

UNDERSTANDING WHISTLEBLOWER LAW

Stephen M. Kohn

Partner, Kohn, Kohn & Colapinto, LLP
Chairman of the Board of Directors,
National Whistleblower Center



America's First Whistleblower 1777-1778

The Original Disclosure Letter

February 19, 1777

"Much Respected Gentlemen: "We who present this petition engaged on board the ship 'Warren' with an earnest desire and fixed expectation of doing our country some service... We are ready to hazard every thing that is dear and if necessary, sacrifices our lives for the welfare of our country, we are desirous of being active in the defense of our constitutional liberties..."

America's First Whistleblower 1777-1778, Cont.

The Original Disclosure Letter

February 19, 1777

"We are personally well acquainted with the real character and conduct of our commander . . . his character is such and that he has been guilty of such crimes as render him quite unfit for the public department he now occupies, which crimes, we the subscribers can sufficiently attest."

The Original Whistleblower Disclosure

Q: Commodore Hopkins is charged with being a hinderance to the proper manning of the fleet, what circumstances do you know relative to this charge?

A: I think him unfit to command...his conversation is at times so wild and orders so unsteady that I have sometimes thought he was not in his senses and I have heard other say the same...

Q: Had you liberty from Commodore Hopkins...to leave the frigate you belong to?

A: No. I came to Philadelphia at the request of the officers who signed the petition against Commodore Hopkins and from a Zeal for the American cause.

Whistleblowers' Letter From Providence Jail

"Your petitioners, not being persons of affluent fortunes, but young men who have spent most of their time in the service of their country... finding themselves arrested for doing what they then believed and still believe was nothing but their duty... do most humbly implore the interposition of Congress in their behalf."

— Letter From Rhode Island Jail by Whistleblower
Richard Marvin and Samuel Shaw, July 8, 1778

America's First Whistleblower Law – Passed Unanimously by the Continental Congress on July 30, 1778

That it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds, or misdemeanors committed by any persons in the service of these states, which may come to their knowledge.

— The Act of Congress, July 30, 1778

National Whistleblower Appreciation Day

The Senate unanimously passed the following resolution:

That the Senate—

- (1) designates July 30, 2016, as “National Whistleblower Appreciation Day”;*
- (2) ensures that the Federal Government implements the intent of the Founding Fathers, as reflected in the legislation enacted on July 30, 1778, by encouraging each executive agency to recognize National Appreciation Day*



A Message from the Intelligence Community Inspector General

Welcome to the Intelligence Community (IC) Whistleblowing website. If you are visiting this website because you are considering whether to make a protected disclosure, or because you are interested in learning more about them, you should know that whistleblowing has a long history in this country. Over 240 years ago, on July 30, 1778, the Continental Congress unanimously enacted the first whistleblower legislation in the United States, proclaiming that "it is the duty of all persons in service of the United States, as well as all other the inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which comes to their knowledge." To this day, Federal law (including the Constitution, rules, and regulations) encourages, consistent with the protection of classified information (including sources and methods of detection of classified information), the honest and good faith reporting of misconduct, fraud, misdemeanors, and other crimes to the appropriate authority at the earliest time possible.

Consistent with that tradition and public policy, this website provides a general overview of lawful whistleblowing in the IC. It explains how individuals may lawfully disclose critical information to authorized recipients while protecting national security. You will find information about [what lawful whistleblowing is](#); [what individuals should report](#); [how to blow the whistle lawfully](#); [who handles a whistleblower complaint](#); [why we have a whistleblower program](#); and [what an individual's whistleblower protections are](#).

Whistleblowers are a key source of information for countering wrongdoing and enhancing the effectiveness of our government. Lawful whistleblowing through authorized disclosures, and passing the right information to the right people, reinforces our public policy of encouraging individuals working for our government, and particularly within our IC, to provide patriotic dissent while maintaining loyalty to individual elements within the IC and protecting national security.

Regardless of your reason for visiting this website, I hope you find its information helpful. To close on another historical note, I keep on my desk a plaque with a quote from Benjamin Franklin - a former government employee - who began his day by asking "What good shall I do this day?" Reporting wrongdoing through authorized means is not only a public and patriotic duty with a long tradition in this country, it is a good that can be done today.

— *Michael K. Atkinson*
Inspector General of the Intelligence Community

Confidentiality in the Official Whistleblower Claim Form



DISCLOSURE OF URGENT CONCERN FORM - UNCLASSIFIED

PART 6 – CERTIFICATION AND SIGNATURE

By signing below, you acknowledge the following:

- ☐ *I understand that in handling my disclosure, the ICIG shall not disclose my identity without my consent, unless the ICIG determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken.
- ☐ *I understand that this form and any supporting documents transmitted to the ICIG will undergo classification review under the *National Security Act of 1947*, 50 U.S.C § 3001 *et seq.*
- ☐ *I certify that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief. I understand that, pursuant to 18 U.S.C. § 1001, knowingly and willfully making a false statement or concealing a material fact in any matter within the jurisdiction of the Executive Branch, including the ICIG, is a criminal offense punishable by a fine of up to \$10,000.00, imprisonment for up to five (5) years, or both.

Signature

Date

Inspector General Act of 1978

§7. Complaints by employees; disclosure of identity; reprisals

- (a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.
- (b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

18 U.S.C. § 1513 - The Federal Obstruction of Justice Laws

§ 1513. Retaliating against a witness, victim, or an informant

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

Haliburton v. ARB

711 F.3d 254
(5th Cir. 2014)

“The undesirable consequences, from a whistleblower's perspective, of the whistleblower's supervisor telling the whistleblower's colleagues that he reported them to authorities for what are allegedly fraudulent practices, thus resulting in an official investigation, are obvious. It is inevitable that such a disclosure would result in ostracism.”

Frequently Ask Questions

- Can federal employees “blow the whistle” confidentially?
- Can federal employees blow the whistle on the President?

YES!

Link to FAQ's : www.kkc.com/faq/

President Must Enforce Whistleblower Rights in Intelligence Community!

50 U.S.C. § 3234

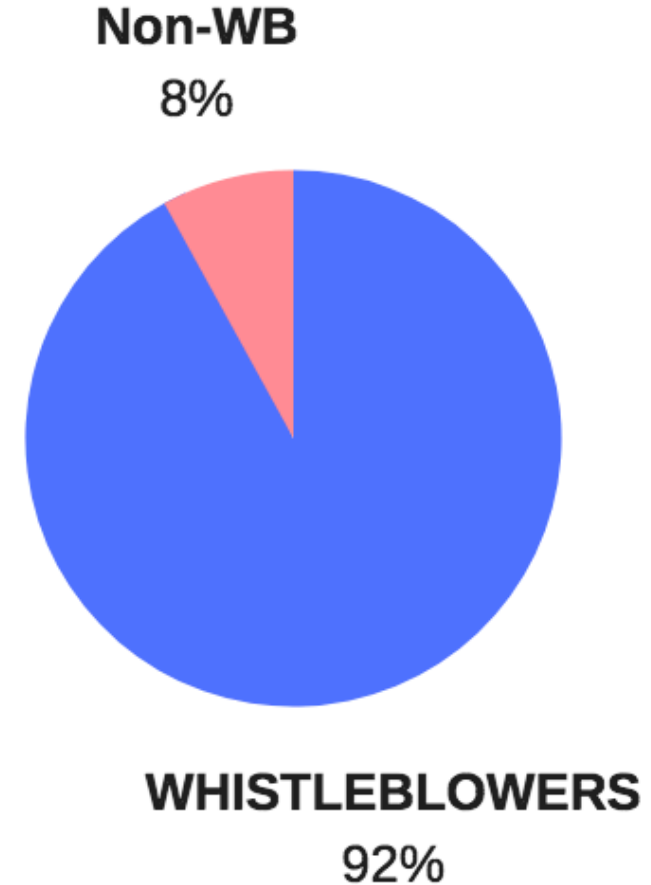
“(c) Enforcement — The President shall provide for the enforcement of this section.”



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](#)



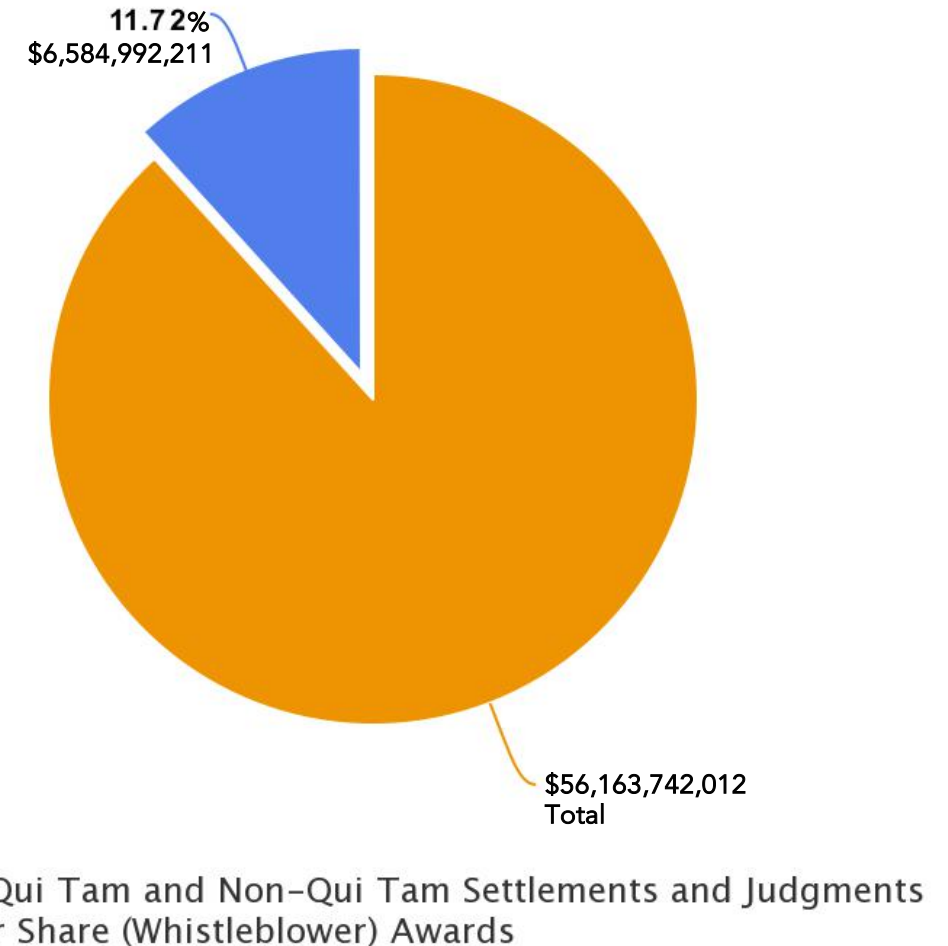
In 2017, of the \$3.4 billion recovered through the FCA and as a result of whistleblower assistance, \$392 million (11.5%) was awarded to whistleblowers.

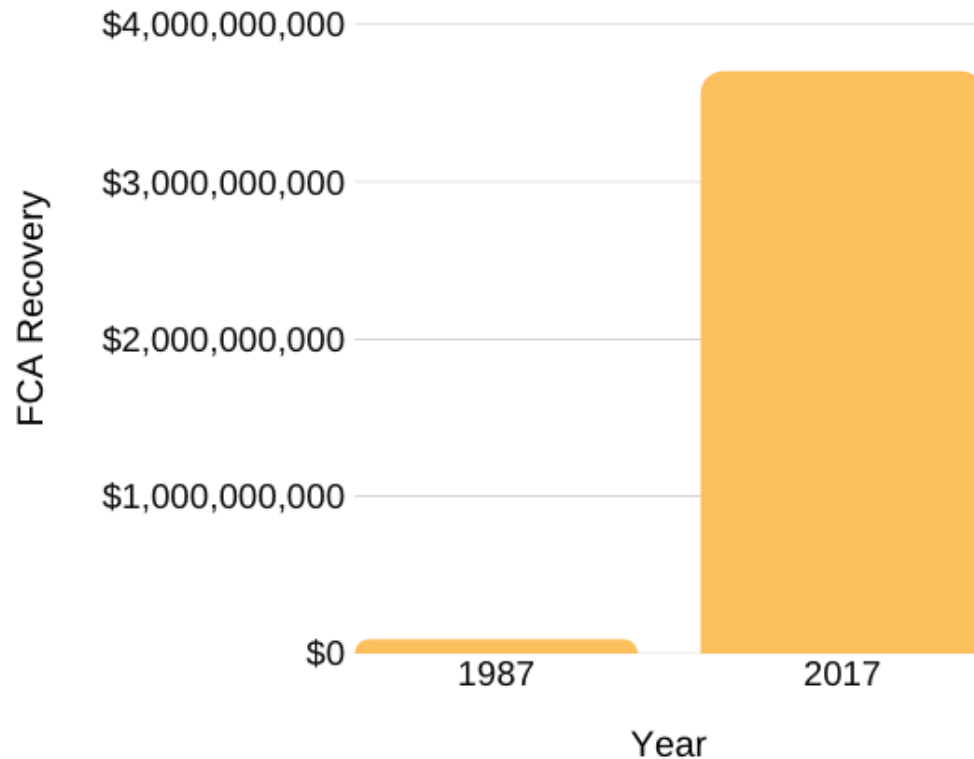


Using the FCA as a model for other whistleblower programs

- Whistleblowers are a key source of the U.S. civil recovery program.
- Without the help of whistleblowers, a successful law enforcement program would be only a fraction of its current effectiveness.
- The FCA framework should be a model for the implementation of other whistleblower programs: we can use best practices learned here to apply elsewhere.

Total U.S. Civil Recovery (FY 1986 - FY 2017)
U.S. Department of Justice, Civil Division





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.

FALSE CLAIMS ACT FRAUD STATISTICS OVERVIEW FY 1986 - FY 2017

Page: 1 of 2
12/19/2017

FRAUD STATISTICS - OVERVIEW
October 1, 1986 - September 30, 2017
Civil Division, U.S. Department of Justice

FY	NEW MATTERS ₁		SETTLEMENTS AND JUDGMENTS ₂					RELATOR SHARE AWARDS ₃		
	NON QUI TAM	QUI TAM	NON QUI TAM TOTAL	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
1987	343	30	86,479,949	0	0	0	86,479,949	0	0	0
1988	210	43	173,287,663	2,309,354	33,750	2,343,104	175,630,767	88,750	8,438	97,188
1989	224	67	197,202,180	15,111,719	1,681	15,113,400	212,315,580	1,446,770	200	1,446,970
1990	243	72	189,564,367	40,483,367	75,000	40,558,367	230,122,734	6,590,936	20,670	6,611,606
1991	234	84	270,530,467	70,384,431	69,500	70,453,931	340,984,398	10,667,537	18,750	10,686,287
1992	285	114	137,958,208	133,949,447	994,456	134,943,903	272,902,109	24,121,648	259,784	24,381,432
1993	304	136	181,945,576	183,643,787	6,603,000	190,246,787	372,192,363	27,576,235	1,766,902	29,343,137
1994	280	216	706,022,897	379,018,205	2,822,323	381,840,528	1,087,863,425	69,453,350	836,897	70,292,246
1995	233	269	269,989,042	239,024,292	1,035,000	240,059,292	510,048,334	45,162,296	405,800	45,628,096
1996	185	340	247,357,271	124,361,203	13,522,433	137,883,636	385,240,908	22,119,619	3,731,978	25,851,597
1997	186	547	465,568,061	621,919,274	5,021,200	627,940,474	1,093,508,535	65,857,419	1,658,485	67,515,904
1998	120	488	151,435,794	438,834,846	30,248,075	469,082,921	620,518,715	70,264,372	8,486,645	78,751,017
1999	140	493	195,390,485	492,924,785	5,067,503	497,992,288	693,382,773	63,018,064	1,374,487	64,392,552
2000	95	363	367,887,197	1,208,370,686	1,668,957	1,210,039,645	1,577,948,841	183,679,377	375,143	184,054,520
2001	85	311	494,496,974	1,216,525,916	128,587,151	1,344,113,067	1,838,610,042	187,590,470	30,701,881	218,292,350
2002	61	319	119,598,292	1,078,174,023	25,766,140	1,103,960,162	1,223,558,454	161,377,822	4,582,319	165,960,141
2003	92	334	711,098,299	1,534,862,352	5,185,911	1,540,048,263	2,251,146,563	337,307,887	1,382,741	338,690,598
2004	111	432	115,656,023	561,717,502	9,261,879	570,979,382	686,635,404	110,224,220	2,376,128	112,600,348
2005	105	406	276,914,983	1,149,047,524	7,481,593	1,156,529,117	1,433,444,099	168,580,543	2,031,695	170,612,237
2006	71	385	1,712,459,257	1,491,105,499	22,711,363	1,513,816,862	3,226,276,119	219,976,072	5,647,836	225,623,908
2007	129	385	584,826,844	1,251,726,955	160,246,894	1,411,973,849	1,976,800,693	192,888,212	4,616,899	197,505,111

Page: 2 of 2
12/19/2017

FRAUD STATISTICS - OVERVIEW
October 1, 1986 - September 30, 2017
Civil Division, U.S. Department of Justice

FY	NEW MATTERS ₁		SETTLEMENTS AND JUDGMENTS ₂					RELATOR SHARE AWARDS ₃		
	NON QUI TAM	QUI TAM	NON QUI TAM TOTAL	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				WHERE U.S. INTERVIEWED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
2008	161	379	312,193,480	1,045,582,229	12,678,936	1,058,261,165	1,370,454,645	201,682,144	2,997,615	204,679,759
2009	132	433	489,334,681	1,963,356,256	33,776,480	1,997,132,735	2,466,467,417	249,567,135	9,684,147	259,251,282
2010	140	576	647,383,493	2,280,378,123	109,778,613	2,390,156,737	3,037,540,230	370,856,551	30,915,991	401,772,542
2011	125	634	241,365,995	2,648,552,414	173,888,703	2,822,441,117	3,063,807,112	510,875,463	49,041,606	559,917,069
2012	144	652	1,608,112,862	3,344,478,500	45,248,343	3,389,726,844	4,997,839,706	436,125,743	12,711,743	448,837,485
2013	101	756	169,126,772	2,868,519,362	127,348,056	2,995,867,418	3,164,994,190	528,312,018	30,449,937	558,761,955
2014	98	715	1,676,564,226	4,386,325,409	81,378,451	4,467,703,859	6,144,268,085	696,768,578	14,868,000	711,636,578
2015	111	639	732,432,286	1,896,482,996	512,357,184	2,408,840,181	3,141,272,467	344,083,870	137,955,425	482,039,295
2016	147	706	1,856,329,432	2,815,841,067	106,098,069	2,921,939,136	4,778,268,567	497,141,013	29,658,600	526,799,613
2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

Sanctions from
whistleblower cases

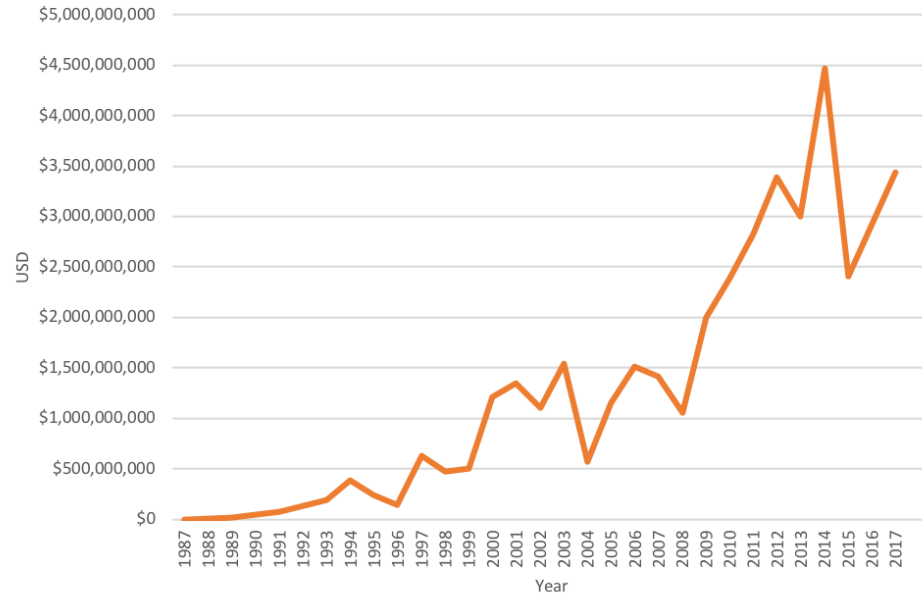
Rewards paid to
whistleblowers

2017	125	674	265,583,089	3,011,269,763	425,767,335	3,437,037,099	3,702,620,187	349,365,587	43,593,801	392,959,388
TOTAL	5,020	11,980	15,614,096,744	38,493,281,288	2,056,363,980	40,549,645,268	56,163,742,012	6,152,769,671	432,222,541	6,584,992,211

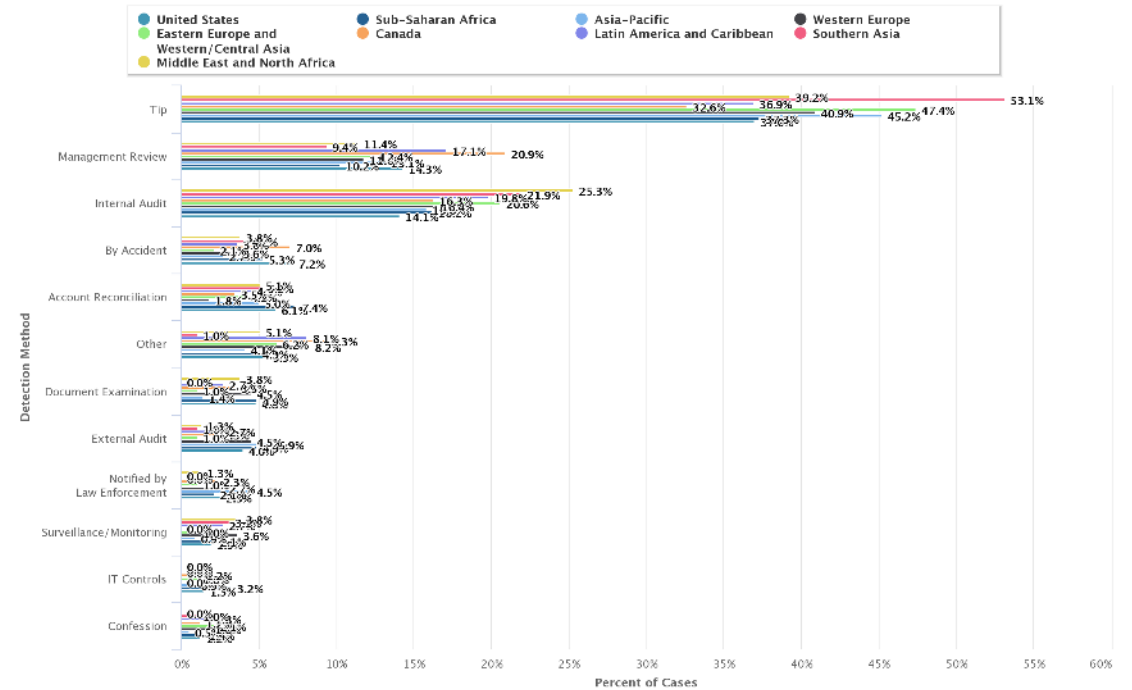
Source: [U.S. Department of Justice](https://www.justice.gov/civil/division)



Sanctions Recovered by the U.S. Government From Whistleblower Disclosures Under the False Claims Act (FY 1987 - FY 2017)



Detection Method by Region



© 2019 Association of Certified Fraud Examiners, Inc. All rights reserved.

USE OF WHISTLEBLOWER TIPS FOR CRIMINAL DETECTION AND PROSECUTION

**The chart (L) represents the exponential growth of law enforcement reach thru sanctions obtained by the U.S. government following the introduction of whistleblower monetary incentives in the 1986 amendments to the False Claims Act. Source: Civil Division, U.S. Department of Justice.*

**The chart (R) represents the outsized effect of whistleblower tips as a detection method of corruption for law enforcement around the world, as compared to other enforcement tools. Source: Association of Certified Fraud Examiners, 2016.*



“Going after waste, fraud, and abuse without whistleblowers is about as useful as harvesting acres of corn with a pair of rusty old scissors.”

— Senator Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the [Video](#) --- Read the [Speech](#)



“Because those who defraud the government often hide their misconduct from public view, whistleblowers are often essential to uncovering the truth.”

— Acting Assistant Attorney General Chad A. Readler, Department of Justice, Civil Division, Press Release: Justice Department Recovers Over \$3.7 Billion From False Claims Act Cases in Fiscal Year 2017 (December 21, 2017)



“The taxpayers owe a debt of gratitude to those who often put much on the line to expose such [fraudulent] schemes.”

— Assistant Attorney General Jody Hunt – [Remarks](#) on the False Claims Act, DOJ Press Release (2018)

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**

STEPHEN MARTIN KOHN, ESQ

Nationally Acclaimed Expert
on Whistleblower Law

"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](#)
- First Amendment: [Rule 13](#)
- Federal Employees: [Rule 14](#)
- Politics is Poisonous: [Rule 29](#)
- Never Forget: Whistleblowing Works: [Rule 30](#)
- National Whistleblower Day: [The Final Rule](#)



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 currently represents whistleblowers at major international financial institutions, including the [Danske Bank manager](#) who reported a massive multi-billion dollar money laundering scheme. 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](#).

Contact

Stephen M. Kohn
Kohn, Kohn and Colapinto
1710 N Street, N.W.
Washington, D.C. 20036
Website: www.kkc.com
Email: contact@kkc.com.

National Whistleblower Center:
contact@whistleblowers.org

Connect with the NWC



@NationalWhistleblowerCenter



@StopFraud



National Whistleblower Center

www.whistleblowersblog.org | www.whistleblowers.org



© Stephen M. Kohn, 2019,
Reproduction permitted with credit.