

Whistleblowing Reaches Center Stage

Court cases and events involving whistleblowing are appearing in news headlines with greater frequency, and awareness about the importance of speaking up when witnessing wrongdoing continues to grow.

Whistleblowing continues to emerge as an important tool in uncovering wrongdoing and prosecuting or punishing offenders. Several recent court cases have been settled successfully based on whistleblowing efforts, and advocacy groups and government regulators in both the United States and the United Kingdom took additional steps toward supporting whistleblowers.

The latest progress comes from the U.S. courts system. In the span of a few weeks, a whistleblower lawsuit filed by a former University of California-Irvine (UCI) professor and anesthesiologist who blew the whistle on illegal practices resulted in an agreement by the California Board of Regents to pay \$1.2 million to the United States. In Alaska, an employee was granted a settlement of \$3.5 million in a whistleblower retaliation case after suing his former employer for wrongful termination. And in Maine, a security worker was awarded more than \$200,000 in damages and attorney fees for

wrongful termination in a whistleblowing case.

During this same time, several Texas healthcare companies agreed to pay \$2.3 million to settle civil allegations that they engaged in false or fraudulent conduct by double-billing the Texas Medicaid program, among others. In Florida, a nonprofit hospital repaid nearly \$3 million it received from over-billing the government before the matter came up in federal court. In New York, a former employee of celebrity tailor Mohanbhai Ramchandani will receive a \$1.1 million reward for blowing the whistle on Ramchandani for underreporting millions of dollars of income and sales taxes. Stephen A. Weiss, who represented the whistleblower, noted that the “settlement demonstrates how necessary and effective whistleblower laws are in uncovering small business fraud that may be known and visible only to company insiders.”

Government agencies and other groups are also making progress in increasing whistleblowing efforts. The Government Accountability Project, a U.S. whistleblower advocacy organization, is engaged in its 2012-2013 American Whistleblower Tour, which visits college campuses and other locations to

promote its message of “corporate and government accountability by protecting whistleblowers, advancing occupational free speech, and empowering citizen activists.” It uses social media and other means to convey to the public its core message of strengthening whistleblower rights.

The U.S. Securities & Exchange Commission (SEC) released the first full-year report of its Office of the Whistleblower, which was established under the Dodd-Frank Act of 2010. The Office administers an initiative to promote payment of monetary awards and increased protection to individuals providing significant new information helpful in prosecuting large, successful enforcement actions.

The *2012 Annual Report on the Dodd-Frank Whistleblower Program* shows that the agency received and processed 3,001 tips, complaints, and referrals (TCRs) during the 2012 fiscal year. Additionally, in the four months of the year that a telephone hotline was available, the agency received 3,050 calls. The most common subjects of the TCRs were corporate disclosures and financials (18.2%), offering fraud (15.5%), and manipulation (15.2%). An “other” category made up 23.4% of the TCRs.

Of the TCR submissions received, 83.5% were from within the U.S., with the remaining 16.5% coming from other countries, including 3.5% from the U.K., 1.5% from Canada, 1.1% from India, and 0.9% from the People's Republic of China.

"In just its first year, the whistleblower program already has proven to be a valuable tool in helping us ferret out financial fraud," then-SEC Chairman Mary L. Schapiro said in November 2012. "When insiders provide us with high-quality road maps of fraudulent wrongdoing, it reduces the length of time we spend investigating and saves the agency substantial resources."

The SEC's Investor Protection Fund awarded the Commission's first Whistleblower Award Program recipient in 2012, but the case and individual haven't been made public. The Fund represents monetary sanctions received from settlements of SEC cases, including penalties, disgorgement, and interest. The balance at the end of fiscal 2012 was \$453 million. In addition to funding the Whistleblower Award Program, the Investor Protection Fund finances the operations of the Inspector General's Employee Suggestion Program.

The SEC's whistleblower report also indicates that "there were 143 enforcement judgments and orders issued during fiscal year 2012 that potentially qualify as eligible for a whistleblower reward." Also, "the Office of the Whistleblower provided the public with notice of these actions because they involved sanctions exceeding the statutory threshold of more than \$1 million."

In the United Kingdom, a new

independent commission was formed to "make it easier" to raise the alarm on misbehavior in corporations or the government. It's led by David Ison, the dean of St. Paul's Cathedral, and Michael Woodford, the whistleblowing former CEO of Olympus, the Japanese corporation famous for its cameras. The commission's objective is to determine how public attitudes, laws, and rules about whistleblowing should be changed to encourage speaking up when people see wrongdoing.

At the same time, the U.K. Financial Conduct Authority (FCA), a quasi-governmental agency that was formed as one of the successors of the Financial Services Authority (FSA) and serves as a sort of counterpart to the U.S. SEC, is considering the adoption of U.S.-style bounty payments to whistleblowers, considering "the FSA receive[d] up to 4,000 whistleblowing reports every year, with 12% pursued as 'actionable intelligence.'" Martin Wheatley, chief executive designate of the FCA, told a Parliamentary commission that the FCA is looking into providing cash incentives, adding, "We have spoken to the U.S. authorities and are looking very carefully at it, but it is too early to make a judgment yet." He continued, "The key difference to us is the incentive structure. Un-

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der our system it is a moral incentive to do the right thing, whereas the U.S. system operates a financial incentive, and there are some pros and cons to both."

The *IMA*® *Statement of Ethical Professional Practice* provides guidance as to how an individual should proceed in notifying the proper person of wrongdoing. The IMA (Institute of Management Accountants) Ethics Helpline provides assistance—for members and nonmembers—in interpreting the *IMA Statement*. In serious cases, consider consulting an independent attorney before reporting incidents outside the organization.

Indictments in Atlanta Testing Scandal

The long-smoldering Atlanta school testing scandal is moving closer to a conclusion with the indictment of Beverly Hall, the former district superintendent, and 34 others (see the November 2011 column, "Teaching How to Cheat").

The scandal began in 2008 when the *Atlanta Journal-Constitution* (AJC) analyzed what appeared to be widespread and unusually large testing improvements. At the time, Hall dismissed the possibility of cheating and didn't plan an investigation. She also received a \$78,000 bonus for her success in "raising" test scores.

In 2009, further AJC analysis showed that the odds of such a significant improvement occurring through legitimate means were less than one in a billion, so the governor of Georgia ordered an analysis of erasures of test answers. State investigators found a third grade teacher willing to be a whistleblower, becoming "Witness No. 1."

According to Michael Winerip's *New York Times* article, "Ex-Schools Chief in Atlanta Is Indicted in Testing Scandal" (March 29, 2013), the witness admitted that "she was one of seven teachers—nicknamed 'the chosen'—who sat in a locked windowless room every afternoon during the week of state testing, raising students' scores by erasing wrong answers and making them right."

The outcome of the state investigation was a July 2011 800-page report stating that close to 200 educators cheated at 44 Atlanta schools. On March 29, 2013, the *AJC* reported a grand jury issued indictments against Hall and 34 others on charges of racketeering, theft, influencing witnesses, conspiracy, and making false statements in connection with the cheating scandal and lying to cover up the crimes. "Of the 178 people implicated in the state's [2011] in-

vestigative report, 21 educators have been reinstated and three people are still awaiting tribunal appeals," said the *AJC*. "About 150 educators resigned, retired, or lost their appeals to retain their jobs."

In the 2013 indictment, authorities allege that the bogus transformation of test scores "resulted from a criminal enterprise that victimized thousands of struggling students for years." Noting the top-down impetus for the criminal activity, it said "Hall inculcated an atmosphere that encouraged using any means necessary to achieve test-score targets." She then "publicly misrepresented the academic performance of schools throughout [the system]. Pressuring subordinates to produce targeted scores created an environment where achieving the desired end result was more important than the students' education." Hall faces up to

45 years in prison.

The phenomenon of cheating at schools exists in many places, but to have teachers and administrators involved—those who should be bright role models for leaders and employees of the future—is absolutely catastrophic. All of us need to pay more attention to what is going on at the schools where we live and work. **SF**

Curtis C. Verschoor, CMA, is the Emeritus Ledger & Quill Research Professor, School of Accountancy and MIS, and an honorary Senior Wicklander Research Fellow in the Institute for Business and Professional Ethics, both at DePaul University, Chicago. He was selected by Trust Across America as one of North America's Top Thought Leaders in Trustworthy Business Behavior, 2013. You can e-mail him at curtisverschoor@sbcglobal.net.