



**ERIC HAVIAN**

- PHILLIPS & COHEN
- GOVERNMENT LAW
- *NORTHERN CALIFORNIA SUPER LAWYERS: 2004–2011*
- LEAD ATTORNEY IN A QUI TAM CASE IN WHICH NORTHROP GRUMMAN SETTLED FOR \$325 MILLION
- FORMER ASSISTANT U.S. ATTORNEY—LEAD PROSECUTOR FOR DEFENSE-PROCUREMENT FRAUD CASES

# BLOWING THE WHISTLE on Fraud

## How Eric Havian became a 'giant-killer'

BY STAN SINBERG  
PHOTOGRAPHY BY GREGORY COWLEY

The first big break in Eric Havian's legal career was a case of mistaken identity. A call came in 1987 from someone at the U.S. attorney's office in San Francisco who "thought they had interviewed me and liked me."

Havian had applied there four years earlier but was rejected via a form letter. He confessed to the caller that he'd never interviewed there, but was indeed interested in a job. He ended up getting the position, and left a San Francisco firm where he had been a litigation associate. Havian still wonders about "the poor guy who was supposed to get the job offer."

During eight successful years as an assistant U.S. attorney, Havian mostly engaged in white-collar prosecutions, nailing corporations for trying to defraud the Department of Defense and going after companies that promoted such things as

fake impotency cures. He also prosecuted the occasional notorious character, such as One-Eyed Marvin—a violent Richmond drug dealer who had a propensity, Havian says, for "killing the wrong people."

One day, U.S. District Judge Robert Schnacke called Havian aside and advised the young attorney not to stay in his present position too long. "He basically told me that it's too seductive a job. As a federal prosecutor, you win almost all the time because the case is completely stacked in your favor, and it's easy to think it's due to your skill and talent and not because you'd have to be pretty lame to lose very often."

Shortly afterward, Havian saw John Phillips—who had been his boss during a fellowship at the Center for Law in the Public Interest in Los Angeles—on television. Phillips, now practicing in D.C., was talking about the new False Claims

Act, which he had helped draw up. The law was a reworking of the little-enforced Civil War-era "Lincoln Law," enacted to punish companies who sold "lame horses and sawdust marketed as gunpowder" to the government. It encouraged whistle-blowers to come forward in order, as it was put in Lincoln's time, to "set a rogue to catch a rogue." The modern version allowed anyone aware of a company knowingly cheating the federal government to file a case in the name of the United States and to receive a reward of 15 to 30 percent of any monies awarded the government.

Havian had been talking with another U.S. attorney, Stephen Meagher, about starting their own firm, and decided to call Phillips, in hopes that the attorney would "throw us a few bones," i.e., false claim cases. Instead, Phillips asked Havian

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if the pair would like to open up a San Francisco branch of his firm.

The day the doors opened, they heard from a whistle-blower referred by a federal agent, claiming that FMC Corp. was gouging the government on its Bradley Fighting Vehicles. The case took a relatively rapid 18 months to settle for \$13 million. Havian’s new firm was on its way.

In a case settled in 2009, Havian represented a whistle-blower who accused a government contractor, TRW Inc., of knowingly selling faulty \$50 transistors for use in billion-dollar spy satellites. The transistors, which had uses other than in satellites, began failing in cell phones, and sure enough, when the satellites blasted off, the transistors malfunctioned. Soon a whistle-blower turned up, accusing the defense contractor of deliberately falsifying its claims about the transistors. In the course of the legal proceedings, an email turned up, written by a high-ranking executive years earlier, when the transistors had been showing a high failure rate. Havian says the email, responding to an inquiry about how the company should respond, read, “God forbid we should tell the truth.”

When you’re Eric Havian helping a whistle-blower sue Northrop Grumman Corp. (because it bought TRW) over allegations of fraud against the U.S. government, it doesn’t get much better than discovering there’s an email like that.

The correspondence was hardly a smoking gun, but the case settled for \$325 million in 2009. In false claims (or *qui tam*) cases, which routinely span years and spawn voluminous discovery searches involving hundreds of thousands of documents. To be successful, the following must happen: 1) a whistle-blower comes forward and files a claim, 2) the federal government purportedly has been cheated, either by being overcharged or receiving inferior-quality goods, and 3) the deception was allegedly deliberate.

Havian estimates that his firm receives more than 1,000 queries a year from would-

be whistle-blowers and takes on perhaps 2 percent of them. Once these suits are filed, the U.S. government conducts its own preliminary investigation and decides whether to join the suit or not. Havian says the government joins about 75 percent of his firm’s cases, compared to only 20 percent of all false-claims cases filed in the country.

When the government joins the fray, these cases almost never make it to trial. Although the cases can stretch out for years, the companies nearly always settle. Though the companies have a different opinion, from Havian’s perspective: “No company is going to write a check for \$50 million or more if they’re innocent.”

Havian’s firm files cases under both the federal and the California false claims laws, including one accusing the Los Angeles Department of Water & Power (LADWP) of overcharging state agencies and schools for electricity, which resulted in a \$224 million verdict. Such cases have catapulted Phillips & Cohen into becoming the nation’s most successful whistle-blower firm, according to its website, so far returning close to \$7 billion to the U.S. Department of Treasury through civil recoveries and criminal penalties. Indeed, the firm was featured in a 2004 book by Henry Scammell called *Giantkillers: The Team and the Law that Help Whistle-blowers Recover America’s Stolen Billions*.

#### **HAVIAN, 56, LANKY AND AFFABLE,**

reminisces about the past from his office with its panoramic view of San Francisco Bay and the Bay Bridge. It’s a far more congenial view, literally and figuratively, than the one Havian grew up with in blue-collar Beverly, Mass., where he says he was involved in occasional mischief—nothing “serious,” he says, adding, “I did a few things I wouldn’t want my daughters to find out about.”

He hardly seemed on track to become a lawyer. Havian says his high school education was so poor that he graduated without ever reading a complete book. He did, however,

learn to play drums—with a garage band that covered the likes of Led Zeppelin, Aerosmith and Journey. They also did Grand Funk Railroad (“which I’m embarrassed about,” he says). Havian sang only one song, but it was a doozy: Iron Butterfly’s 17-minute opus, “In-A-Gadda-Da-Vida.”

Havian went to Stanford University, which he describes as “idyllic,” then was accepted to Harvard Law School. But he got cold feet—wasn’t sure he wanted to be a lawyer—and asked the Ivy League university if he could postpone for a year. Harvard agreed, and Havian took a job as a research assistant at a legal-consulting firm before spending two months backpacking in Hawaii. When he enrolled the next year, he was clearly ready: He graduated from Harvard cum laude in 1981.

Next up was his yearlong fellowship (“code for ‘cheap labor,’” he jokes) at the Center for Law in the Public Interest, where he met Phillips. He dove into impact litigation, which included representing people challenging jail conditions, opposing the construction of the Diablo Canyon nuclear power plant in San Luis Obispo, and trying in vain to get a state initiative passed that would freeze the number of handguns in California.

Thinking it sounded “sexy,” Havian toyed at Harvard with the idea of going into international law—until, he says, “I found out what it was, and then I didn’t want to do it.” Similarly, he considered environmental law but decided the bulk of available jobs were with corporations, defending what he saw as their polluting ways, and felt he would likely “end up destroying the environment instead of helping it.”

When his fellowship ended, Havian took the job as a litigation associate in San Francisco, but it still left him unfulfilled. “It was mainly big companies suing each other,” he says. There were upsides, though. First, it was during this stint that he attended a party where friends introduced him to Jean Jarvis, who would become his wife. They now have two

daughters, Meghan, 31, and Rebecca, 14.

The other upside, of course, was that Havian ended up working for Phillips again after his time as an assistant U.S. attorney.

Despite the fact that whistle-blowers are generally "individual, go-their-own-way types," there are a lot of them, and more are coming out of the proverbial woodwork all the time, thanks to new legislation. Approximately half the states—and also some communities—have enacted their own versions of the federal law. In 2006, an IRS version went into effect; in 2010, a provision in the Dodd-Frank financial reform bill extended whistle-blower rewards and protections to those with accusations about securities law violations.

"Wall Street is really scared about this," Havian says. "Whistle-blowers can come forward to expose insider trading, stock manipulation, bribes to foreign officials."

With these new laws, Havian estimates that at any one time he might have 15 cases on his plate, composed of two-thirds federal and one-third state and local. And he says the False Claims Act has been

effective. The earliest cases were against defense contractors, many of whom have cleaned up their act, he says.

While Havian says there are no outright efforts to repeal the False Claims Act, he asserts there are attempts to kill it with "a thousand cuts," chief among them proposals to cap the amount a whistle-blower can receive in award money.

"This sounds so reasonable," Havian says, mockingly. "'Who needs more than \$2 million?' But these are high-level people. They're not going to come forward and risk losing their entire professional careers if you cap the awards." He pauses. "You have to ask, 'Why are these [lobbyists] so concerned about capping the awards?' The company is going to cut the same check no matter what, so what do they care how much the whistle-blower gets?" He answers his own question: "They're in effect saying, 'We don't want you to offer too much of an incentive to our employees to rat us out.'"

To buttress their argument, and to disparage whistle-blowers in general, Havian says, opposing corporations and

attorneys try to paint whistle-blowers as disgruntled employees. "If you took the word 'disgruntled' out of the defense's vocabulary," he says, "they'd be at a loss as to what to say."

Wayne T. Lamprey has worked with Havian a number of times, including six weeks in San Bernardino one Christmas season when both their firms were working on the *LADWP* case. He says, "Eric is the complete package, more than a triple threat. He has a superb analytical mind; his writing is both fluent and moving; he's a terrific oral advocate; plus he's tenacious, hardworking and has the highest level of integrity."

Allan Joseph, an attorney who has opposed Havian several times over the years, quips, "He's really annoying, because he sees right through my arguments."

Turning a bit more serious, Joseph adds, "There's no artifice about him. He's very effective because he's very direct and sincere. When he tells you something, you know it's right." 