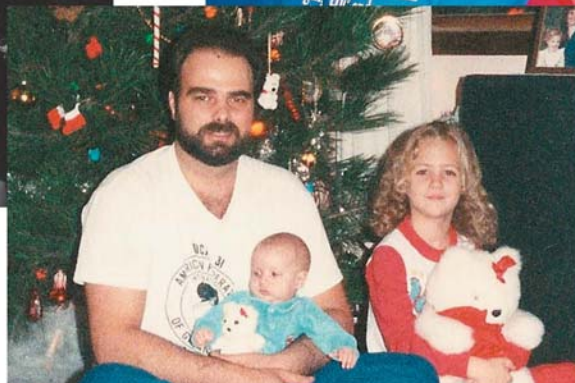
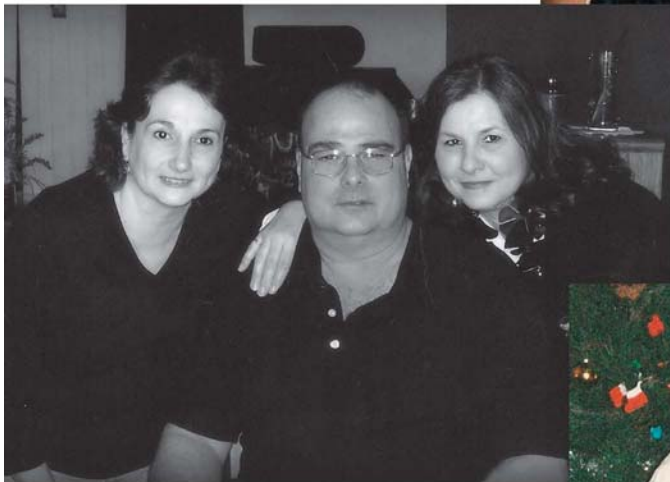


**Testimony of Tonya Ford, Niece of Robert Fitch on  
Whistleblower & Victim's Rights Provisions of H.R. 2067  
"The Protecting America's Workers Act" before the U.S.  
House of Representatives Committee on Education and  
Labor Subcommittee on Workforce Protections April 28,  
2010**



**Testimony of Tonya Ford, Niece of Robert Fitch on Whistleblower & Victim's Rights  
Provisions of H.R. 2067 "The Protecting America's Workers Act" before the U.S. House of  
Representatives Committee on Education and Labor Subcommittee on Workforce Protections  
April 28, 2010**

Dear Chairwoman Woolsey, Ranking Member McMorris-Rodgers and Members of the Committee:

My name is Tonya Ford and I live in Lincoln, Nebraska. I would like to start off by saying thank you so much for this opportunity. It is a great honor to sit here and represent my family and other families who have lost their loved ones due to preventable work-related accidents.

I support the "Protecting America's Workers Act" (PAWA) because of what happened on January 29, 2009 when I lost my Uncle Robert Fitch or as I called him Uncle Bobby to a horrible preventable work-related incident at the Archer Daniel Midland plant in Lincoln, NE. My Uncle Bobby was 51 years old.

Our lives changed forever that day when my uncle stepped onto a belt-operated manlift in order to go on his work break and fell approximately 40 feet. As he fell, he impacted each wall in the cement elevator shaft, and landed on the airduct, hitting it so hard it slid 19 feet from the connection point. At that point, my uncle slid off and fell through a manhole, and then fell another 40 feet to the cement ground below. My dad, uncle's Bobby's brother-in-law found him that day. My dad still works at this ADM plant.

Since that moment, my life has become filled with gathering dates, statistics, evidence, and information. I started my research to answer our family's simple questions:

What Happened?

Did he suffer?

Did the device malfunction?

Was the device too old and unsafe for my uncle and the other employees working at ADM?

I have come to the conclusion that if PAWA had been passed when it was first introduced, my uncle might have been alive three weeks ago to place a rose on his mother's casket. Instead, when my grandmother passed away last month, we placed a single rose on the empty chair where Uncle Bobby should have been seated. PAWA is important not only because it includes tougher penalties to discourage companies letting safety problems continue, but because it extends additional rights to family members. If PAWA had been in place when my uncle died, my family would not have learned about the fines assessed against ADM from a local news reporter.

With the television camera rolling, the reporter asked me “What do you think about the penalty assessed to ADM?”

I could only respond: “We are unaware what the penalty is and that the investigation was closed.”

This is how our family learned that ADM was fined \$0.00 for having the old and dangerous belt-operated man-lift in their plant. This piece of equipment caused my uncle’s death, and that have since been informed it was inherently unsafe and very scary to use. A device that should require specialized training before anyone should use it a device that causes many injuries and even deaths. Yet, ADM received no monetary penalty for having this deadly equipment in their plant.

We asked: Why was ADM not fined by OSHA for the device that took my uncle from us?

Nine months after hearing about zero penalty assessed to ADM, my family still did not have answers. I reached out to OSHA for answers in January 2010, and OSHA agreed to meet with us. I was ready to ask all of the questions that resulted from my months of research on belt-operated manlifts.

To my amazement, I learned that OSHA issued two citations to ADM that were classified as serious and specifically related to their dangerous belt-operated manlift. However, as part of an informal settlement between OSHA and ADM, the two citations related to the manlift and the monetary penalties were DELETED.

When we asked why, OSHA told us that these dangerous manlifts were not covered by an OSHA’s standard. Under an OSHA standard issued in 1971 (29 CFR 1910.68.), manlifts installed prior to August 1971 were “grandfathered in,” meaning the OSHA standard did not apply to them. OSHA explained that because of this “grandfather clause” they could not uphold the citation if ADM contested it, but through their settlement with the company, ADM agreed to replace the belt-operated manlift that killed my uncle, with an elevator. OSHA thought this was a good compromise: getting ADM to get rid of a highly dangerous piece of equipment and install something safer in its place. That’s not good enough. Here’s why: This ADM facility where my uncle was killed and where my dad still works had a total of 5 of these belt-operated manlifts. Stating that they only had to replace just one of them does not get to the root of the problem. These manlifts are operating in other ADM facilities across the country. This equipment kills workers. A company like ADM, with a stock market value of \$18.31 billion, should be compelled to replace all of these dangerous lifts immediately.

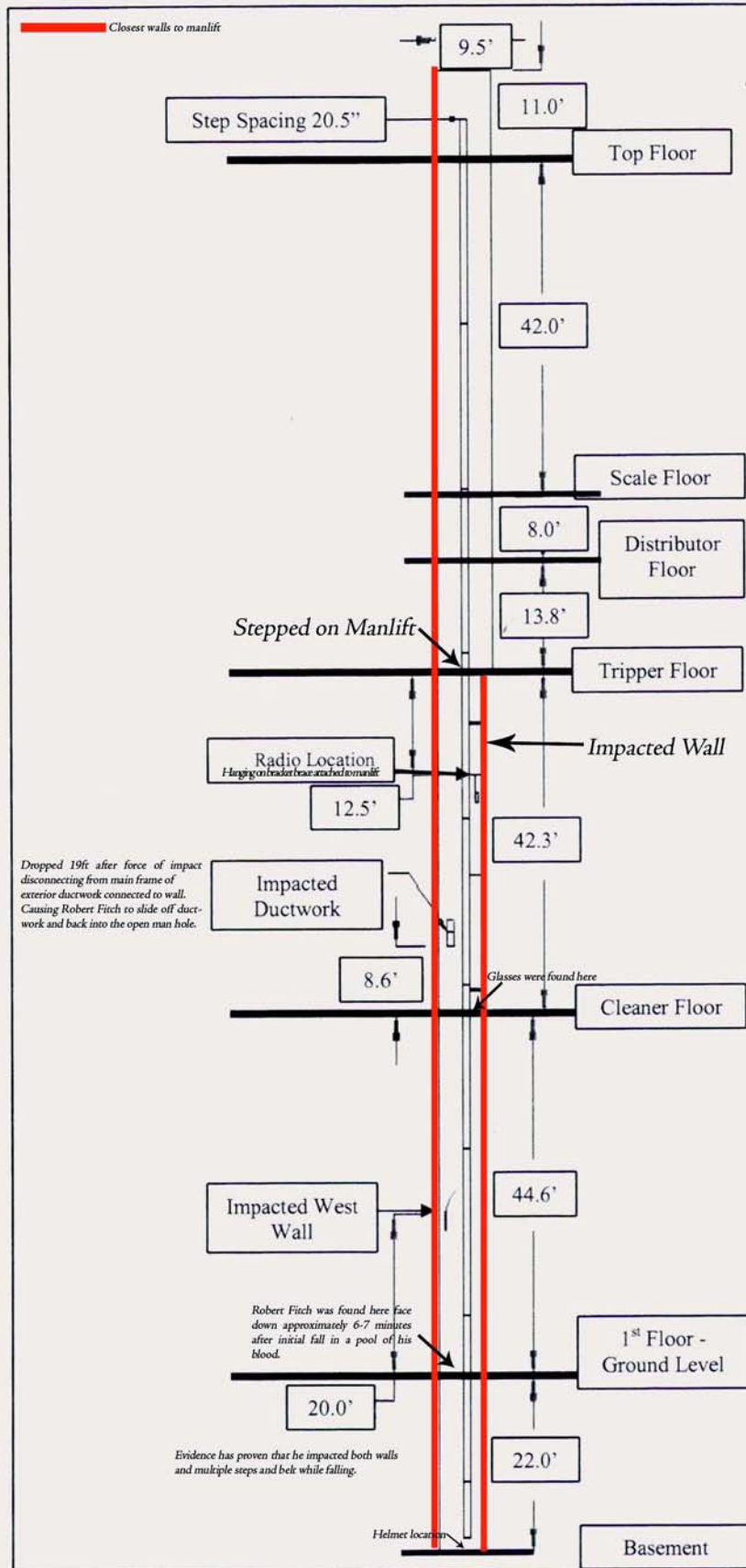
I urge Congress to pass the Protecting America’s Workers Act (H.R. 2067 and S.1580) because it would improve OSHA’s ability to ensure workers are protected from dangers on the job. I support the provisions to increase OSHA penalties and have them routinely adjusted for inflation. But, penalties are only effective if OSHA has the ability to compel abatement even if the employer contests the citation and penalty. The federal mine safety agency (MSHA) has this

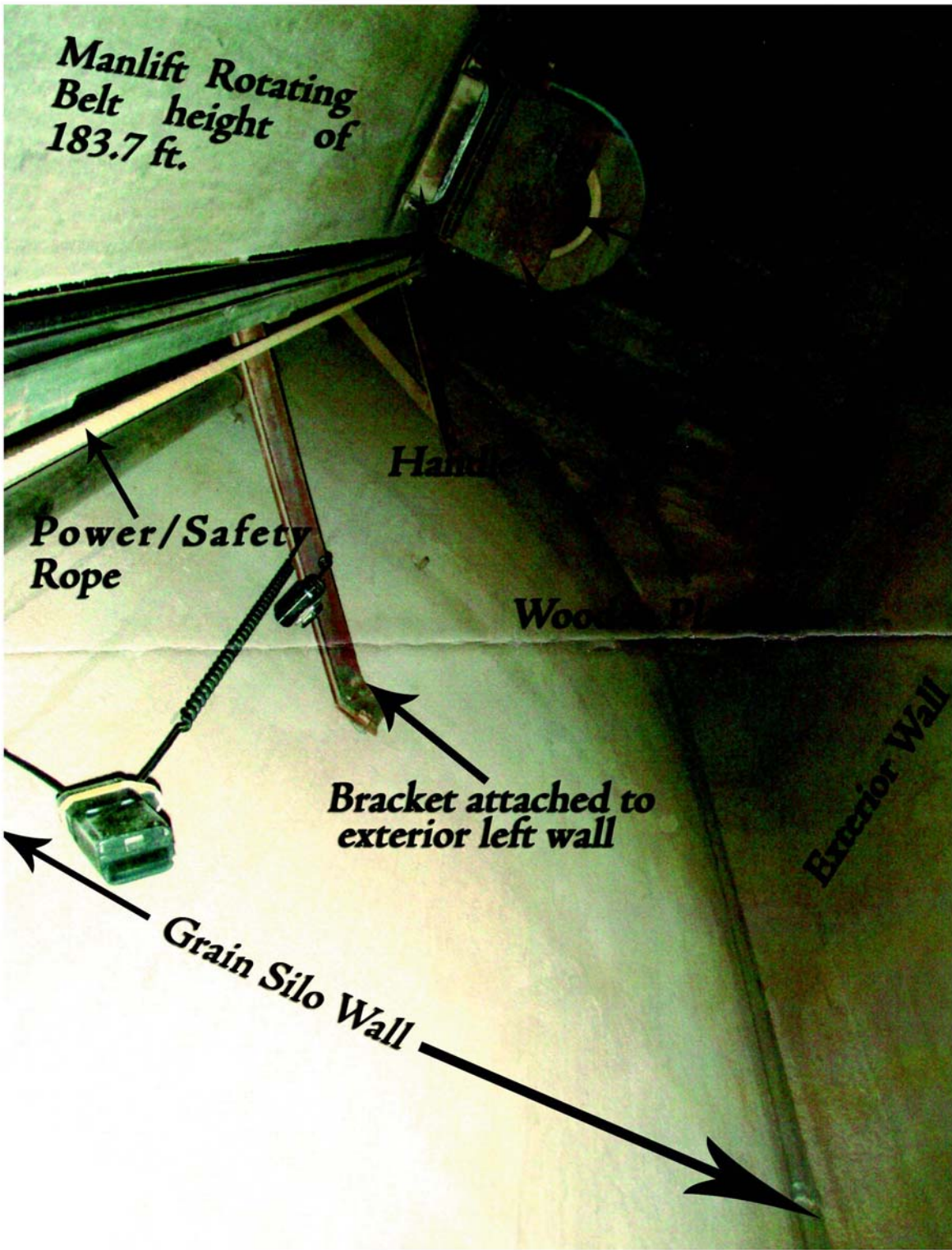
authority for the 300,000 workers it covers, and OSHA needs it for the 111 million workers who rely on its protections. As a family, we believe that if we are going to prevent more deaths and hurt, OSHA must be able to force abatement during the contest period.

We strongly support all the provisions of PAWA, including the new rights that would be given to family members. We believe it is very important for OSHA to meet with a family or their representative before the agency finishes its investigation and for a family to have the opportunity to make a victims' impact statement if the case proceeds to the Occupational Safety and Health Review Commission.

My Uncle Bobby gave 32 years to ADM, often working seven days a week. My dad still works there, as do many other men and women. This month alone we have seen too much death and grief because of preventable workplace hazards. If companies do not set the bar high for worker health and safety, then OSHA must be empowered to do so.

Thank you.





**Manlift Rotating  
Belt height of  
183.7 ft.**

**Hand**

**Power/Safety  
Rope**

**Wood Plank**

**Bracket attached to  
exterior left wall**

**Exterior Wall**

**Grain Silo Wall**