

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE**

“Hearing: Oversight of the False Claims Act”

**Testimony of Stephen M. Kohn¹
Executive Director, National Whistleblower Center
www.whistleblowers.org**

April 28, 2016

Chairman Franks, Ranking Member Cohen, and Members of the Subcommittee:

Thank you for this opportunity to submit written testimony regarding the False Claims Act.

The False Claims Act is the most successful anti-corruption/whistleblower protection law. It was visionary legislation, originally signed by President Abraham Lincoln on March 2, 1863, and modernized by Congress under the leadership of Iowa Senator Charles Grassley in 1986. Over the years it has enjoyed strong bi-partisan support.

Congress should celebrate the achievements of one of its most important success stories. The False Claims Act empowers and incentivizes citizens to report frauds against the government, and works with astounding success in recovering billions of dollars every year from corrupt fraudsters.² But these recoveries are dwarfed by the cultural impact of the law. Many government contractors are far more vigilant today than they were back in the old days when they sold Union troops saw dust instead of gunpowder, or in recent history when they sold hammers for \$500 under the most despicable contracting agreements.

Since 1987, under the False Claims Act, taxpayers have recovered over \$33.230 billion from civil penalties alone. Whistleblower disclosures have resulted in 69% of all successful civil fraud recoveries from government contractors who tried to rip off the taxpayer. *See* Attachments 1 and 2.

The Chamber of Commerce and the large government contractors it lobbies on the behalf of want a return to the bad old days.³ This Subcommittee should strongly oppose these efforts.

¹ Stephen M. Kohn is the author of seven books on whistleblower law, including, *The Whistleblower's Handbook: A Step-by-Step Guide to Doing the Right Thing and Protecting Yourself* (Lyons Press 2013, 3rd ed.). You may email him at contact@whistleblowers.org.

² See Department of Justice, “Justice Department Recovers Over \$3.5 Billion From False Claims Act Cases in Fiscal Year 2015,” December 3, 2015.

³ The attacks on the False Claims Act advocated by the U.S. Chamber of Commerce, were fully debunked in the National Whistleblowers Center's report, “*Saving America's 'Most Important Tool to Uncover and Punish Fraud*,” published at <http://www.whistleblowers.org/storage/documents/RebuttalDocs/final%20fca%20report.pdf>.

THE CHAMBER'S POSITION ON CORPORATE COMPLIANCE PROGRAMS

The Chamber of Commerce endorses corporate compliance programs structured as part of a company's legal department. Under the pretext of attorney-client privilege, companies use these programs to hide fraud and gag the ability of employees to blow the whistle. For example, the largest Iraq War defense contractor, Kellogg-Brown & Root ("KBR"), claimed that its compliance program was secret, and evidence it collected documenting widespread fraud could not be disclosed to either the public or government investigators.⁴ This position was upheld by the U.S. Court of Appeals in D.C., and the compliance records were kept secret.

In the KBR case, a U.S. District Court Judge reviewed the company documents *in camera* (i.e. secretly and not on the public record). The judge found that these documents contained evidence of fraud:

"KBR's documents are filled with evidence that certain KBR employees steered contracts to Daoud [KBR's subcontractor]; are filled with evidence that Daoud gave lousy and late contract performance; and are filled with evidence that KBR nevertheless overpaid Daoud with United States funds."⁵

Despite these findings, the public and the government was never able to learn about how they were robbed during the War in Iraq. This is the type of secrecy the Chamber of Commerce and its allies want to enforce nation-wide.

Corporate compliance programs advocated by the Chamber are so anti-whistleblower that they are required to give "warnings" to any employee who contact them,⁶ although most programs fail to disclose their numerous conflicts of interest.⁷

Chamber/KBR endorsed compliance programs are a trap for whistleblowers.

The False Claims Act creates a safe, effective, and highly successful method for employees to disclose fraud in government programs to the appropriate authorities.

⁴ *In re Kellogg Brown & Root, Inc.*, No. 14-5055 (D.C. Cir. June 27, 2014).

⁵ December 18, 2014 Opinion and Order, Case No. 1:05-CV-1276 (D.C. Dist. Court), available online at <http://bit.ly/1WRJi3P>, overturned by *In re Kellogg Brown & Root, Inc.*

⁶ *See U.S. v. Int'l Broth. Of Teamsters*, 119 F.3d 210, 217 (2nd Cir. 1997) ("attorneys in all cases are required to clarify exactly whom they represent, and to highlight potential conflicts of interest to all concerned as early as possible"); *Also see*, "Avoiding the Perils and Pitfalls of Internal Corporate Investigations: Proper Use of *Upjohn* Warnings," ABA Section of Litigation (Feb. 11-14, 2010).

⁷ The "warning" recommended by the New York Bar states as follows, "I want to caution you that I am an attorney for the Company and not for you or other employees. . . . I do advise you to seek your own counsel, however, as your interests and the Company's may differ. Having said this, I would be happy to listen to your complaint, etc." The National Whistleblower Center is not aware of one company that follows this New York Bar advice.