

# Lessons from the Duke University Case: Warning Signs of Research Misconduct

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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.

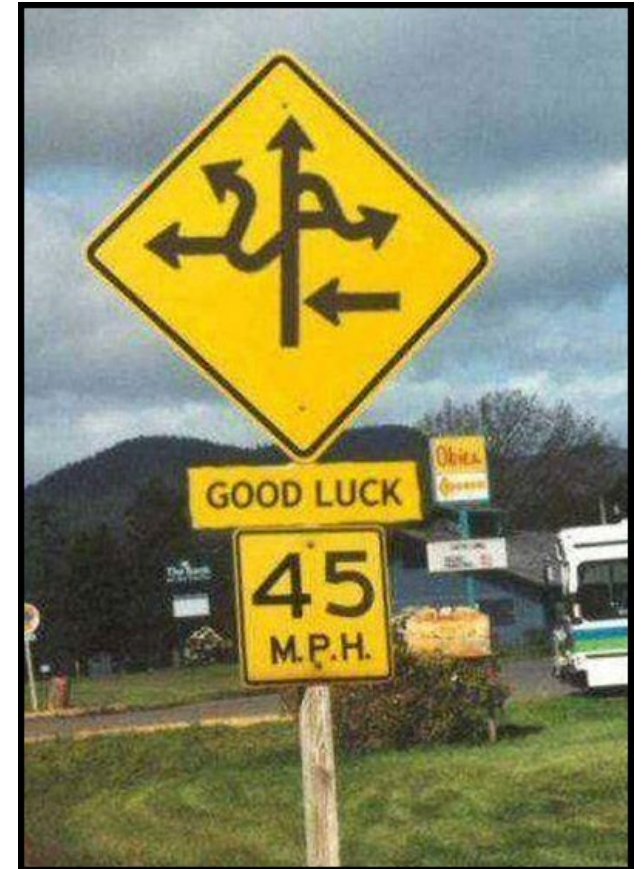
# False Claims Act



- “Lincoln Law”
- *Qui Tam* provisions allow private whistleblowers to bring suit on behalf of the United States Government.
- Elements: (1) Falsity; (2) Scianter (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



# Science



Duke University is at the center of a whistleblower lawsuit concerning potential research misconduct. USCHOOLS UNIVERSITY IMAGES/ISTOCKPHOTO

## 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 my cases remain non-public, and we will not share any such information in this presentation.
- The settlement in the Duke 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.

# US *ex rel.* Thomas v. Duke University, *et al.*

- 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





# Challenges

- FCA is an anti-fraud statute – usually used for Medicare fraud and procurement fraud, not scientific fraud.
- Objective vs. Subjective
- Materiality

# Red Flags



# Scientific Red Flags

- Suspicious Lab Practices
- Small Lies
- Personal Behavior and Toxic Work Environment
- Lack of Transparency
- “Revolutionary” Findings

# Practical Red Flags

- Toxic Work Environment
- Inappropriate Gifts and Financial Arrangements
- Sexual Harassment
- Absentee Leadership

# 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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