

**Testimony of
Bob Whitmore
Before the COMMITTEE ON EDUCATION AND LABOR
UNITED STATES HOUSE OF REPRESENTATIVES
Hearing on
*"Hidden Tragedy: Underreporting of Workplace Injuries
and Illnesses"***

June 19, 2008

Chairman Miller, Ranking Member McKeon and other dedicated Committee members. My name is Bob Whitmore. I am a Vietnam veteran with an additional 36 years of government service at the US Department of Labor. I have directed the national OSHA Injury and Illness Recordkeeping system since 1988, and am the Department of Labor's expert witness for recordkeeping litigation. I have been subpoenaed to testify today and am accompanied by my counsel, Mr. Robert C. Seldon, of Robert C. Seldon and Associates. Mr. Seldon is well known for representing employees who speak out about abuses in the public and corporate sectors, and whom I believe has prevented OSHA from firing me. On July 17th of last year my OSHA Director, Keith Goddard, placed me on paid administrative leave in a non-duty status.

Therefore, at the outset I want to make it very clear that I am here today representing myself as a concerned citizen; a concerned citizen with over 20 years of work experience directly related to the subject of today's Committee hearing. I am not here representing OSHA or the Department of Labor.

I have been an outspoken critic regarding the inaccuracy of OSHA's Injury and Illness Recordkeeping since 1985. Several years ago, I assisted the *Oakland Tribune* in its 2005 coverage of the fraudulent records kept by the joint venture KFM during the construction of the San Francisco-Oakland Bay Bridge East Span, and the subsequent California State Auditor investigation. More recently, I was involved with the Charlotte Observer's six-day series, "The Cruellest Cuts," which was published this past February. The graphic and disturbing pictures I have in front of me come from that coverage. That private investigation uncovered horrendous working conditions and fraudulent records at one of the nation's largest poultry producers, the House of Raeford Farms, with plants in both North and South Carolina.

I contend that the current OSHA Injury and Illness information is inaccurate, due in part to wide scale underreporting by employers and OSHA's willingness to accept these falsified numbers. There are many reasons why OSHA would accept these numbers, but one important institutional factor has dramatically affected the Agency since 1992, regardless of the political party in power: steady annual declines in the number of workplace injuries and illnesses makes it appear that OSHA is fulfilling its mission.

All of us want to see a reduction in the numbers of workplace injuries and illnesses. However, this reduction must be the result of fewer injuries and illnesses actually occurring, and *not* the result of falsified reporting.

Obviously, it is impossible to evaluate the effectiveness of any OSHA program in the results aren't accurate.

To understand how we got to this point in time it is important to look at the history of the OSHA Recordkeeping system. That history can be broken into 3 segments.

What I refer to as the "TAXI FARE ERA" began with the start of recordkeeping in 1972 and continued through mid 1986. While citations for

recordkeeping topped the list of the most cited OSHA standard or regulation during this period, the fines in these cases was usually \$100. (Note: \$100 in 1972 = \$518 in 2008) Many of us referred to these fines as “Corporate Taxi Fare.”

From April 1986 to 1992 we entered what I term the “Egregious Era.” In April of 1986, under the Regan administration, OSHA issued its first ever million-dollar fine to Union Carbide in West Virginia. The \$1.3 million dollar fine was for inaccurate recordkeeping. During this period I reviewed over 40 cases in which we applied the newly developed “instance-by-instance” penalty policy called the Egregious Penalty. One only has to look at the injury/illness rates from 1985 through 1992 in order to see the impact of this era. In fact I believe that in 1988 and 1991 Dr. Ruser and Robert Smith wrote about this impact. The national injury and illness rates rose during this period and the leading occupational illness collected in the system went from contact dermatitis to repeated trauma disorders.

I call the period from 1992 up to the present the “Report Card Era.” Around 1992 Congress passed the Government Performance Results Act (GPRA), in an attempt to make Agencies quantify their performance with objective

findings. For the very first time, GPRA made OSHA directly accountable for the rise and fall of the injury and illness numbers. This information became the “Report Card” of success or failure for OSHA. Obviously, the Congress was looking for real numbers. Regrettably, the *new OSHA* of the nineties and beyond responded to the complaints from large employers and their representatives that the Agency was too zealous with “paperwork enforcement”. OSHA ceased virtually any meaningful recordkeeping enforcement actions after 1991. Unfortunately, rather than aggressively pursuing programs to try and insure *accurate* numbers, OSHA’s leadership turned its backs on such pursuits. Sadly, OSHA’s primary mission – trying to insure worker safety – was lost in their attempt to obtain and publicize a better report card. Until recently Congress didn’t seem to care either.

Like everything in life there seems to be good news and bad news. The good news was that in 1995 OSHA began collecting the injury and illness records directly from approximately 85,000 establishments nationwide, called the annual OSHA Data Initiative or ODI. For the first time ever, this program gave OSHA the injury and illness data for specific establishments, rather than overall industry information. OSHA could finally focus its attention on the employers having the highest injury rates and so it then created the Site

Specific Targeting System (SST). Unfortunately except for one year since 1995 OSHA has decided not to collect information from employers in the Construction industry, one of our deadliest sectors.

The bad news was that employers were reporting these rates to OSHA and history had already warned us of such perils. In the early 1980's OSHA instituted a "Records Check" policy, in which Compliance Officers calculated the "lost-time" rate from the OSHA Log and immediately vacated the premises *if* the employer's rate was below the national average rate (around 4.5 at that time). During the "Egregious Era" everyone came to realize the ridiculous nature of the Records Check Policy and it was eliminated.

The SST recently announced for 2008 will include establishments with DART rates, formerly called lost-workday rates, of 11.0 (3,800 establishments) and above on the primary targeting lists and 7.0 and above on the secondary targeting lists. Please realize that these lists are for *potential* inspections, and other inspections, including fatality, complaint, National and Local emphasis programs often preclude an Area Office from completing even a sample of the SST primary targeting list. Bottom line, if you report a DART rate below 7.0 you aren't even on OSHA's radar for the

potential of a planned inspection. Employers have always had incentives not to report all injuries and illnesses: many plant and corporate managers, physicians, and supervisors receive bonuses based on their OSHA recordable rates. While well intentioned originally, the SST as it is currently administered provides them with another one.

It doesn't take an expert to question this data when one looks at just a few examples from 2005:

- 1) A steel plant in Kentucky reported *no*, or 0%, cases on their log.
- 2) Two other steel plants in Ohio and one in Pennsylvania had total recordable case rates, TCR, below 1.
- 3) Another steel plant in North Carolina and two poultry plants in Iowa reported "Days Away/Restricted/Transferred" (DART) rates of 0, and a large poultry processor in North Carolina reported a DART rate of 1.2.

To try and put these numbers in context, the 2005 data for all private sector establishments classified as General Merchandise Stores (code 452) under retail trade reported the following:

Total Case Rate – 6.7

DART rate – 3.9

So what can this Committee do to ensure that the OSHA numbers are real?

1) Direct OSHA to put its entire employer reported data since 1995 on its website so that no one would be forced, as has been the practice, to submit a FOIA request for this releasable information. This would include the data from the OSHA ODI and OMB Records Audit programs.

2) Direct OSHA to reinstitute *firm, fair & consistent enforcement* of the recordkeeping regulations by establishing an ongoing National Emphasis Program that will begin to address the problem of intentional underreporting of workplace injuries and illnesses.

3) Direct OSHA to create an independent Recordkeeping Inspection Support Office that would contain a national Office “SWAT Team” for potentially egregious cases so that the Field Compliance staff would be able to proceed with their other inspections.

4) Direct OSHA to establish an SST program that does not ignore employers who send in highly questionable, if not fraudulent, information.

5) Finally, but probably the single most effective way to quickly improve the data, direct OSHA to issue a requirement that would make Corporate Safety Directors certify that they have made meaningful and effective efforts to insure the accuracy of the OSHA records throughout their corporation. With Sarbanes/Oxley in effect, large employers will most likely vigorously oppose this idea.

In conclusion, I'd like to share with you the response of Ms. Cherie Berry, Labor Commissioner for North Carolina OSHA, to a question posed by the *Charlotte Observer*, which was printed in its "Cruellest Cuts" series I mentioned earlier:

Q. *"Will your department take any additional steps to ensure that company injury logs reflect reality?"*

"Well, I find it offensive that it seems to me you're suggesting that not keeping the proper paperwork is commonplace in our business community. I just don't find that. ... We're going to keep doing what we're doing because it's working."

While Ms Berry might be offended, I personally find her response, as well as similar reactions throughout OSHA's leadership, outrageous. Today, and every day this year an average 16 pieces of "paperwork" will be completed for working men and women in America, their death certificates. It's time for the leadership of my Agency to show Chairman Miller's "sense of urgency" regarding the safety and health of America's workers.

Unfortunately, tomorrow will be too little and too late for an additional 16 grieving American families.

I personally want to apologize to those 16 families, as well as to the family of Bobby Glover, pictured here after his death at the House of Raeford Farms.

Thank you for giving me the opportunity to appear before this Committee. I look forward to your questions.