Should Whistleblowers in Academic Research Be Financially Rewarded

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Lincoln's Law

The False Claims Act, also known as *"Lincoln's Law"* after the President who signed the legislation into law during the Civil War, was written to curb the rampant fraudulent behavior of defense contractors and suppliers. Massive increases in government spending with minimal oversight during times of conflict were proving to be too good to pass-up for less-than-honest contractors who were more than happy to swindle the government at every opportunity.

Legal historians regard the 150 year-old law as being significant for allowing citizens who are aware of fraudulent conduct impacting the government to sue on behalf of the government, even if they are not directly harmed by the conduct. In addition, the law introduced a *qui tam* provision, based on English common law dating back to the 13th century, that allowed the whistleblower to share in any financial recovery from the petition.

Overnight Wealth

Media coverage of whistleblowers in academic research cases has tended to focus on the larger numbers, such as the case of Bradley Birkenfeld who received an award from the IRS for $104 million in 2012 for exposing schemes that his former employer, Union Bank of Switzerland (UBS), used to help their American clients avoid US taxes. However, for the majority of whistleblowers, the settlements are rarely that large, and after the payment of legal fees, are scarcely enough to rebuild their professional lives after being effectively black balled from ever working in their field again.

First Do No Harm

Whether you subscribe to the belief that *primum non nocere* ("first do no harm") comes from the Hippocratic Oath or the Hippocratic Corpus, the assumption of a primary obligation of care has always underpinned the research profession. When research team members or other employees in the organization witness fraud of any kind—massaging data, generating research to support off-label uses for new drugs (one of the most common transgressions under the False Claims Act), or misusing research funds—their obligation to report should never be influenced by the ability to continue to make a living.

Some of the largest qui tam settlements in the medical sector have come from notifications of Medicare billing fraud, that can run into hundreds of millions of dollars for one healthcare organization alone. For medical research, whistleblower cases often arise as a result of retaliation for revealing illegal conduct. Since there is no financial recovery in which to share, the settlements are typically much lower:

In April 2014, the University of California agreed to pay $10 million to Dr. Robert Pedowitz, the former chairman of UCLA's orthopedic surgery department, to settle a whistleblower-retaliation case in which Pedowitz had raised concerns to his employers about conflicts of interest between physicians at the hospital and the medical-device makers who collaborated on research projects. Pedowitz argued that such relationships ran the risk of tainting important medical research and unduly influencing patient care, since the physicians received lucrative payments for their participation. He also alleged that UCLA ignored his concerns since they stood to benefit financially from the research.

Performance Expectations

If the objective of research is to pursue the purity of scientific truth, then any impediment to that pursuit, especially any attempt to pollute the research process, can only be challenged by the witnesses closest to that impediment. If threats of dismissal or other retaliatory acts are strong enough to silence those witnesses, the consequences can be catastrophic. If potential whistleblowers can at least count on the reassurance of long-term financial security for putting their professional careers on the line to step forward and speak up, then we have some hope that less transgressions will go unreported.

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