

GOVERNING LAWS AND POLICIES

	Narrative	
ALLEGATIONS		
a	<p>There was a multi-layer scheme to terminate The Writing Company’s (TWC’s) contract:</p> <ul style="list-style-type: none"> ▪ <i>Treasury Executives did not want a minority contractor to have such a high-profile contract.</i> For Treasury executives Lisa Ross and Nancy Killefer, it was a race issue. They could not tolerate an African-American firm having a contract of such enormous magnitude. Ross and Killefer engaged in a never-ending effort to terminate TWC’s work and divert it to a politically-connected firm. Their acts accomplished their goal. ▪ <i>Representatives of National Partnership for Reinventing Government (NPR),¹ which operated under the auspices of Vice President Gore, wanted someone in their camp (Plain Language Writing Team (http://www.plainlanguage.gov)² to have the contract.</i> Plain Language members promote the concept of “plain language” in government writing. NPR Representatives Melodee Mercer and Annetta Cheek invaded TWC’s contract, positioned themselves as writing experts superior to TWC,³ and helped Treasury secure termination of TWC’s contract. Working with Treasury, NPR eroded confidence in TWC’s work and paved the way for Mercer’s and Cheek’s associate—Susan Kleimann⁴—to step in and secure the Notice Redesign Contract when TWC was ousted in 1999. Kleimann, which initially served as a subcontractor to ERG⁵ on the IRS Notice Redesign Contract, has retained the contract since 1999.⁶ Note: A website shows that Kleimann served NPR. Kleimann’s website shows it began serving IRS in 1999. On another website, Susan Kleimann lists NPR associates Cheek and Mercer as primary references.⁴ ▪ <i>Union steward Janet Delvison wanted the work to remain in-house.</i> Delvison was the contracting officer’s technical representative (COTR) and she had a central role on the IRS Notice Redesign Contract. Delvison carried out a devastating low-level campaign to oust TWC. Delvison conspired with information systems, legal counsel, and penalty administration personnel and certain ex-employees of TWC to help accomplish termination of TWC’s contract. She falsified documents and misrepresented TWC’s performance at every turn. ▪ <i>Certain ex-employees of The Writing Company joined COTR Delvison in helping to terminate TWC’s contract.</i> Several new TWC employees who had routine contact with COTR Delvison lied to federal investigators and Senator Carnahan’s representative. They also committed other acts designed to help perfect a conspiracy. The employees violated the Criminal False Statements Act and actively participated in a cross-agency government conspiracy. 	<div style="text-align: center;">  <small>Acrobat Document</small> NPR¹ </div> <div style="text-align: center;">  <small>Acrobat Document</small> PLAIN² </div> <div style="text-align: center;">  <small>Acrobat Document</small> CHEEK ON³ TWC'S NOTICES </div> <div style="text-align: center;">  <small>Acrobat Document</small> MERCER³ </div> <div style="text-align: center;">  <small>Acrobat Document</small> KLEIMN⁴ AT NPR </div> <div style="text-align: center;">  <small>Acrobat Document</small> ERG⁵ (PAGE 8 OF 9) </div> <div style="text-align: center;">  <small>Acrobat Document</small> KLEIMANN⁶ IRS CONTRACT </div>
b	<p><i>IRS executed a purchase order on February 3, 1998, that authorized TWC to commence work on IRS Notice Redesign: PO #TIRNO-98-P-00168 for \$99,375. Upon receiving additional funding for the project, IRS signed Contract TIRNO-98-W-00001 with TWC on March 3, 1998, and closed out the purchase order. IRS contracting officers planned to use a series of modifications to fund the entire scope of work promised to TWC:</i></p>	

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	 Acrobat Document PURCHASE ORDER PO #TIRNO-98-P-00168 FEB 3, 1998	 Acrobat Document TIRNO-98-W-00001 TWC CONTRACT, PT 1 MARCH 3, 1998	 Acrobat Document TIRNO-98-W-00001 TWC CONTRACT, PT 2 MARCH 3, 1998	 Acrobat Document MOD FOR SAT & FINAL REPORT (OPTIONS 13 AND 14)	
POLICIES AND PRACTICES					
c	<p><i>The federal government can terminate a contract for any reason using the Termination for Convenience (T4C) provision, as long as the termination does not evidence bad faith.¹ When a T4C evidences bad faith, the termination amounts to a wrongful termination/breach of contract:</i></p> <p style="padding-left: 40px;">A contracting officer is not permitted to exercise rights under the Termination for Convenience clause if such exercise demonstrates bad faith.</p> <p style="text-align: right;"><i>—Administration of Government Contracts, Third Edition, John Cibinic, Jr. and Ralph C. Nash, Jr., Page 1078¹</i></p> <p style="padding-left: 40px;">The board stated that a termination based on discrimination would be improper. . . . <i>Int'l Management Servs., Inc., by Trustee in Bankruptcy, ASBCA.</i></p> <p style="text-align: right;"><i>—Cibinic & Nash, Page 1079</i></p> <p style="padding-left: 40px;">Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement (Good faith is defined in U.S.)</p> <p style="text-align: right;"><i>—Cibinic & Nash, Page 295</i></p> <p style="padding-left: 40px;">When tainted by bad faith or an abuse of contracting discretion, a termination for convenience causes a contract breach.</p> <p style="text-align: right;"><i>—Krygoski Construction Company, Inc. v. U.S., Page 6 of 11²</i></p>				 Acrobat Document CYBINIC & ¹ NSH  Acrobat Document KRYGOSKI ²
d	<p><i>The Writing Company entered into a bilateral contract with Internal Revenue Service (IRS) to rewrite and redesign IRS taxpayer notices. The contract required both contracting parties to perform in accordance with and abide by conditions contained in the contract, related contract modifications, and the Federal Acquisition Regulations (FAR).</i></p>				 Acrobat Document BILATERAL CONTRACTS
e	<p><i>IRS had an obligation to abide by federal statutes and standards governing contract administration: Because the rules of “contract administration are derived from statutes and regulations as well as from judicial and quasi-judicial decisions, the analysis of these rules is necessarily legalistic.” <i>Cibinic & Nash, Pages 2-3.</i>¹ Hence, good faith contract administration includes expectations that contracting officials will abide by the following when acting on behalf of the U.S. Government:</i></p> <p style="padding-left: 40px;">Implied Duty of Good Faith and Fair Dealing. Good faith is defined in U.C.C. § 1-201(19) to mean “honesty in fact in the conduct or transaction concerned. This duty of good faith is also included in the Restatement, Second, Contracts § 205, where the same rule is stated: Every Contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”</p> <p style="text-align: right;"><i>—Cibinic & Nash, Page 295</i></p>				 Acrobat Document CYBINIC & NASH ¹

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e	<p>Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified. But the obligation goes further; bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms and interference with or failure to cooperate in the other party's performance.</p> <p style="text-align: right;">— <i>Cibinic & Nash</i> , Pages 295–296</p> <p>Improper Contract Administration. When one party has the authority to exercise discretion to determine an essential term of a contract, as here, the covenant of good faith and fair dealing requires that the exercise of that discretion be reasonable. . . .</p> <p style="text-align: right;">—<i>Cibinic & Nash</i>, Page 308</p> <p>Duty to Cooperate and Not Hinder Performance. A contractor's performance is often affected by the Government's action or inaction. The Government may actively interfere with the contractor, thereby making performance more costly or difficult. If the Government's action is wrongful, it will be held to have breached its implied duty not to hinder or interfere with the contractor's performance. When some Government action is essential for the contractor to perform, the Government will be held liable if it wrongfully fails or refuses to take action.</p> <p style="text-align: right;">—<i>Cibinic & Nash</i>, Page 297</p> <p>Active Interference. Unjustified Government interference results in a breach of implied duty not to hinder or interfere can occur in various ways during performance, including restricting the manner of performance, <i>Heritage Co.</i>, VABCA 3004, 91-1 BCA ¶ 23,482; directing the contractor to perform in a specific way, rejecting work without a reason . . . and impeding the contractor's opportunity to render services and reap profits, <i>W&S Equip.</i>, ASBCA 36681, 89-1 BCA ¶ 21,469.</p> <p>The same cooperative attitude should be displayed to all contractors. <i>G.S. Galloway Co.</i>, ASBCA 16656, 73-2 BCA § 10,521, the board observed: . . . "The contrast tends to show that [the contractor] was not afforded the degree of cooperation and assistance by CDAS [Defense Contract Administration Service] normally afforded most other Government contractors.</p> <p style="text-align: right;">—<i>Cibinic & Nash</i>, Page 4</p> <p>Lack of Cooperation. Failure to cooperate will be found when the Government's conduct during contract performance is unreasonable. Such unreasonable conduct occurs in a number of ways, which include failing to respond to a contractor's request for information and delays in inspection, <i>Hardie-Tynes Mfg. Co.</i>, ASBCA ¶ 20582, 76-2 BCA 11,972</p> <p>One of the most common situations where the Government is found to have failed to cooperate is when it fails to help in the solution of a problem that has arisen during contract performance. This has occurred when the contractor encounters problems with contract specifications, <i>Hardrives, Inc.</i>, IBCA 2319, 94-1 BCA</p> <p style="text-align: right;">—<i>Cibinic & Nash</i>, Page 300</p> <p>Duty of Mutual Confidence and Respect. While the first goal of good contract administration is to avoid destructive relationships, if it does occur, the personnel exhibiting this confrontational attitude should be removed from the contract administration process. <i>Ben Levine Timber</i>. . . .</p> <p style="text-align: right;">—<i>Cibinic & Nash</i>, Page 7</p>	 Acrobat Document CYBINIC &

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e	<p><i>In G.W. Galloway Co., ASBCA 17436, 770.</i> . . . The board was critical of the administration of the contract, stating at 61,297:</p> <p>Key arsenal personnel, including the original contracting officer, commenced their contractual relationship with [the contractor] in an atmosphere of apprehension and with a suspicion that [the contractor] was “buying into” the contract with expectation of recouping its supposed losses on change orders. The record offers no support for the validity of these suspicions, but the Arsenal staff, nevertheless, constantly recommended close surveillance and monitoring of [the contractor’s] production efforts. Close surveillance and inspection was ordered from the outset and continued throughout the life of the contract. [The contractor’s] production efforts were often subject to what [it] justifiably characterizes as “nit-picking” and its normal managerial functions and prerogatives were sometimes invaded by the Arsenal and DCAS. Conversely, on a number of occasions when [the contractor] earnestly sought the Arsenal’s assistance and cooperation on Arsenal-created problems it was not forthcoming.</p> <p style="text-align: right;">—<i>Cibinic & Nash, Page 7</i></p> <p>Good faith in enforcement. . . . The obligation of good faith and fair dealing extends to the assertion, settlement and litigation of contract claims and defenses. The obligation is violated by dishonest conduct such as conjuring up a pretended dispute, asserting an interpretation contrary to one’s own understanding, or falsification of facts. It also extends to dealing which is candid but unfair, such as taking advantage of the necessitous circumstances of the other party Other types of violation have been recognized in judicial decisions: harassing demands for assurances of performance, rejection of performance for unstated reasons, willful failure to mitigate damages, and abuse of power to determine compliance or to terminate the contract.</p> <p style="text-align: right;">—<i>Cibinic & Nash, Page 5</i></p>	
f	<p>Intentional Interference with Prospective Economic Advantage/Tortious Interference with Contract Performance. The elements are: '(1) an economic relationship between [the plaintiff and some third person] containing the probability of <u>future</u> economic benefit to the [plaintiff], (2) knowledge by the defendant of the existence of the relationship, (3) intentional acts on the part of the defendant designed to disrupt the <u>relationship</u>, (4) actual disruption of the relationship, [and] (5) damages to the plaintiff proximately caused by the acts of the defendant.' (<i>Buckaloo v. Johnson</i> (1975) 14 Cal.3d 815, 827.)</p> <p>The other is interference with contract. The tort of 'interference with contractual relations has its roots in the tort of 'inducing breach of contract.'" (Seaman's Direct Buying Service Inc. v. Standard Oil Co. (1984) 36 Cal.3d 752, 765.) The latter is merely a <u>species</u> of the former. The principal difference between them is that 'the existence of a legally binding agreement is not a sine qua non to the maintenance of a suit based on the more inclusive wrong.' (<i>Buckaloo, supra</i>, at 823.) 'Both the tort of interference with contract relations and the tort of interference with prospective contract or <u>business</u> relations involve basically the same conduct on the part of the tortfeasor. In one case the interference takes place when a contract is already in existence, in the other, when a contract would, with certainty, have been consummated but for the conduct of the tortfeasor. . . .</p> <p>In discussing the related tort of inducing breach of contract, the Supreme Court has stated: 'The act of inducing the breach must be an intentional one. If the <u>actor</u> had no knowledge of the existence of the contract or his actions were not intended to induce a breach, he cannot be held liable though an actual breach results from his lawful and proper acts.' <i>Imperial Ice Co. v. Rossier</i> (1941) 18 Cal.2d 33, 37.) The Restatement of Torts explained it this way, 'The essential thing is the purpose to cause the result. If the actor does not have this purpose, his conduct does not subject him to liability under this rule even if it has the unintended effect of deterring the third</p>	

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	<p>person from dealing with the other.' (Rest., Torts, section 766, com. d, emphasis added.) It is not enough that the actor intended to perform the acts which caused the result -- he or she must have intended to cause the result itself. . . .</p> <p style="text-align: right;">—The Lectric Law Library: http://www.lectlaw.com/def/i084.htm</p>	
g	<p>Criminal False Statements Act:</p> <p>24.01 STATUTORY LANGUAGE: 18 U.S.C. § 1001</p> <p>For a violation of 18 U.S.C. § 1001, a false statement may be written or oral, sworn or unsworn, voluntarily made in regard to information sought as or required by law, signed or unsigned. See generally <i>United States v. Beacon Brass Co.</i>, 344 U.S. 43, 46 (1952); <i>United States v. Poindexter</i>, 951 F.2d 369, 387-88 (D.C. Cir. 1991) <i>cert. denied</i>, 506 U.S. 1021 (1992), <i>cert. denied</i>, 406 U.S. 1021 (1992); <i>United States v. Massey</i>, 550 F.2d 300, 305 (5th Cir. 1977); on remand, 437 F. Supp. 843 (1977); <i>United States v. Isaacs</i>, 493 F.2d 1124, 1156-57 (7th Cir. 1974), <i>cert. denied</i>, 417 U.S. 976 (1974).</p> <p>§1001. <i>Statements or entries generally</i></p> <p>(a) . . . Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully</p> <ol style="list-style-type: none"> (1) falsifies, conceals or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statements or representation; (3) makes or uses any false writing or document knowing the same to contain any <p>shall be fined* under this title or imprisoned not more than five years, or both.</p> <p>The prohibition of 18 U.S.C. § 1001 requires that the false statement, concealment or coverup be "knowingly and willfully" done, which means that "The statement must have been made with an intent to deceive, a design to induce belief in the falsity or to mislead, but § 1001 does not require an intent to defraud—that is, the intent to deprive someone of something by means of deceit." <i>United States v. Lichenstein</i>, 610 F.2d 1272, 1276-77 (5th Cir.), <i>cert. denied</i>, 447 U.S. 907 (1980). The government may prove that a false statement was made "knowingly and willfully" by offering evidence that defendants acted deliberately and with knowledge that the representation was false. See <i>United States v. Hopkins</i>, 916 F.2d 207, 214 (5th Cir. 1990). The jury may conclude from a plan of elaborate lies and half-truths that defendants deliberately conveyed information they knew to be false to the government. <i>Id.</i> at 214-15. As used in the statute, the term "knowingly" requires only that the defendant acted with knowledge of the falsity. See <i>United States v. Lange</i>, 528 F.2d 1280, 1287-89 (5th Cir. 1976). . . .An act is done "willfully" if done voluntarily and intentionally and with the specific intent to do something the law forbids. There is no requirement that the government show evil intent on the part of a defendant in order to prove that the act was done "willfully." See generally <i>United States v. Gregg</i>, 612 F.2d 43, 50-51 (2d Cir. 1979); See also 1 <i>E. Devitt, C. Blackmar, M. Wolff & K. O'Malley, Federal Jury Practice and Instructions</i>, § 17.05 (1992).</p>	<p style="text-align: right;"> CRIMINAL FALSE STMT</p>