

The University of California

CELEBRATING OUR **10**<sup>TH</sup> YEAR

**BUSINESS OFFICER INSTITUTE**

# ***Reporting and Investigating Improper Governmental Activities***

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**University of California**

**<http://whistleblower.ucop.edu>**

## *Agenda*



- Importance of Your Role
- Who Investigates What?
- UC Whistleblower Policies
- Dos & Don'ts
- Exercising Judgment
- Signs of Fraud

## *Association of Certified Fraud Examiners'* **CONCLUSION ON DETECTING FRAUD**



“Relatively few fraud and abuse offenses are discovered through routine audits. Most fraud is uncovered as a result of tips and complaints from other employees.”

Source: Association of Certified Fraud Examiners, 1996

# *Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities*



[See accompanying overview of policies.](#)

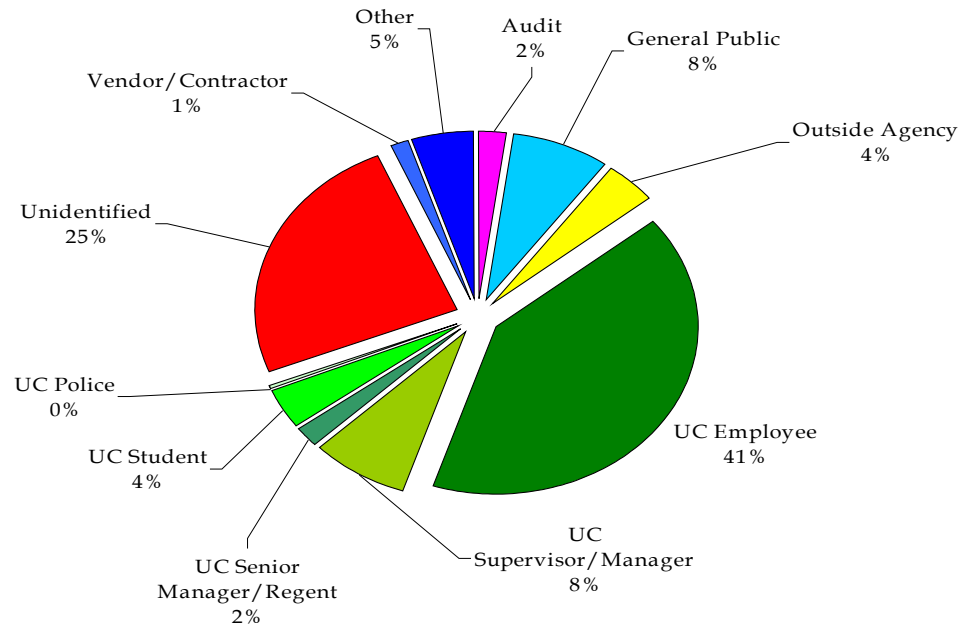
## *Investigation Activities*

The following charts display the Fiscal Year 2008 Investigation Data, by

- Source of Complaint
- Method of Reporting
- Type of Allegation

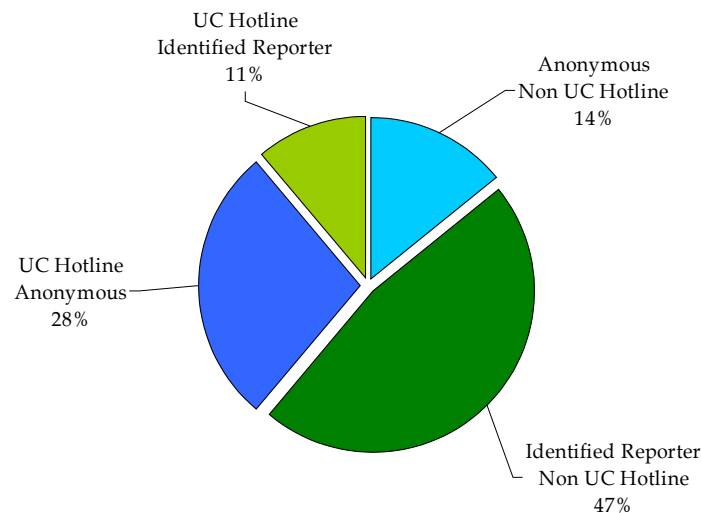
# Sources of UC Investigations

*Fiscal Year 2007 - 2008*



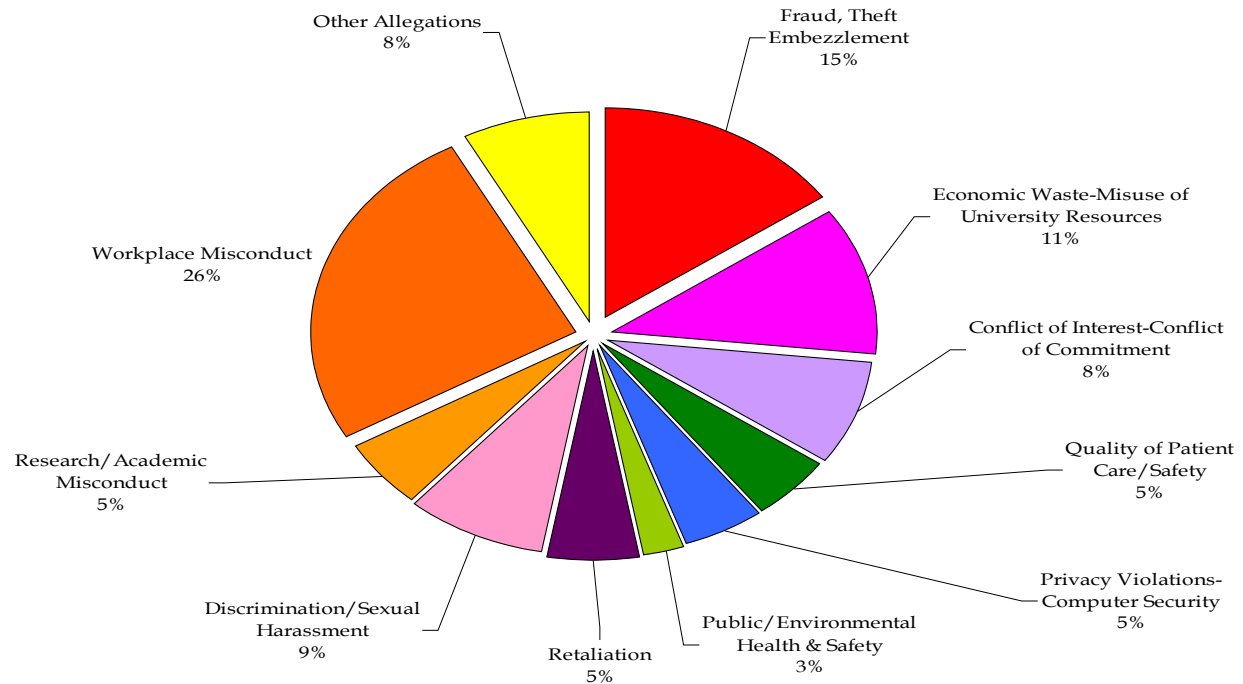
# Reporting Methods

*Fiscal Year 2007 - 2008*



# Types of Allegations

*Fiscal Year 2007 - 2008*





## ***Who Performs Investigations at UC?***

- Academic Personnel
- Animal Research Office
- Disability Coordinator
- Environmental Health & Safety
- Health Sciences Compliance Officer
- Human Resources
  - ✓ Labor Relations
  - ✓ Employee Relations
- EEO/AA
- Risk Management
- Student Judicial Affairs
- Institutional Review Board
- Internal Audit
- Management overseeing *ad hoc* external processes
- Medical Staff
- NCAA Compliance Officer
- Office of the General Counsel
- Privilege & Tenure Committee
- Research Administration
- Retaliation Complaint Officer
- Title IX Officer
- University Police

## *Policy Objective*

To adhere to the spirit of the state whistleblower statutes by creating

1. an environment in which *suspected improprieties are brought forward without fear of retaliation*  
and
1. mechanisms that ensure an *appropriate institutional response to all suspected improprieties* (not just whistleblower reports).



## *Definitions*

### *Improper Governmental Act (IGA) –*

*Any activity by a state agency or by an employee*

that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment,

*and that*

*(1) is in violation of any state or federal law or regulation*

including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty,

*or*

*(2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.*

## Definitions

### Protected Disclosure\* –

any *good faith communication* that discloses or demonstrates an *intention to disclose* information that may evidence

1. an *improper act*

or

1. any condition that may *significantly threaten the health or safety* of employees or the public

if the disclosure or intention to disclose was made *for the purpose of remedying that condition.*



*\*Not restricted to whistleblowers.*

## Key Concepts & Guidance



- Can be oral.
- Can be made to line management OR to a University official with implied authority to act.
- *“for the purpose of remedying that condition”* should normally be assumed.
- If not recognized as such when made, danger of re-characterization as such when retaliation complaint is made.
- Malicious intent does not nullify potential validity of allegations.
- Frivolous complaints may themselves be IGAs.

## *Investigations Policy Overview*

- Reporting Process = Funnel to LDO
  - ★ Triage Process by LDO and I-Group
    - (Two pronged test—“If True” & Sufficient Basis)*
    - ✓ Investigation within natural jurisdiction
      - >> OR <<
    - ✓ Referral to Management\*
  - ★ Communications, Coordination & Monitoring by LDO
- Report to management, IGA source and others as appropriate

\* If the two criteria are not met— “If True” test and “Probable Cause” Standard

## *Reporting Criteria*

1. Results from *significant control or policy deficiency* likely to exist elsewhere (campus or system)
2. Likely to receive *media or other public attention*
3. Involves *misuse of University resources or creates exposure or liability in potentially significant amounts* (No threshold for internal reporting; >\$25,000 for OP reporting)
4. Significant possibility of resulting from a *criminal act*
5. Involves *significant threat to health or safety* of employees and/or the public
6. Judged *significant or sensitive* for other reasons

## *Key Concepts & Guidance*

- Allegations – not just findings – are reportable. The policy consciously dropped the concept of thirty days for preliminary review found in previous policy.
- Sensitivity and media attention need to override dollar impact (which is frequently immeasurable at the outset) and when the matter really isn't about money.
- Audit Committee expectation “No Surprises.”
- Need to balance bias towards disclosure against referrals to LDO for a missing “quart of strawberry ice cream.”
- Remember that matters reported externally trigger internal reporting (e.g. reporting to funding or regulatory agency triggers EVP reporting.)



# *When Confronted with Whistleblower Allegations*

## *Dos*

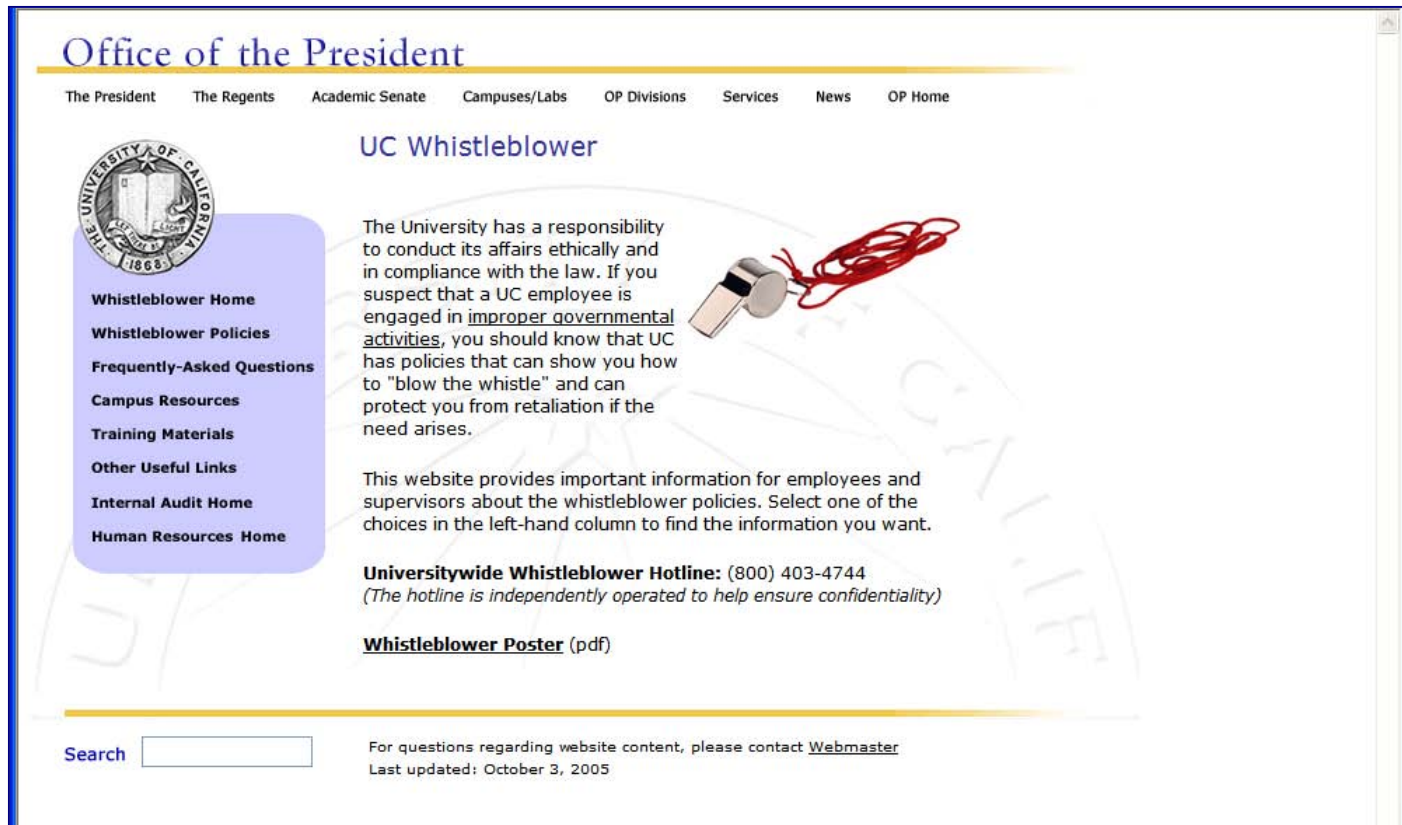
- Learn *UC Policy and reporting channels*
  - ✓ Locally Designated Official
  - ✓ Internal Audit
  - ✓ Human Resources
- Recognize and *be alert to informal communications* of allegations (protected disclosures)
- *Contact Internal Audit and Human Resources* before taking any personnel action
- Act with *speed*
- Hold the matter *confidential*

## ***When Confronted with Whistleblower Allegations***

### ***Don'ts***

- ***Dismiss*** the matter out of hand
- Launch ***your own investigation***
- ***Confront*** the accused or otherwise ***tip them off***
- ***Disclose*** the matter to any unnecessary parties
- Try to ***settle or resolve*** the matter yourself

# UC Whistleblower Website



The screenshot shows the UC Whistleblower website interface. At the top, it says "Office of the President" with a navigation menu including "The President", "The Regents", "Academic Senate", "Campuses/Labs", "OP Divisions", "Services", "News", and "OP Home". The main heading is "UC Whistleblower". On the left is a purple sidebar with the UC seal and links: "Whistleblower Home", "Whistleblower Policies", "Frequently-Asked Questions", "Campus Resources", "Training Materials", "Other Useful Links", "Internal Audit Home", and "Human Resources Home". The main content area features a red whistle icon and text explaining the university's ethical responsibilities and whistleblower policies. It includes a "Universitywide Whistleblower Hotline" number (800) 403-4744 and a "Whistleblower Poster" link. At the bottom, there is a search box and contact information for the Webmaster, dated October 3, 2005.

Office of the President

The President The Regents Academic Senate Campuses/Labs OP Divisions Services News OP Home

## UC Whistleblower

The University has a responsibility to conduct its affairs ethically and in compliance with the law. If you suspect that a UC employee is engaged in improper governmental activities, you should know that UC has policies that can show you how to "blow the whistle" and can protect you from retaliation if the need arises.

This website provides important information for employees and supervisors about the whistleblower policies. Select one of the choices in the left-hand column to find the information you want.

**Universitywide Whistleblower Hotline:** (800) 403-4744  
*(The hotline is independently operated to help ensure confidentiality)*

**Whistleblower Poster** (pdf)

Search


For questions regarding website content, please contact [Webmaster](#)  
Last updated: October 3, 2005

# Locally Designated Officials

Office of the President

[The President](#) [The Regents](#) [Academic Senate](#) [Campuses/Labs](#) [OP Divisions](#) [Services](#) [News](#) [OP Home](#)

## Campus Locally Designated Officials

	<b>BERKELEY</b>	<a href="#">Linda Williams</a>
<b>Whistleblower Home</b>	<b>DAVIS</b>	<a href="#">Bob Loessberg-Zahl</a>
<b>Whistleblower Policies</b>	<b>IRVINE</b>	<a href="#">Mike Arias</a>
<b>Frequently-Asked Questions</b>	<b>MERCED</b>	<a href="#">Janet Young</a>
<b>Campus Resources</b>	<b>LOS ANGELES</b>	<a href="#">Bill Cormier</a>
<b>Training Materials</b>	<b>RIVERSIDE</b>	<a href="#">Gretchen Bolar</a>
<b>Other Useful Links</b>	<b>SAN DIEGO</b>	<a href="#">Gary Matthews</a>
<b>Internal Audit Home</b>	<b>SAN FRANCISCO</b>	<a href="#">Randy Lopez</a>
<b>Human Resources Home</b>	<b>SANTA BARBARA</b>	<a href="#">Donna Carpenter</a>
	<b>SANTA CRUZ</b>	<a href="#">Charlotte Moreno</a>
	<b>UCOP</b>	<a href="#">Katherine Lapp</a>
	<b>DANR</b>	<a href="#">Jake McGuire</a>
	<b>LBNL</b>	<a href="#">Jim Krupnick</a>

## ***Case Study: Reporting & Investigating a Suspected Improper Governmental Act***

A large University department has a small unit that operates fairly autonomously & with *very limited oversight*.

This unit is involved in procuring services from outside vendors and *re-charging* various University organizations.

A temporary employee was assigned to assist with a *backlog problem*. This employee reported to her supervisor that a *substantial amount of expenses had not been re-charged*.

Senior department management became suspicious at this report and noticed that *none of the bills for a particular vendor* had been re-charged in over a year.

## *Decision Point*

1. Has a protected disclosure been made?
1. Does this reported matter meet the criteria for reporting to the LDO or other appropriate office?

## Actions



The senior department manager called the *phone number* listed on the invoices and got an answering machine. The *call was not returned*.



The manager drove by the *address* on the invoice and found that it was a *UPS mail box store*.



The manager called the Better Business Bureau and conducted a *Dun & Bradstreet search* without finding any information on the business.



The manager's research found that the University had *paid this vendor in excess of \$250,000 over several years*.

## *Considerations*

1. Did the manager go too far?
1. Is this matter now reportable to the LDO or other appropriate office?
1. What should the manager's next steps be?



## *Phase 2*



With this information, the senior manager and another department supervisor *confronted the employee on a Friday afternoon* about the vendor and the failure to re-charge for their services.

The employee was perceived as being *evasive but did not admit to any wrongdoing.*

She was *told to be available on Monday* to go over in detail the operation of her unit.

## *Reflection Questions*

1. Should the manager and the supervisor have confronted the employee with questions about the vendor and the failure to re-charge for the billed expenses?
1. Is this matter now reportable to the LDO or other appropriate office?

## Outcomes

On Monday, the department found that *all of the records* in the unit had been *removed* over the weekend and information had been *deleted from the employee's computer*.



The employee had left a message saying that she could be contacted through her *attorney*.



***Then they called Internal Audit.***

## *Avoid Becoming the Subject of an Investigation*

- Document, Document, Document
- Disclose, Disclose, Disclose (*fiat lux*)
- Manage the *Business* not just the Program
- Don't Falsify the Books or Records

## Personal Tests

Wall Street Journal



What Would Mom Say?



What If Someone's Watching You?

## *Fraud Profile*



- Embezzlers usually work their crimes *alone*.
- They *rationalize* their thefts by thinking they are merely “borrowing.”
- They *exploit weaknesses in internal controls* to cover up their crimes.

## *Classic Characteristics of Embezzlers*

- Tend to be *compulsive* (gambling, abusing alcohol/drugs).
- Work themselves into *favor* by utilizing their compulsiveness on-the-job.
- Tend to repeat and *escalate* their crime.



## *Classic Characteristics of Embezzlers*



- *Spend* money freely (their own and/or the University's).
- Have ready *access* on-the-job to cash or its equivalent.



## **ASSOCIATION OF CERTIFIED FRAUD EXAMINERS CONCLUSIONS (Perpetrators of Fraud)**

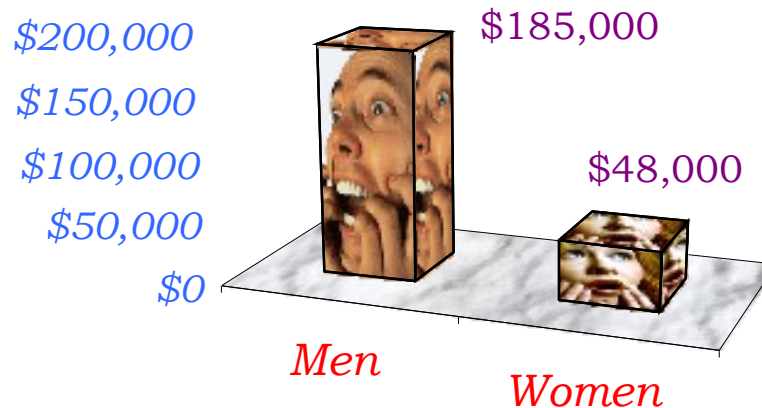
“There is a *direct correlation* between the employee’s *age, education, position and the median loss* due to fraud and abuse.”

These factors often reflect the perpetrator’s position in the organization.

# 1996 ACFE Fraud Study - Gender Demographics

## Who Steals?

Men - 75% Women - 25%

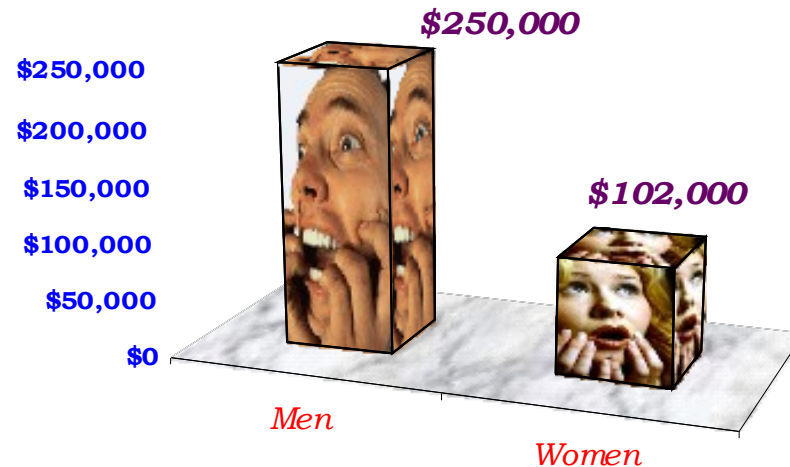


Source: Association of Certified Fraud Examiners, 1996

# 2006 ACFE Fraud Study - Gender Demographics

Who Steals?

Men - 61% Women - 39%

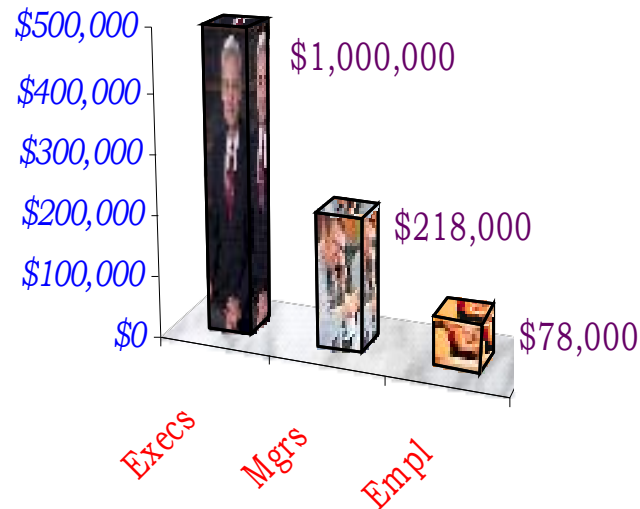


Source: Association of Certified Fraud Examiners, 2006

## Demographics of Position within Company

### Who Steals?

Executives - 19% Managers - 41% Employees - 40%



Source: Association of Certified Fraud Examiners, 2006

## ***Detecting Fraud Red Flags***

- Lifestyle and Personality
- Organization
- Financial Documents
- Accountability and Control



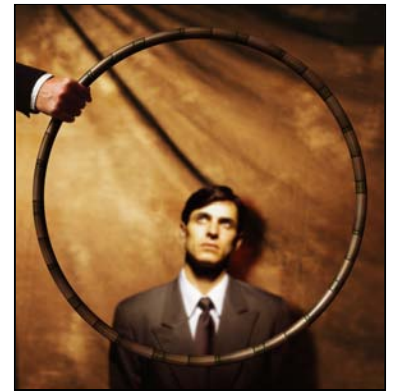
## *Lifestyle & Personality Red Flags*

- Wheeler/Dealer
- Dominating Personality
- Living Beyond Means
- Poor Money Management
- Dissatisfied Worker
- Unable to Relax
- No Vacations or Sick Time
- Close Customer/ Vendor Relationships
- Unusual or Change in Personality (alcohol, drugs, sleep, irritable, defensive, argumentative)
- Too Good to Be True Performance
- Excessive Overtime



## *Organizational Red Flags*

- No Communication of Expectations
- Too Much Trust in Key Employees
- Lack of Proper Authorization Procedures
- Lack of Attention to Detail
- Changes in Organizational Structure
- Tendency Toward Crisis Management



## *Financial Document Red Flags*



- Missing Documents
- Alteration of Documents
- Excessive Number of Voided Documents
- Documents Not Numerically Controlled
- Questionable Handwriting or Authorization
- Duplicate Payments
- Inordinate Use of Form 5's
- Unusual Billing Addresses or Arrangements
- Address of Employee Same as Vendor
- Duplicate or "Home Made" Photocopied Invoices



## *Accountability & Control Red Flags*

- Lack of Separation of Duties
- Lack of Physical Security and/or Key Control
- Weak Links in Chain of Controls and Accountability
- Missing Independent Checks on Performance
- Lax Management Style
- Poor System Design
- Inadequate Training



## ***Consequences of Blowing the Whistle***

### A 2007 University of Chicago Study of 30 Significant Corporate Fraud Cases

- 16 disclosed & 14 anonymous whistleblowers (including groups of employees in unions or particular departments).
- All of the disclosed whistleblowers were males, ranging in rank from senior managers or CFOs to trainees & hourly workers.



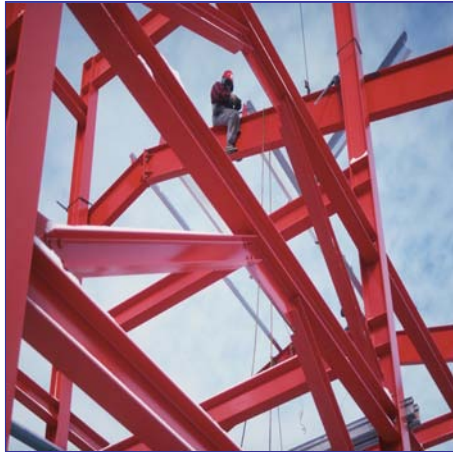
<http://faculty.chicagosb.edu/luigi.zingales/research/PSpapers/whistle.pdf>

## *Costs to the Whistleblower*

- 14 of the 16 known whistleblowers were either terminated, given a different job with significantly reduced responsibility, or outright quit. An additional WB left his firm within a year of the incident.
- Most suffered alienation, threats, intimidation & financial stress. They had difficulty finding other jobs. One moved to 5 towns in the following 10 years. Another's house was broken into.
- Typical comments include: 'I'll never find a job in corporate America again' & 'If I had to do it over, I wouldn't.' 1 WB sentenced to 27 months in prison & fined \$6.9M.



## *Whistleblowers' Motivations*



- 5 of the known whistleblowers avoided potential legal liability (not completely).
- 3 of the known whistleblowers may have been motivated by vengeance.
- 3 of the 14 anonymous whistleblowers were motivated to improve their working conditions; another 3 (groups of employees) were motivated to avoid potential legal liability.

## *Benefits to Whistleblowers*



- 10 of the 16 known whistleblowers filed lawsuits (either *qui tam* or wrongful dismissal); 4 received settlements, sometimes insufficient to cover their losses.
- 2 of the whistleblowers achieved celebrity: a Reader's Digest 'Everyday Hero' & a Time Magazine Cover Story.