commands to halt. The sentry then aimed his shotgun at the decedent's legs and fired. Just at this moment the decedent jumped into a ditch. As a result, he was struck in the chest rather than the legs, and was instantly killed.

A board of officers, which subsequently considered the case, determined that the sentry's actions had been reasonable under all of the circumstances. The board also determined that since the decedent was known to have been in a state of mental confusion at the time of the shooting, his death should be considered to be in line of duty.

The records of Army show that the regular death gratuity was paid in this case and that at the time of the decedent's entry into the military service he was offered but specifically refused national service life insurance.

The decedent's closest survivor seems to be a sister, who presumably would be the ultimate beneficiary of the bill. She is not entitled to survivorship benefits under laws administered by the Veterans' Administration, since sisters are not included within the categories of survivors eligible to receive benefits under such laws.

Laws administered by the Veterans' Administration and other Federal agencies provide systems of benefits for certain dependent survivors of members of the Armed Forces killed in line of duty. Benefits so authorized are generous and are payable to the specified survivors regardless of whether death results from the negligence or willful misconduct of fellow servicemen or any other person. Under the circumstances, I think it only fair and reasonable to consider the generous, uniform, and assured protection which these systems afford as the exclusive remedy against the United States on account of the death of a member of the Armed Forces killed in line of duty. Any other view would be productive of anomalies and serious inequities.

The foregoing view accords with that taken by the Supreme Court in denying relief in a negligence case brought under the Federal Tort Claims Act in which, as here, a member of the Armed Forces was killed not only in line of duty but incident to his actual military service. Such a view is in no sense novel. Military and veterans' survivorship benefits are the equivalent of civilian workmen's compensation benefits. The Federal Government and most of the States have abolished actions for damages between employers and employees and superseded them with workmen's compensation statutes, which provide the sole basis of liability in most cases.

Additionally, as already noted, the decedent had the opportunity to apply for a policy of national service life insurance in the maximum amount of $10,000. He was specifically offered this opportunity, but refused to take advantage of it, as is indicated by his service record.

Accordingly, while regretting the tragic death of the decedent, I am constrained to withhold my approval from S. 820.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 31, 1954.*

LAWRENCE F. KRAMER

S. 2083. I have withheld my approval from the bill (S. 2083) for the relief of Lawrence F. Kramer.

The bill provides for payment to Lawrence F. Kramer of Paterson, N. J., of the sum of $67,500 in full satisfaction of his claim against the United States for (1) compensation for services rendered by him during the period from 1935 to 1952 in assisting and enabling the United States to prosecute successfully criminal proceedings against certain defendants who had defrauded the Government in connection with fixed prices on work projects in the State of New Jersey, and (2) for reimbursement for expenses incurred by him in rendering such services.

It appears that in late 1935, Mr. Kramer complained to the Works Progress Administration concerning the existence of a possible fraud conspiracy, collusive bidding, and bribery in connection with certain sand and stone supply contracts awarded, and to be awarded, by the Works Progress Administration in northern New Jersey. His sole information was that his father, Philip Kramer, operator of a stone quarry at Paterson, N. J., had been approached by one George Brooks to participate in the scheme, and had refused, and that as a result of his refusal, stone supplied by him had been rejected by the Works Progress Administration (apparently due to the influence of the conspirators), with the consequence that he suffered heavy business loss.

As a result of this complaint, an investigation was undertaken by the Government which culminated in the conviction of the lawbreakers in 1941 and a civil recovery (by way of settlement) in 1952. Apart from the initial tip concerning the existence of a possible conspiracy, and the furnishing of the names of certain persons having knowledge of the approach made to his father, it does not appear that claimant contributed anything to the successful prosecution and civil recovery.

There is nothing to distinguish this case from any other case in which the Government receives from a private citizen information concerning wrongful action with reference to which criminal proceedings are brought and civil recoveries are obtained. The vast majority of such proceedings are made possible by citizens who either because of their normal interest in law enforcement and good government, or because of self-interest supply law enforcement officers with information of the character here involved.

Even if claimant were to be treated as if he had commenced suit as an informer, he would be entitled to no more than the 10 percent of the civil recovery, whereas the bill proposes to award him 30 percent of that amount.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 31, 1954.*

GRAPHIC ARTS CORP. OF OHIO

S. 2801. I am withholding my approval from S. 2801, for the relief of Graphic Arts Corp. of Ohio.

S. 2801 provides that the Secretary of the Treasury be authorized and directed to pay the sum of $84,359.19 to the Graphic Arts Corp. of Ohio, Toledo, Ohio, in full settlement of all claims of the said Graphic Arts Corp. against the United States. The bill would afford financial relief to the Graphic Arts Corp. for losses alleged to have been incurred in the performance of contract W–33–038i ac–2023 with the Army Air Corps during the period January 1 to June 1, 1946.

It is the contention of the corporation that it was not supplied with the full quantity of work contemplated by the contract during the contract period, and that the contractor was assured by representatives of the Army Air Corps that it would be protected against losses in its operation under the contract. However, it appears that the contractor did accept extensions of time and other amendments to the original contract under various change orders and supplements pertinent thereto by executing said documents. It is reported that payments totaling $2,029,185.29 were made to the contractor.

Insofar as furnishing work under the contract was concerned, it appears that there was substantial compliance by the Government within the contract period as extended.

There is an established rule that a formal written contract entered into on the basis of negotiations between the parties merges all such previous negotiations and is presumed in law to express the final understanding of the parties. Contract W–33–038 ac–2023, as amended, was entered into on a fixed-price basis. It contained no provision for payment of additional compensation merely because the contractor might suffer a loss in performance. Hence, while the contractor's claim is based primarily upon the premise that certain representations were made by Government officers at the time the contract was negotiated to the effect that the Government would protect the contractor from any loss in performance, the terms of the contract relating to the work to be performed and to the prices to be paid therefor were clear and unambiguous and such extraneous representations, even if established, legally could not be resorted to for the purpose of imposing an additional obligation on the Government. If the contractor felt that the formal contract and change orders and extensions, et cetera, did not afford it sufficient protection against losses in performance, it should not have signed the contract and accepted the extensions. Having done so, it seems clear that there is no liability for any further payment to the contractor, based upon the contract provisions.

Government audit of the contractor's records indicates that this corporation, although claiming a loss of $67,952.31 in the operation of the Gadi division for the 5 months' period beginning January 1, 1946, actually sustained a loss of only $46,213.94 during that period. Of this amount, the audit report shows only $29,432.29 was applicable to Army Air Corps contract W–33–038 ac–2023. Despite this loss of $29,432.29 on this contract for the first 5 months of 1946, the

contractor actually earned a profit of $34,202.86 on the entire contract. The audit report also discloses that this contractor earned a profit of $392,329.15 on all other Government business for the years 1944, 1945, and the first 5 months of 1946. Its commercial business during the same period also operated at a substantial profit.

My approval of this bill would establish the undesirable principle of Government underwriting any wartime losses incurred by contractors providing goods and services to the Government, regardless of the fact that such contractors did not sustain a net loss. I am unable to perceive any circumstances which would warrant preferential treatment for the claimant to the detriment of other wartime contractors. I am satisfied that it is my duty to oppose this bill.

Although my examination of the record in this case does not lead me to believe that there is an equitable basis for this claim, it is possible that a court through judicial processes might be led to determine otherwise. In complex situations like this one, it is my opinion that judicial rather than legislative remedy should be sought. I would, therefore, be willing to give my approval to a jurisdictional bill waiving the bar of any statute of limitations against the claim.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 31, 1954.*

On September 1, 1954:

MRS. MERLE CAPPELLER WEYEL

S. 45. I am withholding my approval of S. 45, a bill for the relief of Mrs. Merle Cappeller Weyel.

This enrolled enactment would pay the sum of $5,437.21 to Mrs. Merle Cappeller Weyel in full settlement of her claim arising out of the death of her husband after his release from active duty in the Navy in 1948.

The husband of the beneficiary of this bill was recalled to active duty in 1947, after having been retired following the completion of 30 years of service. Prior to his release from this tour of duty, he was given a particularly thorough physical examination because of indications that he might be suffering from high-blood pressure. However, a board of medical survey determined, as a result of this examination, that he was physically qualified for release from active duty, and he was accordingly again returned to his retired status in February 1948.

Subsequently, this officer was treated and X-rayed by a private physician in September 1948. The X-ray disclosed that he was suffering from a malignancy which caused his death in December 1948, after two unsuccessful operations in private hospitals.

This deceased officer's case was twice considered by the Board for the Correction of Naval Records, which was established by statute to correct records where this was necessary to remove an injustice. It was contended by the beneficiary that the malignancy should have been discovered at the time her husband was released from active duty and that, if it had been discovered, he would have been kept on active duty until his death. On the basis of this, it was further contended she was entitled to be paid the usual death gratuity, the difference between her husband's active and retired pay for the period between his release from active duty and his death and the amount of private medical and hospital expenses incurred on his behalf. The present measure is based on these same contentions.

After twice reviewing the case, the Board concluded that it was to be presumed that the malignancy had existed at the time the decedent was released from active duty and that, had its existence been discovered, he would not have been released at the time he was. However, the Board concluded that the decedent would not have been kept on active duty until his death, but in all probability would have been retired for physical disability not later than July 1948.

I can perceive no justification for the payment which the bill would make on account of the cost of private medical and hospital care incurred on behalf of the decedent. He was, at all times, entitled to such care at facilities operated by the Navy Department. There is no showing that any attempt was made to take advantage of these facilities. But, on the contrary, it appears that, for personal reasons, the decedent elected to be treated privately. If the Government is to establish medical facilities and make provision for the care of servicemen and veterans, as it has done, it cannot, at the same time, be expected to undertake reimbursement of such personnel when they decide, for personal reasons, to obtain care at their own expense from private physicians and hospitals.

Another reason why I am unable to approve this measure is that, as enacted, it is either unfair to the beneficiary or to the Government. This results from the fact that the bill excludes payment of the death gratuity of 6 months' pay which was originally claimed by the beneficiary but recognizes and authorizes the payment of the difference between active duty pay and retired pay for the entire period between the date of the decedent's release from active duty and the date of his death. It is obviously inconsistent to exclude the one and recognize the other. If the decedent is to be considered on active duty for the entire period in question for pay purposes, he certainly should be so considered with respect to the payment of the death gratuity. On the other hand, if his active duty is considered to have ended prior to the date of his death, then it is equally obvious an adjustment should be made in the pay differential award. In all fairness, it would appear that this inconsistency should be resolved one way or the other.

It should be stressed that notwithstanding disapproval of the bill, the beneficiary can now have her claim settled administratively. Since the time when the case was last reviewed by the Board for the Correction of Naval Records, legislation has been enacted which permits administrative settlement of claims based on changes in records made by the Board. Reconsideration of the beneficiary's claim under such legislation would result in an award which, I am confident, will be equitable from the standpoint of both the beneficiary and the Government. In this connection I should like to express my belief that the Board should take into account, in its reconsideration of the case, the possibility that had it been discovered prior to his release from active duty medical treatment of the decedent's condition might very well have led to his retention on active duty until the date of his death.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 1, 1954.*

E. S. BERNEY

S. 46. I have withheld my approval from S. 46, entitled "For the relief of E. S. Berney."

This bill would pay to E. S. Berney the sum of $4,750 as compensation for damages allegedly sustained by him as a result of certain representations made by a representative of the Navy during World War II.

It appears that in the summer of 1943 a representative of the Navy discussed with the beneficiary the potential use of his Nevada ranch and certain adjoining ones as a bombing range. Although the evidence on this point is conflicting, it appears that such representative indicated that he expected the Navy to begin operations that fall and that, prior to the beginning of such operations, all livestock would have to be removed from the land. The beneficiary alleges that on the basis of this information he disposed of his cattle and other property and vacated his ranch early in the fall. It developed, however, that the Navy did not need or begin to use his land until the following spring.

In subsequent condemnation proceedings, the court refused to recognize any damages occurring prior to the time when the Navy began using the land in question in the spring of 1944. On this premise the court awarded the beneficiary $766.67 for damages occurring after use by the Navy began. The present bill was designed to afford compensation for damages which were excluded by the court and which the beneficiary alleges were due to the premature vacation of his land.

Conceding the facts in this case to be as stated by the beneficiary, it still does not follow that he is entitled to the award proposed here. It has not been established that the damages allegedly sustained by the beneficiary were due to a reasonable reliance upon the representations of the Navy representative. There appears to have been no such reliance on the part of other ranch owners whose land was taken under similar circumstances and whose statements appear in the committee reports in support of some aspects of the beneficiary's claim.

In addition, there appears to be confusion as to the basis for measuring the damages which the beneficiary allegedly sustained. He made an unverified claim of damages in the amount of $12,000. Part of the damages so claimed are covered by the $766.67 condemnation award. The Congress reduced the claim