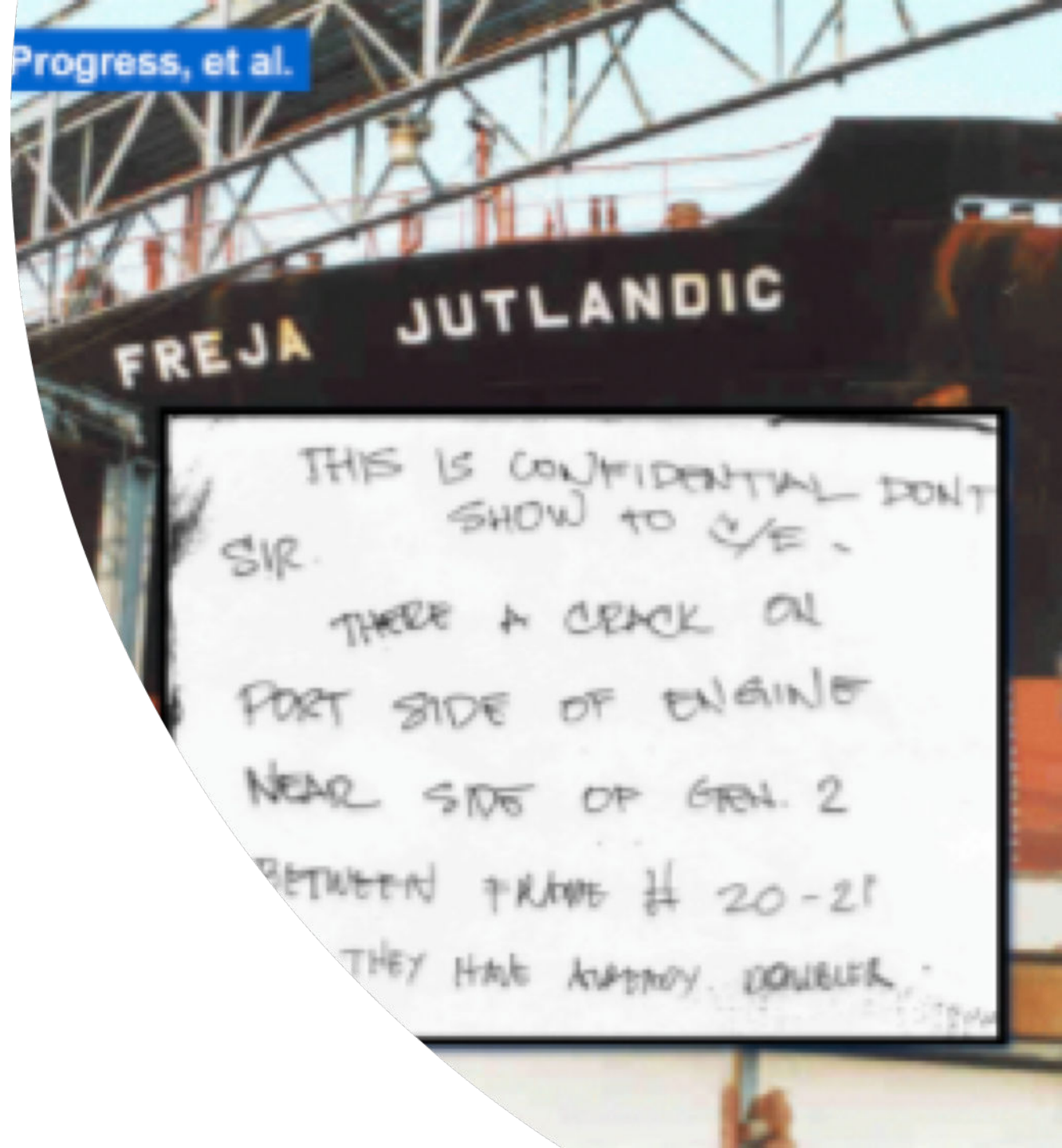


Stephen M. Kohn, Esq.

April 16, 2019

Maritime Whistleblowers: The Role of Private Citizens and NGOs in Enforcing Maritime Laws





Whistleblower reward laws are “the most powerful tool the American people have to protect the government from fraud.”

— Former Assistant Attorney General Stuart Delery

Remarks at American Bar Association’s 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014)

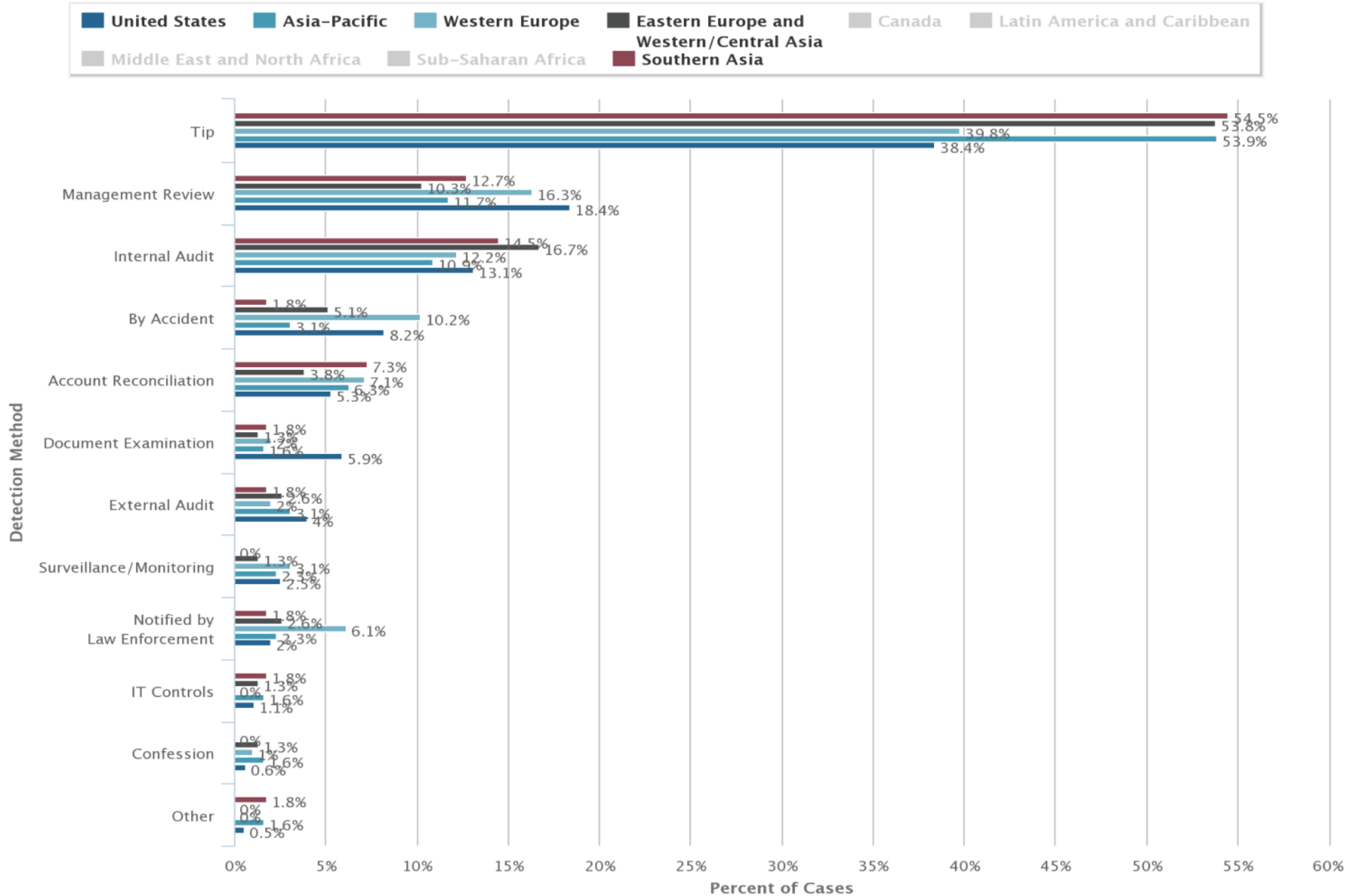
“The False Claims Act and its [whistleblower] provisions remain the government’s most effective civil tool in protecting vital government programs from fraud schemes.”

— Acting Associate Attorney General Bill Baer

Remarks at American Bar Association’s 11th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2016)



Detection Method by Region



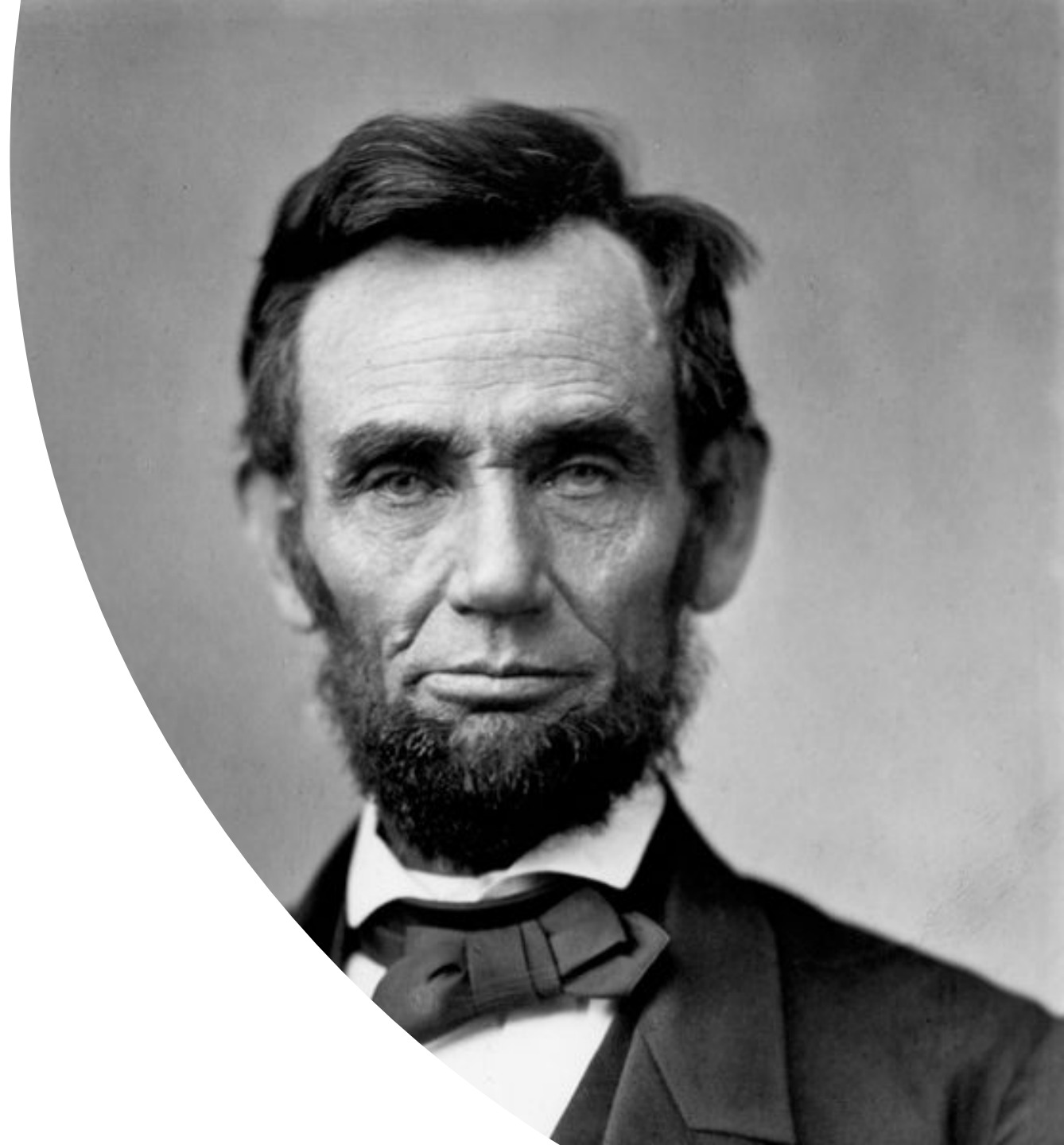


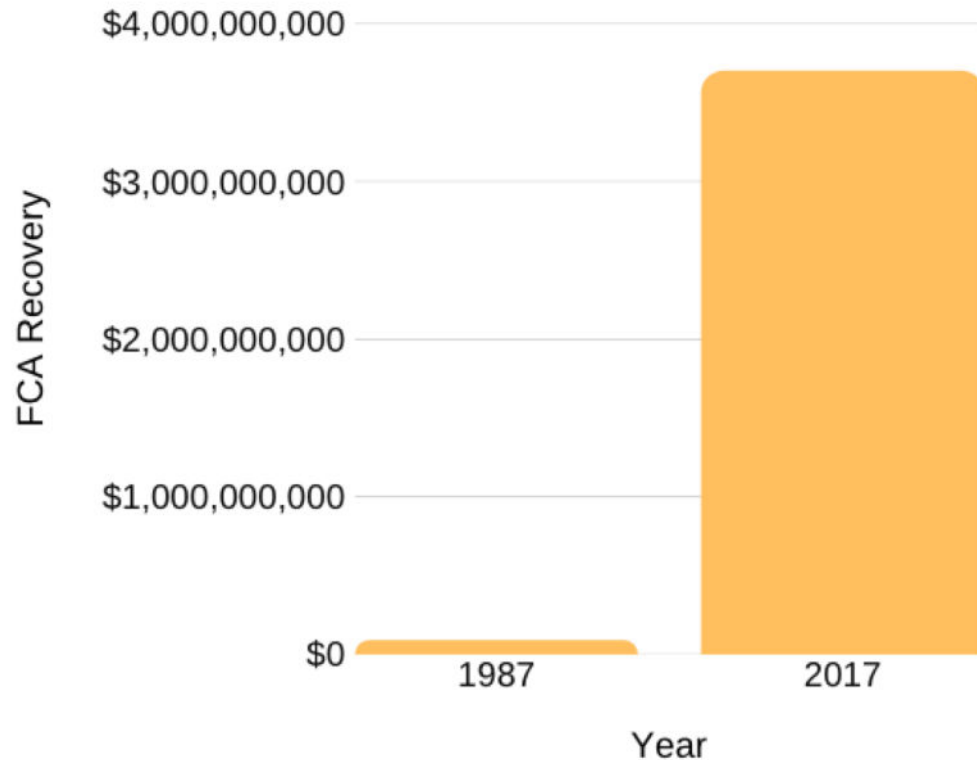
The Solution *qui tam* - "The Lincoln Law"

On March 2, 1863, President Abraham Lincoln signed the original whistleblower [qui tam reward law](#), the False Claims Act ("FCA"), targeting fraud in government contracting.

It was modernized in 1986.

The FCA incentivizes reporting and is the model for all current whistleblower reward laws.





Source: [U.S. Department of Justice](#)

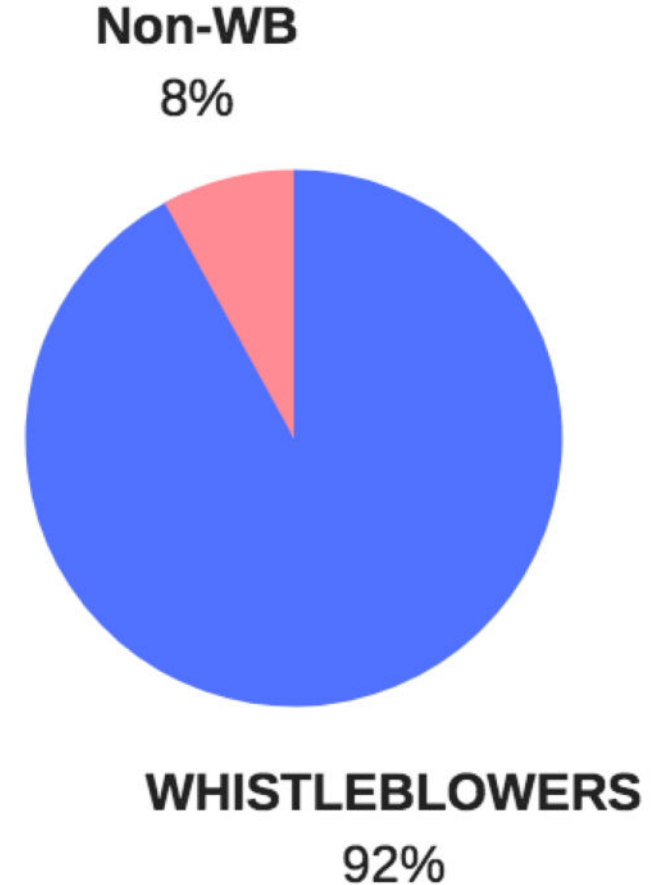
- Since its modernization on October 27, 1986, the False Claims Act has increased the overall annual recoveries from fraudsters who cheated the government.
- The total fraud recovered in the United States increased from \$88.4 million in FY 1987 to \$3.7 billion in FY 2017 based on whistleblower disclosures under the FCA.
- Since FY 1987, whistleblowers were responsible for 72% of the funds recovered in contracting or procurement fraud cases.



A Whistleblower Program Delivers Significant Benefits

- In FY 2017, the U.S government recovered over \$3.7 billion through its civil fraud program.
- Whistleblowers were directly responsible for reporting of over \$3.4 billion of these recoveries.
- Whistleblowers were the source of the detection of 91.8% of all civil fraud recovered in FY 2017.

Source: [U.S. Department of Justice](#)



In 2017, of the \$3.4 billion recovered through the FCA and as a result of whistleblower assistance, \$392 million (11.5%) was awarded to whistleblowers.



Implementing whistleblower laws will trigger a massive increase in the detection of ocean pollution crimes and MARPOL violations.





How the U.S. Enforces MARPOL

- Relevant U.S. law: 33 U.S.C. § 1901 – 1915
- § 1908(a) criminal penalties for failing to maintain an accurate Oil Record Book
- Payment for Information: “In the discretion of the Court, an amount equal to not more than 1/2 of such fine may be paid to the person giving information leading to conviction.” 33 U.S.C. § 1908(a)



Protecting
Whistleblowers
Critical to
Enforcement

“Very few other countries have any track record of prosecuting deliberate MARPOL violations, let alone a legal process that would protect witnesses from obstruction of justice such as occurred in the vast majority of vessel pollution prosecutions.”

U.S. Department of Justice, Environment and Natural Resources Division, filing in APPS Case *United States v. Efploia*.



APPS
Prosecutions are
Dependent upon
Whistleblowers

“Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover.”

U.S. Department of Justice, *USA v. Noble Drilling, LLC* (U.S. District Court, Alaska).

THE REALITY "ON THE GROUND"

"The availability of the award aptly reflects the realities of life at sea... A monetary award both rewards the crew member for taking that risk and may provide an incentive for other crew members on other vessels to alert inspectors and investigators regarding similar crimes."

– U.S. Department of Justice, Natural Resources Division Brief in *U.S. v. Odfjell*



Act to Prevent Pollution on Ships (APPS)

- APPS and wildlife trafficking crimes originate outside of the U.S.
- Both APPS and other wildlife protection laws cover violations of international conventions, such as MARPOL and CITES, that occur outside the United States.
- The U.S. is the number one enforcer of MARPOL because of whistleblowers.





Revenue Generated From Whistleblower Cases Serves the Public Interest

Whistleblower cases generate millions of dollars in revenue from the fines and penalties collected from polluters.

A majority of the revenue generated from the whistleblower cases goes back to the general treasury.

24% of the total funds generated from whistleblower cases is used for beneficial purposes and to help mitigate the impact of ocean pollution.

Revenue Resulting from Whistleblower Disclosures Serves the Public Interest

Sample of Groups that Obtained Community Service Payments:

- The National Fish & Wildlife Foundation
- The National Marine Sanctuary Foundation
- Florida National Keys Marine Sanctuary
- Alaska Sealife Center
- Pinellas County, Florida Environmental Fund (PCEF)
- International Arctic Research Center
- Puget Sound Marine Conservation Fund
- Stenson Bank National Marine Sanctuary
- North American Wetlands Conser. Fund
- Columbia River Conservation Fund
- Channel Islands National Park

Examples of Projects Targeted for use from these payments:

- Benefit, preserve, and restore the environment and ecosystems in U.S. waters
- Activities of conservation and management of fish, wildlife, and plant resources of the U.S. coastline
- Restoration of marine & aquatic injured resources and protection coral reefs, sea grass beds, and species dependent on that habitat
- Scientific research of marine resources & habitats
- Education regarding protection of the marine environment from pollution
- Louisiana habitat conservation

Retaliation v. Rewards

Most whistleblower laws are designed to protect a whistleblower's employment and compensate him or her for loss of a job.

In the context of ocean pollution this model does not work. Seamen often are not citizens or residents of countries that have the ability to protect a seaman's job.

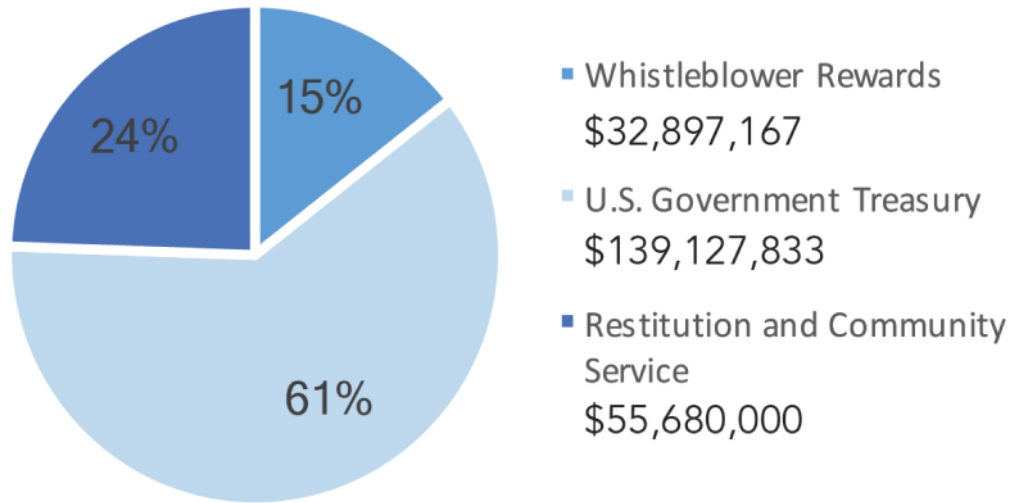
The reward laws are the only practical method to incentivize the detection of ocean pollution, and protect those who risk their jobs, careers or even their lives.

Rewards also incentivize others to assist in detecting ocean pollution crimes.

The reward laws implemented under the APPS have not been abused, and have been remarkably successful both in protecting whistleblowers and policing polluters.



Revenue Distribution from APPS Cases Involving Whistleblowers¹



Total Money Recovered Based on Whistleblower Information: **\$177,593,000**

- The U.S. government has awarded 205 whistleblowers a sum of approximately \$33 million in the 100 most recent prosecution under APPS.
- The largest reward paid for an individual whistleblower was \$2,100,000 (*USA v. Omi Corporation*).
- \$5,250,000 is the largest amount paid to a group of APPS whistleblowers from the Philippines (*USA v. Overseas Shipping*).
- The average reward paid per whistleblower in a recent survey of 75 cases was \$163,575.



A Program to
Implement Ocean
Pollution
Whistleblower
Laws

LEGAL TOOLS TO SUPPORT INTERNATIONAL WHISTLEBLOWERS

False Claims Act:

Customs
Violations
(imports into the
United States)

FCPA: Foreign
Bribery/Bribery at
International Ports

Bank Secrecy Act:

Offshore Accounts
and Money
Laundering

Act to Prevent Pollution from Ships:

Ocean
Pollution on the
High Seas



Step One

Educate
Whistleblowers

Make Whistleblowers
and supporting NGOs
aware of the APPS
program



Step Two

Protect
Confidentiality

Create safe and
confidential
mechanism for
whistleblowers to
report crimes



Step Three

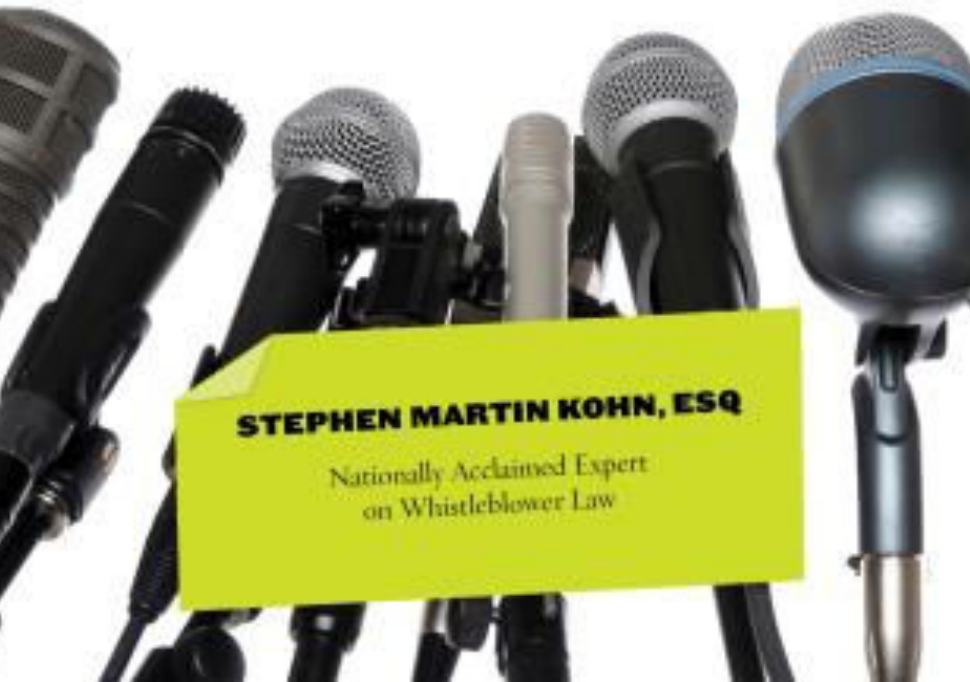
Ensure that the whistleblower reward laws are well-publicized and properly implemented

Updated with new information on rewards,
wildlife trafficking, and Wall Street whistleblowing

THE NEW

Whistleblower's HANDBOOK

**A Step-by-Step Guide to Doing
What's Right and Protecting Yourself**



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

–Wall Street Journal

Links to the legal authorities including statutes, regulations, and cases relied upon in The Handbook can be found [online](#), including:

- New Legal Tools: [Rule 1](#)
- False Claims Act / Qui Tam: [Rule 6](#)
- Banking/AML Whistleblowers: [Rule 7](#)
- Foreign Corrupt Practices Act: [Rule 9](#)
- Ocean Pollution/APPS: [Rule 11](#)
- International Whistleblowing: [International Toolkit](#)



Stephen M. Kohn
Founding Director, [National Whistleblower Center](#)
Partner, [Kohn, Kohn & Colapinto, LLP](#)

[Stephen M. Kohn](#), a partner in the law firm of [Kohn, Kohn & Colapinto](#) and the Chairman of the Board of Directors of the [National Whistleblower Center](#), has represented whistleblowers since 1984, successfully setting numerous precedents that have helped define modern whistleblower law. He obtained the [largest reward ever paid](#) to an individual whistleblower (\$104 million for exposing illegal offshore bank accounts) and is widely recognized as the leading U.S. authority on whistleblower laws. Mr. Kohn is the most published author on whistleblower law, including [The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself](#).

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- Commodity Exchange Act | [7 U.S.C. § 26](#)

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- SEC Enforcement Action on NDAs, [In re KBR](#).
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