The Importance Of Whistleblower Rewards In Combating International Corruption

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Introduction

Whistleblower Reward Laws are the Key to Successfully Combating Fraud and Corruption

In a rare show of international unity, over 140 nations, (including every major nation in the world), signed the United Nations Convention Against Corruption.[1] In the introduction to the Convention the Secretary-General of the United Nations wrote:

"*Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.*"

Articles 32 and 33 of the Convention promote the protection of whistleblowers.

Unquestionably, the key to a successful fraud detection program are whistleblower reward laws designed to protect and encourage "insiders" to report misconduct. The United States reward laws have been extraordinarily successful, and have worldwide reach. Since 2011, whistleblowers from over 82 countries have filed whistleblower claims and in 2014 over $30 million U.S. dollars was paid to non-U.S. citizens under these laws. Many of these claims focus on violations of the Foreign Corrupt Practices Act.

The U.S. regulators responsible for implementing the whistleblower reward laws have strongly praised them and have explained how they are crucial instruments in fighting fraud and

In the words of these officials:

- Whistleblower reward laws are "*the* ***government's most potent civil weapon in addressing fraud against the taxpayers***." Statement of the Acting Assistant Attorney General, Civil Division of the Department of Justice.[2]

- Whistleblower reward 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.[3]

- "*Most*" Civil Fraud Cases that result "*in recoveries were brought to the government by whistleblowers*" under the rewards law. Statement of the Assistant Attorney General.[4]

- Whistleblower reward laws have made "*record-setting recoveries*" on behalf of the taxpayer possible. Statement of the Assistant Attorney General.[5]

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Continued...

- Whistleblower reward "*laws **provide significant deterrence** to those contemplating*" engaging in fraud. Department of Justice, Civil Division 2011 Performance Budget Request.[6]

- Whistleblower reward laws are "*the **most powerful tool the American people have to protect the government from fraud.***" Statement of the Assistant Attorney General.[7]

- Whistleblower reward 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.*" Statement of the Assistant Attorney General.[8]

- 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.*" Statement of the Attorney General of the United States.[9]

- The "impact" of the reward laws "*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.*" Statement of the Attorney General of the United States.[10]

- "*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."* Memorandum of the Deputy Commissioner for Services and Enforcement of the Internal Revenue Service.[11]

- *"[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*." Statement of the Principal Deputy Assistant Attorney General.[12]

Introduction
Continued...

- "*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.*" Testimony of Securities and Exchange Commission Chairman before the House of Representatives.[13]

- Whistleblower reward laws are "**attracting high-quality tips and cooperation we might not otherwise receive**." Statement of Acting Director of the Commodity Futures Trading Commission's Enforcement Division.[14]

- "*The CFTC's Whistleblower Program is a valuable resource for the American public. Information received under the Whistleblower Program helps the agency better protect market participants and the public.*" Statement of Acting Chairman of the Commodity Futures Trading Commission.[15]

Based on the overwhelming success of the whistleblower reward program, the National Whistleblower Center recommends the following:

- International whistleblowers should seek protection under U.S. reward laws whenever possible.

- Where possible, all nations should enact whistleblower reward laws modeled on the successful U.S. laws. The laws must protect the identity of the whistleblower, guarantee due process, and establish mandatory monetary rewards for whistleblowers who disclose original information resulting in successful anti-corruption enforcement actions.

- NGOs and other anti-corruption organizations should immediately sponsor trainings to ensure that qualified whistleblowers know their rights under the U.S. laws and as means to educate the public and responsible officials regarding the importance of whistleblower protection.

"Corruption is an insidious plague"
General Secretary, United Nations

Fact #1

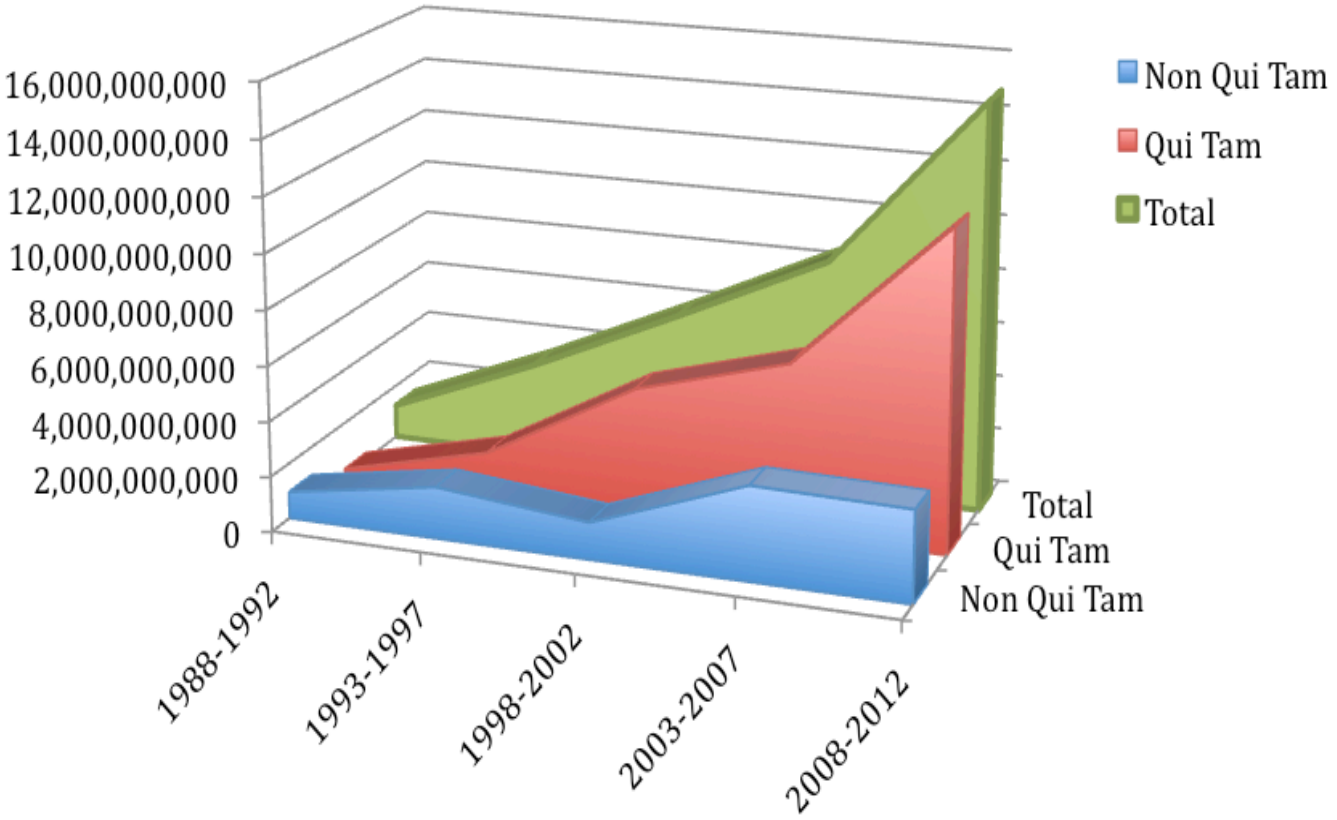
Whistleblower Reward Laws Work

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, such as the U.S. Chamber of Commerce, 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 (represented in orange) are those exclusively derived from whistleblower disclosures.

The recoveries obtained by the government that are not directly and explicitly tied to whistleblowers are represented in blue, (i.e. 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 #2

Employees Outside the USA are Already Benefiting from American Reward Laws

The failure of nations to enact whistleblower reward laws has resulted in numerous foreign nationals seeking protection under the U.S. Securities and Exchange Commission's Whistleblower Reward law. For example, from 2011 through September 2014, 1136 foreign nationals filed whistleblower disclosures with the U.S. Securities and Exchange Commission, and non-U.S. citizens have already been paid over $30 million U.S. dollars in whistleblower rewards for reporting securities violations or foreign bribery committed internationally.[18]

Some officials in developed democratic countries capable of implementing reward laws have argued that such laws would not work well in the nation. However, this argument ignores the fact that in 2014 more whistleblowers came from the United Kingdom, an economically and politically advanced nation, then than any other nation in the world.[19] Similarly, as reflected in the chart printed at the end of this report, since 2011 numerous whistleblowers from countries such as the Australia, Canada, France Germany, Netherlands, and Spain have all made disclosures under the U.S. reward laws.

Areas of law for which non-U.S. citizens fully qualify for rewards concern violations of the Foreign Corrupt Practices Act, international banking and tax violations, assisting U.S. citizens setting up non-disclosed bank accounts or other illegal financial structures, selling defective products to the U.S. government, and securities violations.[20]

In its 2014 annual report, the Securities and Exchange Commission's Office of the Whistleblower specifically noted, "allowing foreign nationals to receive awards under the program best effectuates the clear Congressional purpose underlying the award program."

To date, foreign nationals from 83 separate countries have applied for rewards in the securities/foreign bribery whistleblower rewards program alone. [21]

"In issuing [a $30 million USD] award, the Commission specifically noted that allowing foreign nationals to receive awards under the program best effectuates the clear Congressional purpose underlying the award program." Securities and Exchange Commission Report[15]

Fact #2
Continued...

Arguments raised that these programs are somehow outside the cultural norms of other nations or that whistleblowers would not take advantage of these programs because they are not concerned about rewards are flawed and disingenuous. These arguments ignore the fact that whistleblowers are already reporting to the U.S. from numerous countries in every continent, in large and increasing numbers.

Whistleblowers need the protection and encouragement offered by the reward laws.

The U.S. Securities and Exchange Commission has described the reach and success of their international program as follows,

"*Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in 83 countries outside the United States. In Fiscal Year 2014 alone, the Commission received whistleblower submissions from individuals in 60 foreign countries.*"[22]

Countries where the SEC has Accepted Whistleblower Tips and Award Applications in 2014

*Map from 2014 Annual Report to Congress on the "Dodd-Frank Whistleblower Program" Report by the SEC (2014).[23]

Whistleblower Tips Received By Geographic Location (International) Fiscal Year 2014

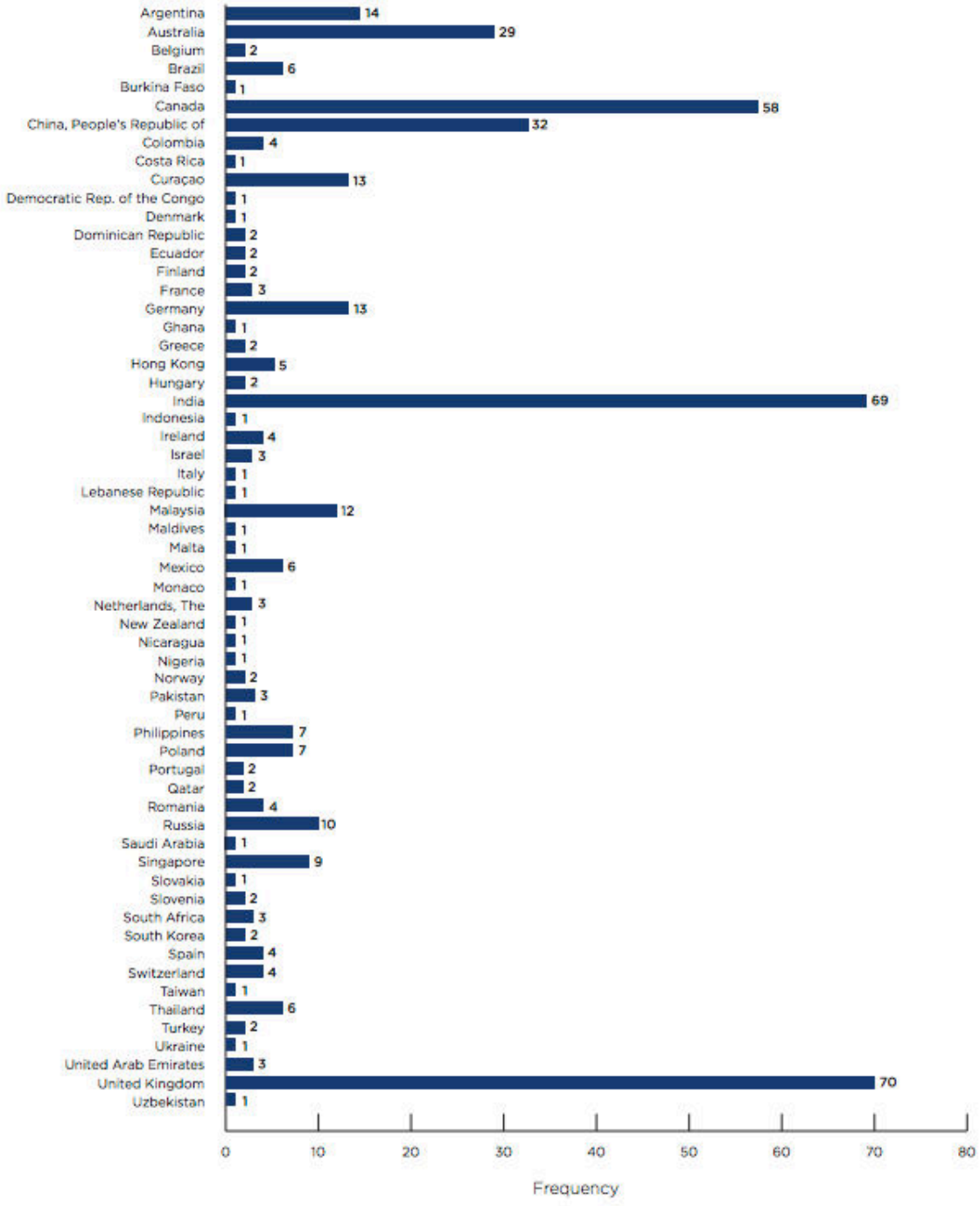


*Chart from 2014 Annual Report to Congress on the "Dodd-Frank Whistleblower Program" Report by the SEC (2014).[24]

Fact #3

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

> *"Most of the cases resulting in recoveries were brought to the government by whistleblowers." Department of Justice*

"*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.[26]

"*[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).[27]

"*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.[28]

Fact #3
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." 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).[29]

"[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, U.S. Department of Justice (Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement, June 5, 2014).[30]

"[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." Department of Justice

Fact #3
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).[31]

"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).[32]

"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.[33]

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

Fact #4

Newly Enacted Securities, Tax and Foreign Bribery Rewards Laws are also "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, enacted as part of the 2010 Dodd-Frank Act, is one of the laws that have produced profound results. This law has transnational application and also applies to violations of the Foreign Corrupt Practices Act. 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."[34]

"[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."[35]

"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."[36]

The "new whistleblower program" "is resulting in high-quality tips from insiders at financial firms." [37]

"We're seeing high-quality tips that are saving our investigators substantial time and resources."[38]

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

Fact #4
Continued…

Two other major agencies have experienced similar successes. These successes are reflected in the public comments of the Internal Revenue Service and the Commodities Futures Trading Commission.

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, [39]

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."

Although the Office of the Whistleblower at the Commodity Futures Trading Commission is still very new, leaders in the agency have expressed considerable excitement regarding the early results of their whistleblower program.

After the Commodity Futures Trading Commission issued their first-ever whistleblower award, leaders at the Commodities Futures Trading Commission issued the following statement regarding the new program,

"The [Commodity Futures Trading Commission]'s Whistleblower Program is attracting high-quality tips and cooperation we might not otherwise receive and is already having an impact on the Commission's enforcement mission."[40]

"I am pleased to announce this first award which illustrates that the [Commodity Futures Trading Commission]'s Whistleblower program is a valuable resource for the American public. Information received under the Whistleblower Program helps the agency better protect market participants and the public through successful enforcement actions."[41]

"Our Whistleblower Program is a necessary enforcement tool for the agency, and my hope is that this award will send the strong message that the [Commodity Futures Trading Commission] will pay for information that helps us do our jobs."[42]

Fact #5

Why Reward Laws Are Needed

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."[43]

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."*[44]

The Booth School study also explained the downside of whistleblowing. They explain that without laws such as the False Claims Act, fraud will go undetected, 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."[45]

***

"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."[46]

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 #6

Why Whistleblower Reward Laws Work

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:[47]

"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?"

"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."

"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).

Fact #6

Continued...

In a bipartisan report available on the Internet, the U.S. Senate Committee on the Judiciary recognized that whistleblower rewards were key to fraud detection.

The reason why laws incentivizing employees to disclose fraud are absolutely essential for any successful whistleblower program was explained by Pamela Bucy, a Bainbridge Professor of Law at the University of Alabama School of Law, in a bi-partisan report issued by the U.S. Senate Judiciary Committee. The report stated: [48]

> *"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."*

Based on this testimony and the empirical evidence regarding the success of America's oldest reward laws, the U.S. Senate Judiciary Committee concluded:

"The need for a robust whistleblower reward law cannot be understated. . . . a great deal of fraud would go unnoticed absent the assistance of qui tam realtors."

The Committee confirmed *"the critical role that qui tam relators play in uncovering and prosecuting violations."*

Note: *qui tam* relators are the formal name for whistleblowers under the False Claims Act.

"The need for a robust whistleblower reward law cannot be understated." Senate Judiciary Committee

Fact #7

Confidentiality is Key to Protecting and Encouraging Whistleblowers

Some nations have enacted anti-retaliation whistleblower protection laws. These laws prohibit firing whistleblowers, and offer some job protection and compensation (usually back pay and reinstatement).

Although the National Whistleblower Center strongly endorses such laws, these laws have two major drawbacks. First, they are defensive in nature. They are used not to encourage whistleblowers, but to mitigate the devastating impact that whistleblowing can have on the whistleblower.

The new U.S. reward laws permit confidential and anonymous reporting. Employees can file confidential disclosures and still fully qualify for a reward. This process decreases the likelihood that a government official or corporate officer whose misconduct is disclosed will ever learn the identity of the whistleblower. Such confidentiality is the best defense against retaliation.

Concerns have been raised that "*confidentiality impedes the use of anti-retaliation deterrents with employers; it means the agencies cannot issue specific warnings to firms about the need to protect the employee who has made a disclosure. So there is no additional protection for whistleblowers using this route.*"[49]

This argument makes no legal sense. If your company or the government does not know who the whistleblower is, they cannot retaliate against you for blowing the whistle. This is one of the greatest benefits of the new reward laws. Many employees now using enhanced confidentiality procedures are able to blow the whistle without being detected.

This is the single greatest advancement in protecting employees from retaliation. It is not negative in any way.

There is no downside to confidentiality. It is, in fact, the most important breakthrough in U.S. whistleblower protection laws, and will ultimately result in protecting far more whistleblowers than under traditional anti-retaliation laws.[50]

Fact #8

Concerns Over "Malicious Reporting" Are Meritless

Among the first arguments raised in opposition to enacting rewards laws is that such laws may encourage malicious reporting or the filing of "frivolous lawsuits" by opportunists or uninformed persons.[51]

This argument is based on pure speculation and ignores the facts.

First, the University of Chicago's Booth School of Economics' study debunked any allegation that the False Claims Act increases the filing of frivolous litigation: **"[T]here is no evidence that having stronger monetary incentives to blow the whistle leads to more frivolous suits."**[52]

Second, the oldest reward law, the False Claims Act, has a provision that requires federal courts to sanction relators who file frivolous lawsuits.[53] Between 1986 and 2013, of the nearly 10,000 cases filed, there were only *eleven* reported cases in which sanctions were awarded.

Six of those cases were against pro se filers [pro se means that the person filing the lawsuit could not locate an attorney] who cited to the False Claims Act as part of their absurd cases.[54] The other five cases were also not real whistleblower cases, but frivolously argued issues far removed from fraud, such as copyright infringement or breach of private contracts.

Third, over-filing of *qui tam* lawsuits is not a problem. In 2013, a total of only 753 whistleblower reward cases were filed in court.[55] This is an absolutely miniscule number compared to the total number of civil lawsuits (284,606), or even employment discrimination lawsuits (33,309) filed during the same time period.[56]

Finally, as reflected in the Congressional testimony of the U.S. Department of Justice, the *qui tam* suits do not cause the government "unnecessary litigation costs," but instead save the government (and therefore the taxpayers) significant amounts of money by providing the Department of Justice with high-quality information necessary to investigate complex and secretive fraud.[57]

"The University of Chicago's Booth School of Economics' study debunked any allegation that reward laws increase the filing of frivolous litigation."

Fact #9

Concerns that Reward Laws Could be used to "Entrap" victims are Misplaced

The Bank of England's Financial Conduct Authority issued a report warning that whistleblower reward laws could result in employees improperly attempting to "entrap" victims in order to collect a reward.[58]

This concern, and similar arguments raised by other officials or organizations, are premised on speculative hypothetical situations and have no basis in fact. They are refuted by the experiences in the thousands of cases that have been filed under U.S. law, many of which were filed by non-U.S. citizens.

The Bank's Financial Conduct Authority raised the following concern:

*"Entrapment: Some market participants **might** seek to 'entrap' others into, for example, an insider dealing conspiracy, in order to blow the whistle and benefit financially."*[59]

The "entrapment" concern demonstrates a profound ignorance of the actual operation of reward laws.

These laws prohibit persons who "plan and initiate" the frauds from obtaining a reward.[26] If an employee decides to plan and initiate a fraud in order to "entrap" another employee (or the company), that employee would not qualify for a reward.

Furthermore, that employee would be engaging in serious criminal misconduct, and if he or she decided to "blow the whistle" on himself/herself, they would most likely wind up in jail. Thus, there are no reported cases, of the over 10,000 reward cases filed in court, in which someone who planned and initiated a fraud obtained a reward.

"The 'entrapment' concern demonstrates a profound ignorance of the actual operation of reward laws"

Fact #10

Reward Laws do not Create a Conflict of Interest

The Bank Report also raised a concern over the potential conflict of interest that could be created due to the opportunity for a whistleblower to obtain a financial reward:

*"Conflicts of interest in court: If a whistleblower's disclosure led to a criminal prosecution which relied on the whistleblower's evidence, the court **could** call into question the reliability of their evidence because the witness stood to gain financially, thus undermining the prosecution's case."*[60]

This speculative hypothetical has no basis in law or fact. First, it is extremely common in criminal cases to give a witness immunity or leniency in order to obtain testimony. This process works well in criminal cases and does not undermine the ability of prosecutors to obtain convictions.

Second, there are *no* reported cases, in the over 10,000 court cases filed under whistleblower reward laws, in which a criminal prosecution was actually prejudiced solely because the whistleblower was eligible for a reward.

The key in a fraud investigation is not worrying about hypothetical bias that has no basis in fact, but instead trying to entice honest insiders to risk their jobs and careers by providing evidence to government regulators or prosecutors.

Whistleblower reward laws are designed to deal with the reality of employee reporting behaviors. They are designed to create systems that significantly increase the ability of regulators to detect fraud, and systems that provide companies with an inventive to prevent fraud.

The whistleblower is often the best witness in a criminal or civil investigation or prosecution.

***The "Impact" of the Reward Laws Has Been "Nothing Short of Profound . . . Some of these [Whistleblower Cases] may have saved lives. All of them saved money."* The Attorney General of the United States.**[61]

Conclusion

Whistleblower reward laws address both the short-term and long-term problems caused by the realistic fear employees experience when they consider blowing the whistle.

- Reward laws create an incentive for employees to take a risk and report fraud.
- Reward laws establish safe and protected channels for reporting.
- Reward laws place a premium on raising concerns that are valid, well documented, and provable. Unlike retaliation laws, the only way to prevail in a reward law is to be right about the wrongdoing.
- Reward laws give employees a choice: report internally or report through a government-protected channel that can offer real financial security. This creates powerful motivation for companies to compete with the government programs by creating independent and effective compliance programs.
- Reward laws provide a safe channel for employees to report their allegations to law enforcement confidentially, and, if appropriate, become a confidential informant.
- Reward laws permit employees who disclose their fraud-based allegations to the government to obtain protection from retaliation as government witnesses under the criminal obstruction of justice laws, along with traditional employment discrimination laws.
- Reward laws permit the appropriate authorities to obtain evidence of fraud, and conduct effective investigations designed to protect the public interest.

"Reward laws create an incentive for employees to take a risk and report fraud."

Recommendations

1. International whistleblowers, including those in Great Britain and Europe, should use the U.S. reward laws whenever applicable.

2. NGOs and Government Institutions dedicated to anti-corruption efforts should sponsor trainings to educate their country's citizens on how to use U.S. whistleblower reward laws to obtain protection, financial rewards and to put a stop to local corruption and misconduct.

3. International Institutions such as the European Union, the World Bank, the I.M.F., the U.N. should enact whistleblower reward programs to promote the prosecution of financial fraud under their jurisdiction.

   "We hope that awards like this one [a large multi-million dollar reward given to an international whistleblower] will incentivize company and industry insiders, or others who may have knowledge of possible federal securities law violations, **both in the U.S. and abroad**, to come forward and report their information promptly to the Commission." 2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities and Exchange Commission

4. All nations should adopt whistleblower reward laws wherever there are democratic institutions capable of administering these laws. Where such institutions do not exist, programs should be enacted to protect whistleblowers that report to international institutions or outside government agencies.

5. All whistleblower reward laws must ensure the anonymity and privacy of whistleblowers, establish minimum standards for rewards for whistleblowers to be calculated as a percentage of total recovery, and provide for due process, including the right to judicial review for claims of wrongful denial of awards

Appendix: International Whistleblower Tips Received by Geographical Location

Whistleblower Tips Received by Geographical Location (International)
Fiscal Year 2011-2014[62]
Annual Report to Congress on the Dodd-Frank Whistleblower Program
U.S. Securities and Exchange Commission

Canada	167
United Kingdom	149
China	121
India	120
Australia	68
Russia	33
Germany	32
Ireland	31
Argentina	22
Curaçao	18
Singapore	18
South Africa	18
Israel	17
Switzerland	16
France	14
Mexico	14
Netherlands, The	14
Brazil	13
Malaysia	13
New Zealand	13
Spain	12
Hong Kong	11
Italy	11
Turkey	11
South Korea	9
Norway	8
Thailand	8
Philippines	7
Poland	7
Portugal	7
Romania	7
Sweden	7
Colombia	6
Finland	6
Ghana	6
Venezuela	6
Belgium	5
Dominican Republic	5
Japan	5
Pakistan	5
Slovakia	5
Taiwan	5

United Arab Emirates	5
Austria	4
Slovenia	4
Ukraine	4
Greece	3
Hungary	3
Vietnam	3
Costa Rica	2
Cyprus	2
Czech Republic	2
Ecuador	2
Indonesia	2
Lebanese Republic	2
Qatar	2
Belize	1
Botswana	1
Bulgaria	1
Burkina Faso	1
Cameroon	1
Cayman Islands	1
Democratic Rep. of the Congo	1
Denmark	1
Egypt	1
El Salvador	1
Kazakhstan, Republic of	1
Kenya	1
Luxembourg, Grand Duchy of	1
Maldives	1
Malta	1
Monaco	1
Montenegro	1
Nicaragua	1
Nigeria	1
Panama	1
Peru	1
Rwanda	1
Saudi Arabia	1
Serbia	1
Uruguay	1
Uzbekistan	1
Total Tips Received	1136

Take Action: Set Up a Training

Over the past ten years the National Whistleblower Center and Whistleblower Legal Defense and Education Fund have conducted educational programs in countries such as South Korea, Hungry, Israel and Serbia. Attorneys who work with the Whistleblower Center and Defense Fund have shared their expertise with international NGOs and governmental representatives, providing specific guidance based on over 25 years of experience representing whistleblowers (including non-U.S. citizens or persons reporting fraud committed by non-U.S. corporations). Overseas educational programs focus on two primary areas: (1) how international whistleblowers can utilize the existing American whistleblower reward laws; and (2) the programs and laws that are necessary to ensure that employees are encouraged to report fraud and are fully protected if they become whistleblowers.

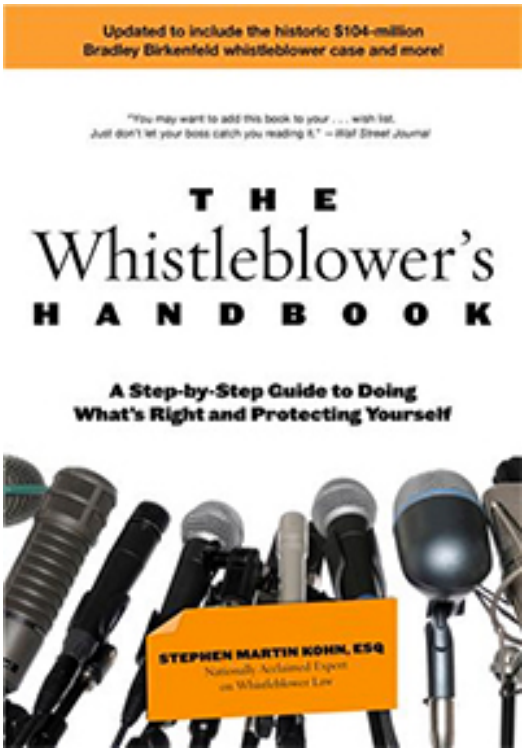
If you are interested in arranging training please contact: contact@whistleblowers.org.

Take Action: Protect Yourself

OBTAIN LEGAL ADVICE! The single best method for a whistleblower to determine whether he or she is protected under a U.S. reward 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).

STAY INFORMED! 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

1. *United Nations Convention Against Corruption*. A list of the 140 countries that approved the convention is available online. Other international institutions, such as the Council of Europe, have also adopted requirements that member nations adopt laws to protect whistleblowers. These are also available online.
2. Acting Assistant Attorney, Civil Division Department of Justice (Statement before the American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement, June 7, 2012). Department of Justice, Civil Division Fiscal Year 2012 Budget Request.
3. U.S. Department of Justice, Civil Division Fiscal Year 2012 Budget Request.
4. *Id.*
5. 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).
6. United States Department of Justice, Civil Division, FY 2011 Performance Budget Congressional Submission
7. Assistant Attorney General, U.S. Department of Justice (Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement, June 5, 2014).
8. *Id.*
9. "Attorney General Eric Holder Speaks at the 25th Anniversary of the False Claims Act Amendments of 1986" (January 31, 2012).
10. Deputy Commissioner of the Internal Revenue Service, John M. Dalrymple (Memorandum, Subject: Internal Revenue Service Whistleblower Program) (August 20, 2014).
11. Principal Deputy Assistant Attorney General, 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).
13. Securities and Exchange Commission Chair Mary Jo White, Testimony on "Oversight of the [Securities and exchange Commission]'s Agenda, Operations and FY 2015 Budget Request" April 29, 2014.
14. Acting Director of the Commodity Futures Trading Commission's Enforcement Division, quoted in *The Wall Street Journal*, "CFTC Hands Out First Whistleblower Award" (May 20, 2014).
15. Acting Chairman of the Commodity Futures Trading Commission, Quoted in CFTC press release, PR6933-14 (May 20, 2014).
16. *Fixing the False Claims Act: The Case For Compliance-Focused Reforms*, Institute for Legal Reform, U.S. Chamber of Commerce, Institute for Legal Reform, 2013.
17. *Fraud Statistics*, U.S. Department of Justice (2013), [hereinafter DOJ Statistics].
18. 2011-14 Annual Reports to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities and Exchange Commission.
19. *2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program*, U.S. Securities and Exchange Commission.

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20. *The Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself*, Third Edition, Lyons Press, "Rule 6" (Rewards for Government Contracting Fraud); "Rule 7" (Rewards for Tax Fraud and Reporting Non-Disclosed Illegal Bank Accounts); "Rule 8" (Rewards for Disclosing Securities and Commodities Violations and Violations of the Foreign Corrupt Practices Act); "Checklist 1" (Summary of Whistleblower Reward Laws); "Checklist 4" (Examples of Frauds for which U.S. Government Paid Rewards); Checklist 7 (Dodd-Frank Act Rules for Filing Securities and Foreign Corrupt Practices Act Reward Claims).
21. *2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program*, U.S. Securities and Exchange Commission.
22. *Id.*
23. *Id.*
24. *Id.*
25. Acting Assistant Attorney General, Civil Division Department of Justice (Statement before the American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement, June 7, 2012).
26. U.S. Department of Justice, Civil Division Fiscal Year 2012 Budget Request.
27. Assistant Attorney General, Civil Division (Statement before U.S. Senate Committee on Appropriations, Feb. 15, 2011).
28. United States Department of Justice, Civil Division, FY 2011 Performance Budget Congressional Submission.
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31. "Attorney General speaks at the 25th anniversary of the False Claims Act" (January 31, 2012).
32. Principal Deputy Assistant Attorney General, 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).
33. United States 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.
34. *Remarks at the Securities Enforcement Forum*, Securities and Exchange Commission Chairman (Oct. 9, 2014)
35. *Id.*
36. *Navigating Dodd-Frank with SEC Chairman Mary Schapiro,* Event held at George Washington University Center for Law, Economics and Finance, Oct. 26, 2012.
37. Statement of Securities and Exchange Commission Chairman, SEC Release 2012-162, Aug. 21, 2012.
38. *Id.*
39. John Dalrymple, Deputy Commissioner for Services and Enforcement, IRS Whistleblower Program Memorandum, August 20, 2014.

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40. "[Commodity Futures Trading Commission] hands out first Whistleblower Award" *Wall Street Journal* (May 20, 2014)
41. Commodity Futures Trading Commission Press Release (May 20, 2014)
42. *Id.*
43. Alexander Dyck, Adair Morse & Luigi Zingales, *Who Blows the Whistle on Corporate Fraud?* University of Chicago, 2006.
44. *Id.*
45. *Id.*
46. *Id.*
47. Statement of Securities and Exchange Commission Chairman (Securities Enforcement Forum, Oct. 9, 2014).
48. S. Rep. No. 110-507 (2008).
49. *Financial Incentives for Whistleblowers*, Bank of England Financial Conduct Authority and Prudential Regulation Authority, 2014.
50. Whistleblowers who file their claims confidentiality should still be fully protected against retaliation, should their employer suspect them of being the source. Under U.S. case law, which should be adopted by other countries, a whistleblower who proceeded confidentially can still demonstrate that the employer knew that they were the whistleblower by circumstantial evidence. Frazier v. MSPB, 672 F.2d 150 (D.C. Circuit 1982).
51. *Financial Incentives for Whistleblowers*, Bank of England Financial Conduct Authority and Prudential Regulation Authority, 2014.
52. Alexander Dyck, Adair Morse & Luigi Zingales, *Who Blows the Whistle on Corporate Fraud?* University of Chicago, 2006.
53. 31 U.S.C. §3730(d)(4)
54. *Saving America's "Most Important Tool to Uncover and Punish Fraud": 25 Facts that Rebut the Chamber of Commerce's Proposal to Undermine the False Claims Act,* National Whistleblower Center, July 30, 2014.
55. *DOJ Statistics*, supra note 1.
56. U.S. District Courts Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit (2012-2013).
57. S. Rep. No. 110-507 (2008).
58. *Financial Incentives for Whistleblowers*, Bank of England Financial Conduct Authority and Prudential Regulation Authority, 2014.
59. *Id.*
60. *Id.*
61. "Attorney General Eric Holder Speaks at the 25th Anniversary of the False Claims Act Amendments of 1986" (January 31, 2012).
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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

Find us on social media:

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 and the payment of a $104 million USD whistleblower reward to Mr. Birkenfeld). 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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