



Margaret Finerty '78



Neil Getnick '78

## The Fraud Fighters

by LINDA BRANDT MYERS | ILLUSTRATION by DAVID PLUNKERT | PHOTOGRAPHY by ANDREW QUERNER

From whistleblowing to *qui tam* antifraud law practices, graduates are making a difference across the spectrum.

Excerpt:

### Representing Whistleblowers

Neil Getnick, who taught a course on whistleblower law with former dean Stewart J. Schwab in 2014 at Cornell Law School, makes a distinction between *qui tam* whistleblower law cases and other kinds of cases involving whistleblowers, such as a private matter between an employee and his or her company that could give rise to an employment action with a whistleblower component.

"*Qui tam* cases are initiated by private citizens on behalf of, or in partnership with, the government," explains Getnick. They make use of federal and state False Claims Acts aimed at recovering defrauded government funds. Private citizens may also avail themselves of a series of whistleblower laws aimed at tax, securities, and commodities fraud, he says.

"Under any of those laws a citizen who has knowledge of such fraud can retain counsel in order to file either a case or a claim. And if there is a recovery, then that individual is entitled to a share of it," Getnick points out.

The False Claims Act laws "envision a partnership between the citizen and the government," he says. "They empower citizens to bring suit on behalf of the government, and then to pursue that case through private counsel on the government's behalf, either in a public-private partnership or on their own, to advance the interests of our government."

## A Brief History of U.S. False Claims Act Laws

The federal False Claims Act is sometimes called "Lincoln's Law," says former dean Schwab. "That's because during the U.S. Civil War, under President Lincoln, there was a lot of fraud and abuse going on involving contractors supplying the Union Army," he explains. "Some would supply the army with gunpowder that turned out to be sawdust. Meanwhile the government was trying to fight a war, so they had things to do other than going after everybody trying to make a fraudulent buck."

The result was the first federal False Claims Act, in 1863, which allowed people who knew about fraudulent practices targeting the U.S. government to sue in court on the government's behalf and, if successful, get 20 to 30 percent of the award, he says.

After the war the statute remained on the books but was little used from the time of World War II until 1986, when it was strengthened by bipartisan legislation in the House and Senate. Once again fraud against the military was targeted, particularly contractors who overcharged for everything from faucets billed for thousands of dollars to airplanes that malfunctioned, Schwab says.

Today *qui tam* suits have shifted to fraud in the health-care and pharmaceuticals industries, as the government picks up more and more of the tab for people's hospital, medical, and drug costs under Medicare and Medicaid, explains Schwab. "It's a major percentage of the federal budget, and there have been some very dramatic cases against the drug companies."

The U.S. Department of Justice website calls the False Claims Act the "single most important tool U.S. taxpayers have to recover funds lost due to fraud against the government." And with good reason, points out Getnick.

Prior to the 1986 legislative changes the Department of Justice was recovering less than \$50 million a year through the federal False Claims Act," Getnick says. "In the ten years following 1986, the Department of Justice recovered \$1 billion. It became very apparent that the amendments were highly efficacious. But most significantly, last year alone the DOJ recovered more than \$5.5 billion, which brings the total recoveries in the last five years to \$22.75 billion—more than half of the recoveries since the 1986 amendment."

In terms of return on investment, "for every dollar our government spends on federal False Claims Act health-care enforcement, it recovers \$20 in return," Getnick says. "That's a 20-to-1 return on investment. Does anyone know of any other program, federal, state, or local, that can boast those results?"

That success, he says, has led to new and expanded whistleblower laws.

"The Federal Deficit Reduction Act enacted in 2005 gives states an incentive to pass their own False Claims Acts, and many states have since done so," he notes. "The IRS whistleblower law aimed at federal tax fraud was enacted in 2006. The SEC and Commodities Futures Trading Commission (CFTC) whistleblower laws were enacted as part of the Dodd-Frank statute in 2010. Also in 2010, the New York State False Claims Act was enhanced by amendments," Getnick points out, "transforming it into the most robust such law in the nation, including a *qui tam* tax provision."

"Most recently, in September 2014, U.S. Attorney General Eric Holder called for an increase in the currently limited awards provided for in the whistleblower provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, to further encourage these types of cases. All of these advances speak to the efficacy of incentivizing citizens to join with the government in fighting fraud," Getnick asserts.

But Whitehead is concerned that when the Dodd-Frank legislation was drawn up in 2010 in the wake of the financial crisis, "it was regulation that looked through the rearview mirror. It was responsive to the particular problems that led up to the financial crisis without taking into account broader changes in the financial markets and the need for a new approach to regulation"-which he thinks is still needed.

Still, all those developments seem also to have led to an increase in law firms specializing in whistleblower-related cases, *qui tam* and otherwise, many with Cornell Law School connections.

## . . .Whistleblower Law Practices

Getnick, his wife, Judge **Margaret Finerty**, also '78, and other colleagues at Getnick & Getnick got interested in whistleblower law because "it seemed like a

natural outgrowth of our firm's early antifraud and anticorruption practice," says Getnick.

"Its antifraud, not antibusiness," he likes to clarify.

Perhaps their firm's most shocking case, and biggest victory to date, involved whistleblower **Cheryl Eckard**, a former global quality assurance manager for pharmaceuticals giant GlaxoSmithKline.

In Getnick and Schwab's 2014 whistleblower law class, guest speaker Eckard talked and answered questions about how she had uncovered and reported on serious widespread oversights at the firm's largest manufacturing plant, in Cidra, Puerto Rico.

Among her discoveries were medicines erroneously mixed with one another and packaged that way; antibiotic ointment for babies that contained potentially harmful microorganisms; unsterile anti-nausea medication for cancer patients; a common antidepressant lacking a key ingredient; and a diabetes drug too weak in some instances, too strong in others, to work correctly. She related how she'd initially been ignored, and then fired by higher-ups after she urged the company to shut down the plant temporarily to fix it when it seemed that no corrections to the harmful manufacturing practices were being made.

"Hearing from an actual whistleblower like Cheryl definitely made the subject more vivid, and it expanded my knowledge of whistleblower law in a way that influences how I approach my current job," says Anders Linderot '14, now an associate at Cravath, Swaine & Moore.

"Cheryl Eckard is the ideal whistleblower client," Getnick says. "Like many people in the health-care industry who go on to be whistleblowers, her first concern was the ability to promote the health of the population that her company served. She was very proud of it, particularly since she played an important role in quality assurance and quality control," he reports.

"A lot of people are under the misimpression that whistleblowers are so driven by the potential reward that they bypass their company compliance systems and don't give the company the chance to get it right on their own," observes Getnick. "Our experience is completely the opposite."

"Cheryl not only tried to get her company to get things right before she was fired, but she also continued trying after she was fired. She worked with GSK's compliance team and sought out its CEO and general counsel, all without any intention of getting a reward and ultimately of even retaining her job, but just because she knew what a serious situation existed in this huge manufacturing plant putting out this adulterated product."

A *qui tam* suit in which Eckard, through Getnick's law firm, sued on behalf of the U.S. government under the federal False Claims Act to recoup lost revenues related to Medicare and Medicaid charges led to a civil settlement in 2010 of \$600 million. GSK also paid a substantial criminal fine. Eckard, who received a \$96 million award from the federal component of the case and an additional amount from the state component, became the single most highly rewarded whistleblower in U.S. history.

"One of our firm's big concerns now is that since that settlement we've seen a big migration of pharmaceutical manufacturing facilities into India and China," Getnick says.

"We've already seen evidence that these problems have been exported overseas, and that affects us in the United States because the ingredients and the actual pills and tablets find their way back to the United States and are paid for by our government's Medicare and Medicaid programs," Getnick points out.

To adapt to the situation, his law firm is internationalizing its practice so that it can continue to press for compliance.

"Whistleblower laws can be the great equalizer," Getnick says, "developing reliable information, matching that up with public resources, and incentivizing integrity."

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### Can a Law School Produce Principled Graduates?

The Law School's graduates include many who have done the right thing when faced with an ethical challenge.

Among the best-known is **Samuel Leibowitz, Class of 1915**, who defended the "Scottsboro boys," nine African American youths falsely accused of the rape of two young white women and sentenced to death in Alabama in 1931. Convinced of their innocence, he survived death threats defending them in the state, and eventually persuaded the U.S. Supreme Court to reverse the convictions of two of them by arguing that blacks were systematically excluded from juries in Alabama.

And there are likely many more, past and present, who have taken an ethical stance instead of the expedient one or the one purely for personal gain. But can a law school like Cornell's actually impart lasting lessons about ethical behavior?

Azorsky thinks so. "Cornell Law School really had an eye toward encouraging the practice of law with a social significance when I attended," he recalls. "They had clinics to assist local residents with Social Security issues and legal problems. It was a real opportunity to learn what it's like to help real people with real problems against large and impersonal institutions."

He still remembers some of the clients he helped and the understanding he gained from doing so. "I remember the unfortunate circumstances those people found themselves in after working hard a substantial part of their lives. Now, during a period of disability they felt as if the bureaucracy was too complicated and that they were given short shrift by corporate America, where they had worked for much of their lives."

The compassion he gained from that experience has helped inform his *qui tam* practice today, he says.

Getnick also thinks ethical lessons in law school can have a lasting influence. He cites three former faculty members who have been strong influences on him and his current practice: Professors **G. Robert Blakey**, **Ronald Goldstock**, and **David Ratner**. Blakey and Goldstock had successfully fought organized crime and ran an institute at the Law School on that area. And Ratner, a securities law professor, gave him wise counsel when Getnick was a student member of the Cornell University Board of Trustees and sought a more socially responsible university investment policy.

The values of honesty and integrity that they promoted, along with classroom lessons at the Law School, initially led Getnick to a job in the frauds bureau of

famed Manhattan District Attorney **Robert Morgenthau** and have since inspired his own firm's *qui tam* whistleblower law practice, he says.

"The work my law firm does grows out of a vision, if you will, of seeing a world where the law is an instrument for justice, a means to fight corruption and reform society," says Getnick. "The area of whistleblower law fits squarely in that larger vision"—one of honesty and integrity, that he was first exposed to by Law School faculty.

Those values also have led to his desire to give back to the Law School. In 2010 Getnick and his wife, Judge Margaret Finerty, made a substantial gift to the school to create a Business Integrity Fund named in their honor. The gift supports programs, scholarship, and initiatives relating to business integrity, with a special emphasis on the *qui tam* provisions of False Claims Acts and related whistleblower laws. It's an important area for current students to learn more about, Getnick says.

But while influential faculty and programs that promote ethical values, together with the school's roster of illustrious graduates, are indeed something to be proud of, can the Law School really make the claim that its graduates are more principled than those of competing schools?

Perhaps not. Most top-tier law schools probably can point to just as many winners in the ethical sweepstakes department.

But there is at least anecdotal evidence that a law school that pays attention to ethical issues in the faculty it hires, courses it offers, programs it supports, and guest speakers it attracts will reap the rewards in terms of the achievements of its alumni, whether they are whistleblowers, wise leaders, or just wellinformed citizens.

And that, as Stout has pointed out, is good for society as well as business.