The background of the slide is a photograph of the United States Capitol building in Washington, D.C. The building's iconic white dome and neoclassical architecture are visible against a clear blue sky with a few wispy clouds. In the foreground, several large cherry blossom trees are in full bloom, their pink and white flowers partially obscuring the lower part of the Capitol. The overall scene is bright and clear, suggesting a spring day.

Utilizing
Whistleblowers
in the Fight
Against
Waste, Fraud,
and Abuse

February 25,
2015

Authored by Stephen M. Kohn, with the assistance of Michael D. Kohn, David K. Colapinto and Mary Jane Wilmoth. The report was produced *pro bono* on behalf of the National Whistleblower Center and the National Whistleblower Legal Defense and Education Fund.

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For additional information please email: contact@whistleblowers.org or visit our website at www.whistleblowers.org.

Special thanks for the contributions of the following law clerks that provided instrumental assistance to this project:
Katherine Chapman and Paul Lyons.

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Introduction

Whistleblower Reward Laws are the Key to Successfully Combating Waste, Fraud and Abuse

Whistleblowers are the leading source of information concerning waste in our government programs, as well as abuse that harms our nation's economy. Revealing this information, however, often leads to harsh retaliation, costing whistleblowers their careers. As a result, the overwhelming majority of insiders are unwilling to report waste, fraud and abuse to responsible law enforcement agencies.

In order to remedy this, the False Claims Act and other similar laws were enacted, introducing incentives that encourage employees to blow the whistle. Over time these laws have demonstrated that whistleblowers, when properly incentivized and protected, provide a crucial resource to help protect the public interest.

The regulators responsible for implementing the whistleblower laws have praised them over the years and have explained how whistleblower programs are crucial instruments in fighting fraud and corruption.

In the words of these officials:

- Whistleblower laws are *“the government’s most potent civil weapon in addressing fraud against the taxpayers.”* Acting Assistant Attorney General, Civil Division of the Department of Justice.¹
- Whistleblower laws *“generate much needed revenue by recovering billions of dollars lost each year through fraud and abuse on behalf of Government agencies, entitlement programs, and the general fund.”* Department of Justice, Civil Division Fiscal Year 2012 Budget Request.²
- *“Most”* Civil Fraud Cases that result *“in recoveries were brought to the government by whistleblowers”* under the rewards law. Assistant Attorney General.³
- Whistleblower laws have made *“record-setting recoveries”* on behalf of the taxpayer possible. Assistant Attorney General.⁴
- Whistleblower *“laws provide significant deterrence to those contemplating”* engaging in fraud. Department of Justice, Civil Division 2011 Performance Budget Request.⁵
- Whistleblower laws are *“the most powerful tool the American people have to protect the government from fraud.”* Assistant Attorney General.⁶

Introduction

Continued...

- Whistleblower laws have “*been a tremendous benefit not only to the government and the American public but also to companies that want to do business fairly and honestly.*” Assistant Attorney General.⁷
- Whistleblower reward laws have “*provided ordinary Americans with essential tools to combat fraud, to help recover damages, and to bring accountability to those who would take advantage of the United States government – and of American taxpayers.*” Attorney General of the United States.⁸
- The “*impact*” of whistleblower laws “*has been nothing short of profound . . . Some of these actions may have saved lives. All of them saved money. And – taken as a whole – this remarkable track record represents a wide-ranging effort to eradicate the scourge of fraud from some of government’s most critical programs.*” Attorney General of the United States.⁹
- “*Whistleblowers can provide valuable leads, and often offer unique insights into taxpayer activity. Frequently the whistleblower provides specific information on issues, taxpayer positions, or actions we would likely be unable to identify.*” Deputy Commissioner for Services and Enforcement, Internal Revenue Service.¹⁰

*The “impact” of whistleblower laws “has been nothing short of profound”
Attorney General*

Introduction

Continued...

- “[W]histleblowers have led to an **unprecedented number of investigations and greater recoveries**. . . The whistleblowers who bring wrongdoing to the government’s attention are instrumental in preserving the integrity of government.” Principal Deputy Assistant Attorney General.¹¹
- “The Securities and Exchange Commission’s whistleblower program . . . has resulted in investigative staff receiving a substantial volume of **high quality information** about potential securities law violations. It has allowed our investigative staff to work more efficiently and permitted us to better utilize agency resources.” Securities and Exchange Commission Chairman.¹²
- Whistleblower reward laws are “**attracting high-quality tips and cooperation we might not otherwise receive.**” Acting Director of the Commodity Futures Trading Commission’s Enforcement Division.¹³

*“Whistleblowers
have led to an
unprecedented
number of
investigations and
greater
recoveries.”
Principal Deputy
Assistant
Attorney General*

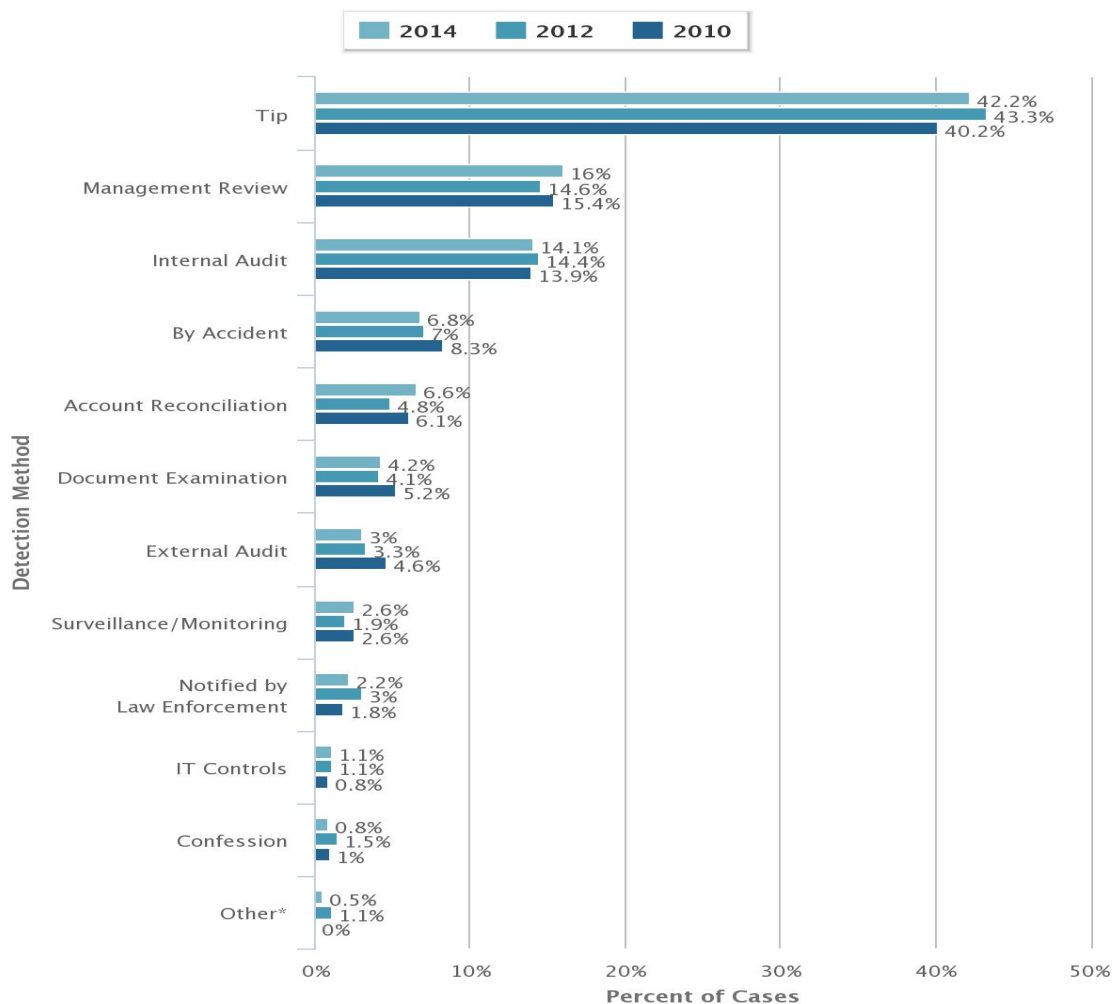
Fact #1

Why Whistleblower Laws Are Needed

Whistleblowers are by far the most common source of information concerning fraud and misconduct.

The Association of Certified Fraud Examiners (ACFE) periodically surveys the means by which fraud is detected around the world. In the ACFE's most recent report, the "2014 Report to the Nations on Occupational Fraud and Abuse", the Association found that of all the different sources that contributed to the detection of fraud, individuals submitting "tips" (i.e. whistleblowers) were the most common and most effective source.

Initial Detection of Occupational Frauds



*"Other" category was not included in the 2010 Report. © 2014 Association of Certified Fraud Examiners, Inc. All rights reserved

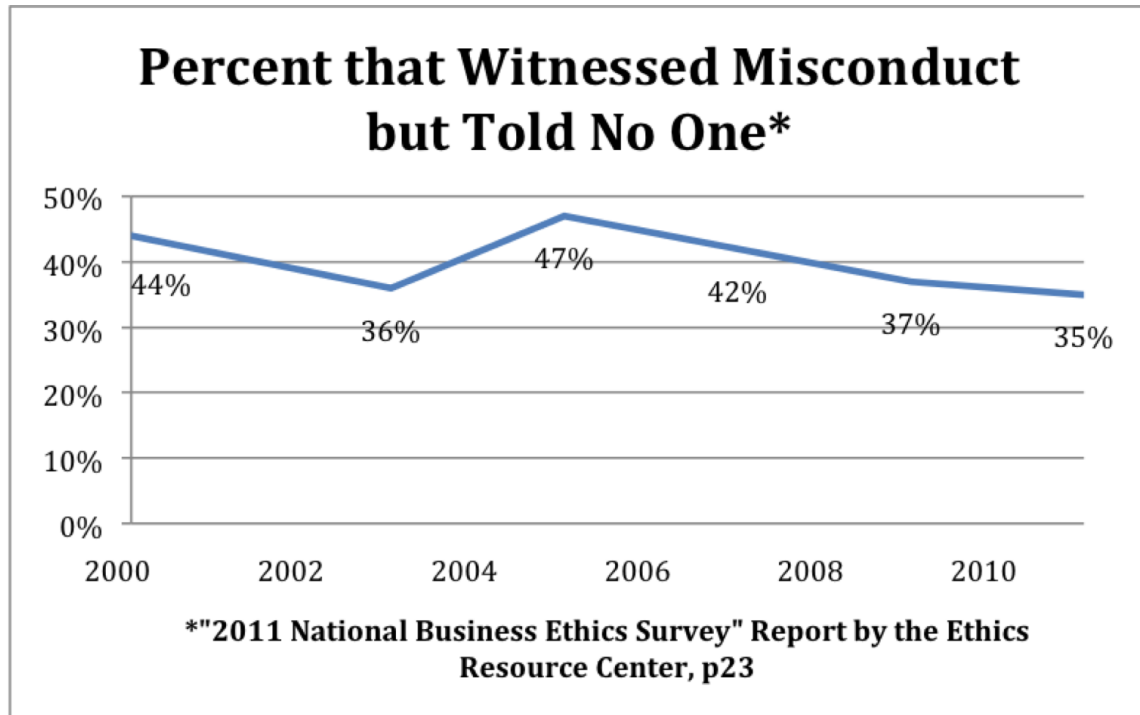
Fact #1

Continued...

Although whistleblowers are the single most common and valuable source of information on fraud and corruption, 40% of employees who witness wrongdoing tell *no one* about what they've observed, not even their immediate supervisors, much less a responsible government agency.

This research was conducted by the Ethics Resource Center, a corporate-sponsored organization that produces annual, statistically valid surveys of employee reporting behaviors.

*The Ethics Resource Center is sponsored primarily by Lockheed Martin, Raytheon, MERCK, and Altria among other multinational corporations.



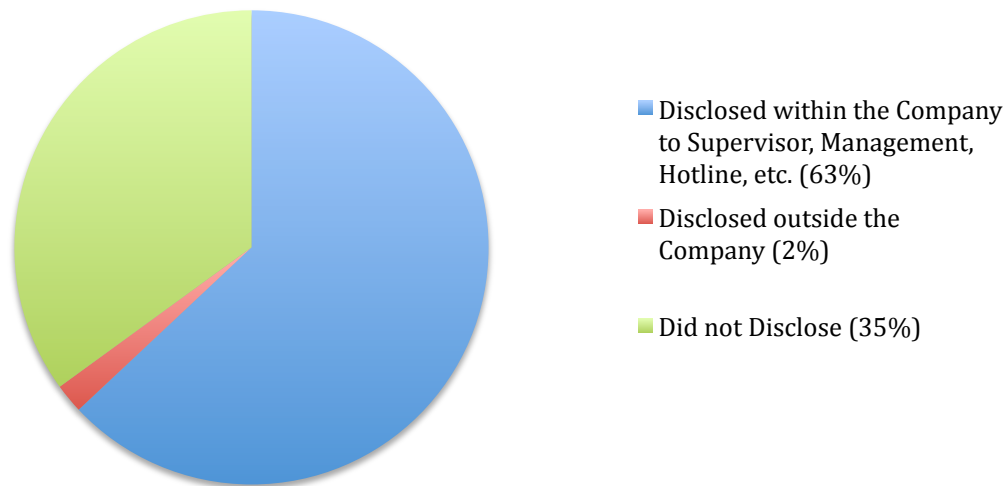
Fact #1

Continued...

Of significant concern to experts in corporate compliance and government oversight is the remarkably low number of employees willing to go outside of their company and report violations of law or misconduct to responsible law enforcement agencies. Based on the statistics published by the Ethics Resource Center in its 2011 studies, only 2% of employees who witness misconduct report to anyone outside their company.

As a result of this ongoing problem, the Ethics Resource Center concluded, “One of the critical challenges facing both [Ethics and Compliance] and government enforcement officials is convincing employees to step forward when misconduct occurs.”¹⁴

Initial Reporting Behavior of Employees Who Observed Misconduct 2011



* Based on the statistics reported in “Inside the Mind of a Whistleblower” Report by the Ethics Resource Center (2012).

Fact #2

The Key Role of “Insiders” in Detecting Complex Fraud

The need to protect the False Claims Act from hostile “reforms” was best stated in a bipartisan report issued on September 25, 2008, by the U.S. Senate Committee on the Judiciary.¹⁵ After studying the FCA, the Judiciary Committee endorsed none of the “reforms” urged by the Chamber of Commerce. Instead, the Committee recommended expanding its scope.

The Judiciary Committee concluded: *“The need for a robust FCA cannot be understated. . . . a great deal of fraud would go unnoticed absent the assistance of qui tam relator.”* The Committee confirmed *“the critical role that qui tam relators play in uncovering and prosecuting violations.”*

The Committee endorsed the findings reported by Pamela Bucy, a Bainbridge Professor of Law at the University of Alabama School of Law:

“Complex economic wrongdoing cannot be detected or deterred effectively without the help of those who are intimately familiar with it. Law enforcement will always be outsiders to organizations where fraud is occurring. . .

. . . They will not find out about such fraud until it is too late, if at all. When law enforcement does find out about such fraud, it is very labor intensive to investigate.”

Michael Hertz, Deputy Assistant Attorney General, Civil Division, of the Department of Justice, also testified at the hearing:

“Whistleblowers are essential to our operation. Without them, we wouldn’t have cases.”

Mr. Hertz confirmed that the publicity surrounding FCA payouts greatly contributes toward the government’s enforcement efforts, and had a significant deterrent effect on those who may otherwise engage in fraud:

“In the wake of well-publicized recoveries attributable to the qui tam cases, those who might otherwise submit false claims to the Federal Government are more aware than ever of the ‘watchdog’ effect of the qui tam statute. We have no doubt that the Act has had the salutary effect of deterring fraudulent conduct.”

“Complex economic wrongdoing cannot be detected or deterred effectively without the help of those who are intimately familiar with it.”

Fact #3

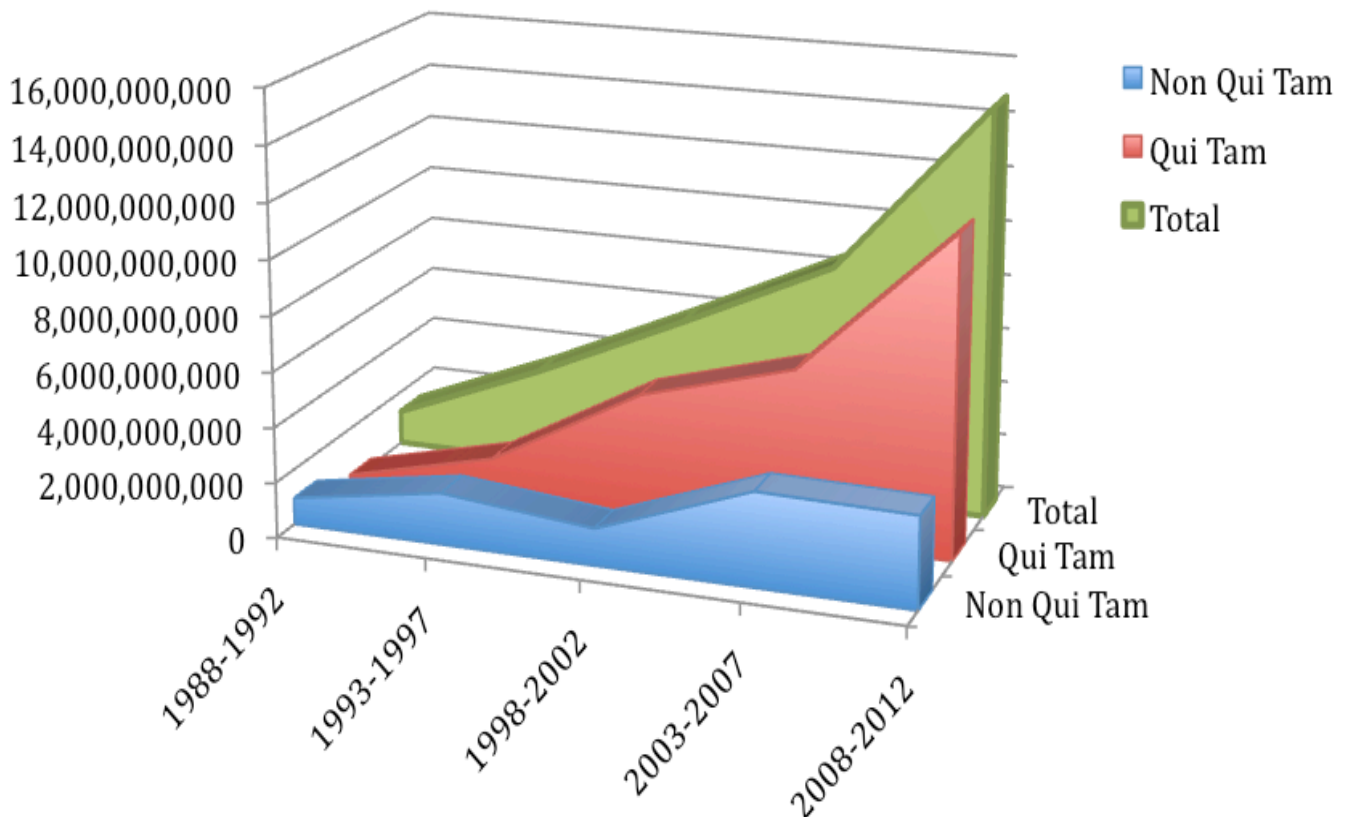
Why Whistleblower Laws Work

As demonstrated in the graph below, the False Claims Act (America's oldest whistleblower reward law) works remarkably well. Even the staunchest opponents of the law are forced to concede that the awards law is the "most important tool to uncover and punish fraud against the United States."¹⁶

As represented in the graph,¹⁷ the *qui tam* recoveries are those exclusively derived from whistleblower disclosures.

The recoveries obtained by the government that are not directly tied to whistleblowers are represented by the Non Qui Tam recoveries.

As can be seen, the amount of actual recoveries obtained on behalf of the taxpayers has grown significantly over the years as employees have become aware of the False Claims Act and utilized its *qui tam* procedures.



Fact #3

Continued...

The University of Chicago Booth School of Economics conducted the most comprehensive and objective study of whistleblower reward laws, whether or not they work, and their value to enforcement efforts. The study focused on the False Claims Act, and was designed to “identify the most effective mechanisms for detecting corporate fraud.” It was based upon an “in-depth” study of “all reported fraud cases in large U.S. companies between 1996 and 2004.”¹⁸

The Booth School’s conclusions are clear and contain unambiguous messages concerning the importance of whistleblower reward laws:

- *“A strong monetary incentive to blow the whistle does motivate people with information to come forward.”*
- *“[T]here is no evidence that having stronger monetary incentives to blow the whistle leads to more frivolous suits.”*
- *“Monetary incentives seem to work well, without the negative side effects often attributed to them.”*

The Booth School study also examined the risks that whistleblowers often face. They explain that without laws such as the False Claims Act, fraud will go undetected,

and the few whistleblowers who do step forward will not be rewarded:

“[E]mployees clearly have the best access to information,” [but whistleblowers were] “fired, quit under duress, or had significantly altered responsibilities. In addition, many employee whistleblowers report having to move to another industry and often to another town to escape personal harassment.”

“Not only is the honest behavior not rewarded by the market, but it is penalized . . . Given these costs, however, the surprising part is not that most employees do not talk; it is that some talk at all.”

It has been well demonstrated, when applied to United States regulatory and enforcement agencies, that whistleblower reward laws increase the amount and quality of whistleblower disclosures and are crucial to the exposure and prosecution of fraud and misconduct. The Chicago Booth School study demonstrates the need for effective whistleblower incentives.

“A strong monetary incentive to blow the whistle does motivate people with information to come forward”

Fact #4

America's Oldest Whistleblower Reward Law, the False Claims Act, has had Remarkable Success in Protecting Whistleblowers and Exposing Fraud

Below is how U.S. regulators describe the oldest U.S. whistleblower reward law, the False Claims Act. The False Claims Act is designed to punish fraud in government programs and it has a thirty-year track record of success. The modern version of the law, which enhanced whistleblower financial incentives, was enacted in 1986. The testimony and statements set forth below are all from the U.S. regulators responsible for the administration of the False Claims Act:

"[I]t is abundantly clear that, twenty-five years after this statute [the whistleblower reward law] was significantly amended, it remains the government's most potent civil weapon in addressing fraud against the taxpayers." Acting Assistant Attorney General, Civil Division DOJ (Statement before the American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement, June 7, 2012).¹⁹

"Most of the cases resulting in recoveries were brought to the government by whistleblowers."

"Under the False Claims Act, Civil Division attorneys generate much needed revenue by recovering billions of dollars lost each year through fraud and abuse on behalf of Government agencies, entitlement programs, and the general fund." U.S. Department of Justice, Civil Division Fiscal Year 2012 Budget Request.²⁰

"[M]ost of the cases resulting in recoveries were brought to the government by whistleblowers under the False Claims Act." Assistant Attorney General, Civil Division (DOJ, Statement before U.S. Senate Committee on Appropriations, Feb. 15, 2011).²¹

"Since 1986, Branch attorneys and their colleagues in U.S. Attorneys' Offices have recovered more than \$24 billion on behalf of Government programs . . . These efforts provide significant deterrence to those contemplating defrauding these programs . . . The majority of False Claims Act cases are filed initially by private citizens or "whistleblowers" under the qui tam provisions of the False Claims Act." United States Department of Justice, Civil Division, FY 2011 Performance Budget Congressional Submission.²²

Fact #4

Continued...

“[T]he Department has made significant strides in protecting taxpayer dollars – as well as the integrity of government programs that depend on those dollars . . . Our primary tool in these fraud enforcement matters is the False Claims Act . . . Although the False Claims Act dates back to the Civil War, it has been significantly strengthened in recent years to enhance its whistleblower provisions and to strengthen the government’s ability to recover taxpayer dollars. . . . [M]ost of the cases resulting in recoveries were brought to the government by whistleblowers under the False Claims Act. In 1986, Congress amended the False Claims Act to revise the statute’s qui tam (or whistleblower) provisions, which encourage whistleblowers to come forward with allegations of fraud. The changes enacted in 1986 made the record-setting recoveries of last year possible.” Assistant Attorney General for the Civil Division.²³

“[The False Claims Act’s whistleblower reward] amendments have played a critical role in transforming the False Claims Act into what it is today – the most powerful tool the American people have to protect the government from fraud. Indeed, each of the past five years has seen a new record for the number of whistleblower complaints filed, and of course the commitment advocacy of relators has been central to our record-setting recoveries . . . But the value of the False Claims Act is not just in allowing the government to respond to fraud after it happens. It is also in preventing fraud from happening in the first place . . . The results have been a tremendous benefit not only to the government and the American public but also to companies that want to do business fairly and honestly, and want to know that they won’t be put at a competitive disadvantage as a result because others are not playing by the rules.” Assistant Attorney General.²⁴

“[The False Claims Act’s whistleblower reward] amendments have played a critical role in transforming the False Claims Act into what it is today – the most powerful tool the American have to protect the government from fraud.” Assistant Attorney General

Fact #4

Continued...

"[T]he False Claims Act has provided ordinary Americans with essential tools to combat fraud, to help recover damages, and to bring accountability to those who would take advantage of the United States government – and of American taxpayers. Since the day that President Reagan signed these bipartisan amendments into law in 1986, their impact has been nothing short of profound . . . Some of these [False Claims Act cases] may have saved lives. All of them saved money. And – taken as a whole – this remarkable track record represents a wide-ranging effort to eradicate the scourge of fraud from some of government's most critical programs. Attorney General of the United States (January 31, 2012).²⁵

"The increased incentives for whistleblowers have led to an unprecedented number of investigations and greater recoveries . . . The whistleblowers who bring wrongdoing to the government's attention are instrumental in preserving the integrity of government programs and protecting taxpayers from the costs of fraud. We are extremely grateful for the sacrifices they make to do the right thing." Principal Deputy Assistant Attorney, quoted in Department of Justice, Office of Public Affairs, "Justice Department Recovers Nearly \$5 Billion in False Claims Act Cases in Fiscal Year 2012" (December 4, 2012).²⁶

"The False Claims Act is the government's primary civil remedy to redress false claims for government funds and property under government contracts, including national security and defense contracts, as well as under government programs as varied as Medicare, veterans benefits, federally insured loans and mortgages, transportation and research grants, agricultural supports, school lunches and disaster assistance. In 1986, Congress strengthened the Act by amending it to increase incentives for whistleblowers to file lawsuits on behalf of the government, which has led to more investigations and greater recoveries. Most false claims actions are filed under the Act's whistleblower, or qui tam, provisions, which allow private citizens to file lawsuits alleging false claims on behalf of the government." U.S. Department of Justice, Office of Public Affairs, "Justice Department Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013," December 20, 2013.²⁷

***"The False Claims Act has provided ordinary Americans with essential tools to combat fraud."
Attorney General of the United States***

Fact #5

Newly Enacted Securities and Tax Whistleblower Laws have also been “Tremendously Effective”

The Department of Justice is not the only agency to experience such success with whistleblower reward programs. Other agencies, including the Securities and Exchange Commission, the Internal Revenue Service, and the Commodity Futures Trading Commission have seen remarkable success with their own programs as well.

The securities-fraud whistleblower incentive law is one of the laws that have resulted in profound successes. In the words of the U.S. regulators responsible for implementing this law:

“Another tool we are using with growing frequency and success is our whistleblower authority, which enables us to award those who come forward with evidence of wrongdoing.”²⁸

“[T]he [Securities and Exchange Commission]’s whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips and, in some cases, virtual blueprints laying out an entire enterprise, directing us to the heart of an alleged fraud.”²⁹

“The Securities and Exchange Commission’s whistleblower program . . . has resulted in investigative staff receiving a substantial volume of high quality information about potential securities law violations. It has allowed our investigative staff to work more efficiently and permitted us to better utilize agency resources.”³⁰

The “new whistleblower program” “is resulting in high-quality tips from insiders at financial firms.”³¹

“We’re seeing high-quality tips that are saving our investigators substantial time and resources.”³²

*“The] whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips”
Securities and Exchange
Commission Chairman*

Fact #5

Continued...

Similarly, the Deputy Commissioner for Services and Enforcement at the Internal Revenue Service, John Dalrymple wrote the following in a memorandum immediately after a formal review of the Internal Revenue Service Office of the Whistleblower, ³³

Since the [Internal Revenue Service] Office of the Whistleblower was founded, “thousands of Whistleblowers have reported hundreds of millions of dollars in suspected tax compliance issues, resulting in a wide range of audits and investigations. Many of these audits and investigations have yielded significant results, demonstrating that whistleblower information can be an important tool in our compliance efforts.”

“Whistleblowers can provide valuable leads, and often offer unique insights into taxpayer activity. Frequently the whistleblower provides specific information on issues, taxpayer positions, or actions we would likely be unable to indentify using our compliance processes and procedures.”

“Some whistleblowers have insights and information which can help the Service understand complex issues or hidden relationships.”

*“Thousands of Whistleblowers have reported hundreds of millions of dollars in suspected tax compliance issues . . . demonstrating that whistleblower information can be an important tool in our compliance efforts.”
Deputy Commissioner
of the Internal Revenue
Service*

Conclusion

Congress's Continued Effort to Protect the Public has been Successful

Numerous reports and statements by public officials and respected independent scholars explain in detail why whistleblower reward laws are successful. Recently, the Chairman of the U.S. Securities and Exchange Commission endorsed these findings based upon the Commission's experience under the Dodd-Frank Act. That Act permitted whistleblowers to report securities fraud and violations of the Foreign Corrupt Practices Act confidentially, while obtaining large monetary rewards for taking the associated risks. The Chairman of the Securities Commission explained why these laws work:³³

"The program also incentivizes companies to report misconduct before a whistleblower comes to us first."

"When our whistleblower program was being set up, many in the securities bar . . . worried that the program would undermine internal compliance efforts. It seems, however, that the program may be having the opposite effect. Today, we hear that companies are beefing up their internal compliance function and making it clear to their own employees that internal reporting will be treated seriously and fairly."

"They persuade people to step forward"

"They put fraudulent conduct on our radar that we may not have found ourselves, or as quickly."

"They deter wrongdoing by making would-be violators ask themselves – who else is watching me?"

"Companies are beefing up their internal compliance function and making it clear to their own employees that internal reporting will be treated seriously and fairly." Statement of SEC Chairman (Securities Enforcement Forum, Oct. 9, 2014).

Set Up a Training



Over the past ten years the National Whistleblower Center and Whistleblower Legal Defense and Education Fund have conducted educational programs throughout the United States as well as in countries such as South Korea, Hungary, Israel and Serbia. Attorneys who work with the Whistleblower Center and Defense Fund have shared their expertise providing specific guidance based on over 30 years of experience representing whistleblowers.

If you are interested in arranging training please contact: contact@whistleblowers.org.

Resources

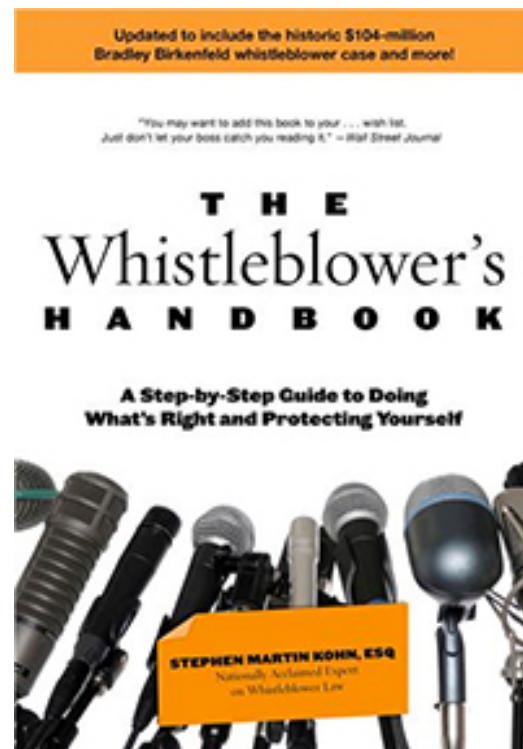
Legal Advice

The single best method for a whistleblower to determine whether he or she is protected under the law is to have a claim *confidentially reviewed* by an attorney with expertise in whistleblower law. To help whistleblowers obtain expert advice, the National Whistleblower Legal Defense and Education Fund offers a free *attorney referral service*. All contacts with this service are strictly confidential and covered under the attorney-client privilege to the maximum extent permitted under U.S. law. The service can be contacted at contact@whistleblowers.org or by calling 202-342-1903 (USA phone number).

Online Information

Link to the [Whistleblower's Protection Blog](#) to obtain up-to-date information on whistleblower laws and major developments.

*"You may want to add this book to your Christmas wish list. Just don't let your boss catch you reading it."
Wall Street Journal*



Know Your Rights

Read *The Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself*. The *Handbook* was described by the Foreign Corrupt Practices Act Compliance and Ethics Blog as "the single best volume" on whistleblowing. The *Handbook* includes detailed information on all the U.S. reward laws, including the Foreign Corrupt Practices Act and the law that resulted in UBS whistleblower Bradley Birkenfeld obtaining a \$104 million reward. The *Handbook* can be ordered from various commercial booksellers or from the National Whistleblower Center at www.whistleblowers.org.

Endnotes

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4. Statement of the Assistant Attorney General for the Civil Division, U.S. Department of Justice, before the U.S. Senate Committee on Appropriations (Feb. 15, 2011).
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10. Deputy Commissioner of the Internal Revenue Service, John M. Dalrymple (Memorandum, Subject: Internal Revenue Service Whistleblower Program) (August 20, 2014).
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 22. United States Department of Justice, Civil Division, FY 2011 Performance Budget Congressional Submission.
 23. Assistant Attorney General for the Civil Division, U.S. Department of Justice, before the U.S. Senate Committee on Appropriations (Feb. 15, 2011).
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 28. *Remarks at the Securities Enforcement Forum*, Securities and Exchange Commission Chairman (Oct. 9, 2014).
 29. *Id.*
 30. *Navigating Dodd-Frank with SEC Chairman Mary Schapiro*, Event held at George Washington University Center for Law, Economics and Finance, Oct. 26, 2012.
 31. *Id.*
 32. Statement of Securities and Exchange Commission Chairman, SEC Release 2012-162, Aug. 21, 2012.
 32. John Dalrymple, Deputy Commissioner for Services and Enforcement, IRS Whistleblower Program Memorandum, August 20, 2014.
 33. Statement of Securities and Exchange Commission Chairman (Securities Enforcement Forum, Oct. 9, 2014).
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About the National Whistleblowers Center

The National Whistleblowers Center (NWC) is a non-partisan, non-profit and tax-exempt organization based in Washington, D.C. See our web page at: www.whistleblowers.org. Since 1988, the NWC has advocated for the protection of employees to lawfully disclose fraud and violations of law to the appropriate authorities. You may contact the NWC at contact@whistleblowers.org or visit its website at www.whistleblowers.org.

The National Whistleblower Legal Defense and Education Fund is a non-profit law firm dedicated to providing assistance to whistleblowers. The Fund operates the Attorney Referral Service, and can be contacted at ars@whistleblowers.org, or visited at its web site at www.whistleblowers.org. The Fund's blog is published at www.whistleblowersblog.org

Stephen M. Kohn serves *pro bono* as the Executive Director of the National Whistleblower Center. Mr. Kohn is a partner at the Washington, D.C. law firm of Kohn, Kohn and Colapinto, LLP, and has specialized in representing whistleblowers for 30 years, including the successful representation of internationally recognized whistleblowers such as Dr. Frederic Whitehurst (whose disclosures vastly improved the integrity and quality of the FBI crime lab) and Mr. Bradley Birkenfeld (whose documentation of illegal Swiss banking practices resulted in the recovery of billions of dollars for U.S. taxpayers). In 1985, Mr. Kohn wrote the first legal treatise on whistleblower law. His seventh book on whistleblowing is *The Whistleblower's Handbook: A Step-by-Step Guide to Doing What's right and Protecting Yourself* (Lyons Press, 3rd ed. 2013). You may contact Mr. Kohn at contact@kkc.com.

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