

Matthew Lifflander: The Economic Truth About Lying

By: Matthew L. Lifflander

Every day, in courtrooms across America, crimes are committed in front of judges and juries. The crime is perjury, intentionally giving false testimony under oath. It usually goes unpunished. The only time you hear about perjury or obstruction of justice being prosecuted, it seems, is when the government wants to nail a prominent person and doesn't have much else to work with. Just ask Martha Stewart or Scooter Libby or Barry Bonds.

Plenty has been written about police who lie under oath to convict criminals. Relatively little has been said about the commercial side of perjury and its cousins in dissembling, such as filing fraudulent Medicare claims. These crimes deprive victims of justice, at enormous cost to individuals, companies and taxpayers. Perjury in particular demeans the judicial system, but enforcement of laws against it is statistically de minimis.

The result: People lie in legal matters with seeming impunity. Courthouse dishonesty is nothing new—"Perjury, The National Sin" was published in London in 1689. Yet in that book the unnamed author deplored widespread violations of an oath to God. In the modern era, the matter merits serious attention because of the economic impact of dissembling under oath and in sworn statements. Millions, if not billions, of dollars could be saved if people worried more about being punished for public prevarication. It would cost relatively little to instill such fear.

The immediate victims of the crime are other litigants, but the economic consequences of successful false testimony and other kinds of misrepresentation are passed on to the public directly by adding to the cost of goods and services. Liability insurance premiums include the significant expense of settlements, judgments and defense costs for litigation decided on the basis of fraud and deception. According to the 2008 report of the "**Coalition Against Insurance Fraud**," nationwide insurance fraud of all kinds amounts to \$80 billion a year, including \$6.8 billion (or 18%) of bogus auto insurance claims for bodily injury and property damage combined.

Health care is another liar magnet. The U.S. Attorney in Manhattan revealed in October 2011 an investigation into Long Island Railroad workers' fraudulent disability claims adding up to millions of dollars. As of January, 32 people had been indicted, with 16 guilty pleas involving

According to the 2008 report of the Coalition Against Insurance Fraud, nationwide insurance fraud of all kinds amounts to \$80 billion a year, including \$6.8 billion (or 18%) of bogus auto insurance claims for bodily injury and property damage combined.



**Coalition Against
Insurance Fraud**

perjury, health-care fraud and obstruction of justice.

An FBI report on financial crimes for the 2010-11 fiscal year calculated that fraudulent billing to health-care payers, Medicare, Medicaid and private health insurers is between 2% and 10% of total health-care expenditures. The conservatively estimated total of the rip-off: \$2.4 trillion (14% of GDP). Types of fraud the FBI investigates include billing for services not rendered, "upcoding" reimbursable services, performing unnecessary services, adding tests to generate high fees, kickbacks and pharmaceutical drug diversion. These resulted in 736 federal convictions of health-care fraud, \$1.2 billion in restitution, \$1 billion in fines and over \$1 billion in civil settlements. Given the scale of the total deceit, those amounts are relatively minor.

Taxpayers are burdened by excessive municipal tort claims, a significant portion of which are based on fraud. In 2011, New York City paid \$550 million in personal-injury and property-damage tort settlements and judgments to claimants—about \$70 per resident. City lawyers have previously said that up to 10% of the claims against the city involve fraud or misrepresentation.