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## DOJ Criminal Division Will Increase Scrutiny of False Claims Act Lawsuits for Criminal Prosecution

Posted By [Mary Jacoby](#) On September 17, 2014 @ 8:17 pm In [News](#) | [Comments Disabled](#)

The Justice Department's Criminal Division will be increasing its scrutiny of whistleblower complaints alleging fraud against the government.



Leslie Caldwell (Getty)

An [announcement](#) <sup>[1]</sup> today by Assistant Attorney General **Leslie Caldwell** that her team will be “stepping up” its analysis of False Claims Act cases for potential criminal prosecution formalizes a practice that began in the health care context several years ago.

But by raising the profile of the initiative, and emphasizing the unique expertise the Criminal Division Fraud Section can bring to the cases, the policy shift is expected to increase coordination between Main Justice prosecutors and the 94 U.S. Attorneys’ offices throughout the nation.

“We in the Criminal Division have unparalleled experience prosecuting health care fraud, procurement fraud and financial fraud,” Caldwell said in a

[speech](#) <sup>[1]</sup> before the Taxpayers Against Fraud Education Fund conference in Washington, D.C., on Wednesday. “We can and we will bring that expertise to bear by increasing our commitment to criminal investigations and prosecutions that stem from allegations in False Claims Act lawsuits.”

False Claims Act lawsuits give private citizens incentives to blow the whistle on fraud against the government, awarding them a percentage of any recoveries the government obtains through their actions.

By department policy, the Justice Department's Civil Division oversees all False Claims Act cases with damages exceeding \$1 million, according to the United States Attorneys’ Manual. The U.S. may join those suits judged most likely to succeed. The Civil Division refers False Claims Act cases, also known as *qui tam* claims, to the Criminal Division for possible prosecution.

The new policy announced today won't change the Civil Division's leadership role, but it will speed up and streamline the process of assessing the cases for potential criminal charges.

"Experienced prosecutors in the Fraud Section are immediately reviewing the qui tam cases when we receive them to determine whether to open a parallel criminal investigation," Caldwell said in her speech.

While Criminal Division prosecutors pursue defense procurement fraud and other matters that might yield False Claims Act-related criminal prosecutions, the most potential for parallel investigations involves health care fraud.

The Criminal Division Fraud Section unit devoted to rooting out Medicare scams has been going gangbusters since [expanding its localized strike-force model in 2009](#) [2] and upgrading its data analysis capabilities.

The joint effort of the DOJ and Department of Health and Human Services now focuses on nine cities: Los Angeles; Dallas; Houston; Baton Rouge, La.; Miami; Tampa; Detroit; Chicago and Brooklyn, N.Y. According to Caldwell, the strike force since 2007 has charged nearly 2,000 people connected to \$6 billion in false billings to the government, and earned a 95 percent conviction rate.

While the strike force was "initially created to go after more mom-and-pop health care entities," said **Sam Sheldon**, a partner at Quinn Emanuel Urquhart & Sullivan LLP, Caldwell's announcement "will mean that the success of the strike force model for the past six years is now being officially applied to corporate qui tam cases."

Sheldon supervised the Criminal Division Fraud Section's health care fraud unit from December 2011 to March 2013.

The hallmark of the strike force is using data to speed up investigations and indictments, to cut down the time that it takes normally to investigate," Sheldon said. But increasingly, Justice Department prosecutors "are starting to see that the way the strike force model of doing things works," he added.

Some False Claims Act lawsuits have already yielded criminal prosecutions. In 2011, the owner of a Miami-area community mental health center called American Therapeutic Corporation was [given a 50-year sentence](#) [3] for masterminding a \$205 million fraud, Caldwell said.

In August, two Atlanta-area health care industry executives [pleaded guilty to a kickback scheme](#) [4] for Medicare patient referrals that stemmed from a [False Claims Act lawsuit](#) [5] against [Tenet Healthcare Corp](#) [6]

Whistleblowers, backed by an industry of lawyers who specialize in False Claims Act suits, have filed so many cases in recent years that it can be hard for the government to keep up.

"With False Claims Act cases generally, the department is a bit like the 'dog that caught the car' – asking, 'What do I do now?'" said **Jay Darden**, an attorney at

Squire Patton Boggs LLP and former Criminal Division Fraud Section prosecutor, who said 750 qui tam suits were filed last year.

The Criminal Division Fraud Section currently has more than 40 prosecutors assigned to health care fraud cases, and is growing quickly since the lifting of a government-wide hiring freeze from 2011.

Darden said a substantial amount of time and resources are spent weeding through complaints in cases that ultimately lack merit. "My sense is that the number of qui tam cases with criminal involvement will remain relatively small," he said.

There is also the risk, from a defense attorney's perspective, of the government using the threat of criminal charges as leverage to extract larger civil settlements.

"At the same time, if criminal prosecutors are going to be involved, I would actually prefer them to be involved from the beginning, rather than coming into the case later in the game," Darden said. "My experience is that impressions are formed about the relators and about the defendants early on in these cases. As an advocate, I'd prefer to have all the relevant constituencies – civil, administrative, criminal – at the table as early as possible."

Relators is the legal term to describe the whistleblowers, often corporate employees, who bring the allegations to light.

Last year, the Justice Department [recovered \\$3.8 billion](#) <sup>[7]</sup> from frauds exposed by False Claims Act lawsuits. Total recoveries since 2009 total \$17 billion, the department said – more than half the amount recovered since the Civil War-era statute was modernized with amendments in 1986.

Caldwell made the case that her division is uniquely situated to pursue criminal prosecutions from the whistleblower suits.

For one, criminal prosecutors can obtain search warrants and wiretaps, make consensual recordings, conduct undercover operations and use confidential informants, she said.

And as fraud goes global, the Criminal Division has important international expertise to offer that U.S. Attorney offices don't necessarily have, such as experience making mutual legal assistance requests to foreign governments for evidence abroad.

"We have developed relationships with foreign government agencies across the globe, and often conduct parallel investigations alongside those agencies," Caldwell said.

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