Perspective of the Whistleblower

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Overview of Legal Practice

• Represent whistleblowers in a variety of cases, primarily False Claims Act cases.

• Founder and national Chair of the Federal Bar Association *Qui Tam* Section

• Prior experience as US Marine attorney.
False Claims Act

• “Lincoln Law”

• *Qui Tam* provisions allow private whistleblowers to bring suit on behalf of the United States Government.

• Elements: (1) Falsity; (2) Scienter (Knowledge); (3) Materiality; and (4) Damages

• Treble Damages

• Whistleblowers (“Relator”) may receive up to 30% of the recovered amount.
Whistleblower Goals

• Scientific Integrity
• Protection from Retaliation
• Transparency
• Saving Resources
• Consequences for Wrongdoers
Whistleblower sues Duke, claims doctored data helped win $200 million in grants

By Alison McCook, Retraction Watch | Sep. 1, 2016, 2:00 PM
Disclaimer

• Some information related to the case remains non-public, and we will not share any such information in this presentation.

• The settlement in this case did not involve an admission on the part of Duke as to liability or any of the factual particulars of the case.

• Any factual analysis are our impressions and opinions.

- Core Laboratory
- 8 years of pulmonary research
- ~50 publications
- ~35 grants
Procedural History of Case

• Filed May 2013
• DOJ investigated for 4 years, Litigated for 2 years
• 52 depositions, 15+ experts
• Settled in November 2018
• $112.5M USD
Joe’s Perspective

• Observations

• Motivations

• Factors leading toward legal route

• Outcomes
Challenges

• FCA is an anti-fraud statute – usually used for Medicare fraud and procurement fraud, not scientific fraud.

• Objective vs. Subjective

• Materiality
Takeaways

• Legal system can have a role in addressing research misconduct

• Institutions need to better understand whistleblower motivations and respond

• Increased legal (and financial) exposure may lead many universities to increase efforts to address research misconduct
Questions?

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