Program for laboratory tests.

11 Over the past year or so, the False
12 Claim Act cases that have been brought have
13 included, among others: Allegations of inflated
14 home health care management costs charged to
15 Medicare; the billing Medicaid and CHAMPUS for
16 unnecessary or unperformed mental health
17 services; overbilling on FDIC and RTC contracts;
18 the provision of defective aircraft carrier parts
19 to the Navy; Student Financial Aid fraud;
20 Medicare, Medicaid hospice fraud; kickbacks
21 involving HUD-insured properties; the
22 underpayment of oil royalties under Federal
23 mineral contracts; false prescription drug
24 claims; and billing for services by physicians
25 actual on leave.

1 Beyond remedying wrongdoing and
2 replenishing the U.S. Treasury, the Amended Act
3 has had an even more important impact; that is,
4 it has introduced a powerful deterrent to those
5 contemplating fraud against the Federal
6 Government.

7 Before 1986, those who were tempted to
8 defraud the Government faced relatively little
9 chance of getting caught and a relatively small
10 price to pay if caught. The 1986 Amendments
11 changed that.

12 The existence of strong qui tam
13 provisions greatly increases the likelihood of
14 wrongdoers being exposed, and the Amended FCA
15 hits bad actors with significant financial
16 consequences.

17 While admittedly difficult to quantify,
18 the 1996 Stringer Economic Study estimates a
19 deterrence of fraud due to the 1986 Amendments
20 for their first ten years of existence totaled
21 between 148 and \$296 billion.

22 And their second ten years of existence
23 will total 240 and \$480 billion, even assuming a
24 conservative estimate of deterrent effect first.

25 In conclusion, a strong False Claims Act

1 and qui tam are the American Taxpayers' best hope
2 for ensuring that all funds fraudulently diverted
3 from Federal programs will ultimately be
4 recovered and, more importantly, that fraud
5 against the Federal Government will be diminished
6 in the future. I respectfully suggest that the
7 taxpayers of Pennsylvania deserve the same.

8 Before I answer questions, let me just
9 quickly point out what I've included in the
10 appendix to my written testimony. In the
11 appendix, you will find a summary of the most
12 recent qui tam statistics released by the Justice
13 Department, although the -- may have even more
14 recent statistics.

15 I have charts describing the cases that
16 led to the top qui tam recoveries in 1995, 1996,
17 and 1997; descriptions of about fifty False
18 Claims Acts cases that have been brought or
19 resolved in the first half of this year; excerpts
20 from the 1986 False Claims Act Amendments Tenth
21 Anniversary Report, including a brief history of
22 the Act; and the Executive Summary and Table of
23 Contents from the 1996 Stringer Economic Study.

24 Complete copies of the Stringer Study
25 and the Tenth Anniversary Report can be obtained

1 free-of-charge by calling our office at
2 202-296-4826. And if anyone has any questions
3 that I don't end up answering here today, please
4 feel free to call me any time at that number.
5 Thank you very much.

6 CHAIRPERSON CLARK: Okay. We thank you.
7 And are there any questions?

8 (No audible response.)

9 CHAIRPERSON CLARK: I want to thank you
10 very much for your testimony and your information
11 today, and that'll conclude today's hearing on
12 House Bill 1671. Thank you again very much.

13 (At or about 12:40 p.m., the hearing was
14 adjourned.)

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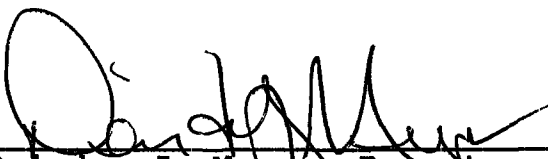
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C E R T I F I C A T E

I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.


Deirdre J. Meyer, Reporter,
Notary Public. My commission
expires August 10, 1998.