

**UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE INSPECTOR GENERAL**

**VIDEO TRANSCRIPT**

of

**REPORTING WRONGDOING:**

**WHISTLEBLOWERS AND THEIR RIGHTS AND PROTECTIONS**

**VIDEO**

Stephanie Smith: Hi, I'm Stephanie Smith and I've been an employee with the Department of Justice for about six weeks. I'm very happy to be working as a federal government employee, helping contribute to our mission to ensure the fair and impartial administration of justice for all Americans.

When I think about doing justice, I don't tend to think about dealing with fraud, waste or abuse within my own agency. I understand that sort of thing does happen though, and sometimes as government employees, we may find ourselves faced with that kind of situation, even in our own workplace.

Join me for the next 25 minutes or so as a veteran DOJ employee and I talk about whistleblowers rights and protections with Rob Storch, Senior Counsel to the Inspector General, who serves as Whistleblower Ombudsperson at the DOJ OIG.

You'll also see excerpts from a discussion Rob had with a department employee who talks about how and why he came forward as a whistleblower and what the experience was like for him in what became a case of national significance.

The goals for this video are that you understand the rights and protections for whistleblowers in the Department of Justice and that you know where to go and what to do to report wrongdoing and how to report any actual or threatened retaliation for doing so.

Rob Storch: Stephanie, Kent, thank you very much for coming in. I appreciate your coming to learn a little bit more about whistleblower rights and protections.

My understanding is that, Stephanie, you are a fairly new employee here at the Department, and Kent, I understand you've been with us a while. Whether you are new or you've been with the Department for a while, these are important issues and I appreciate you taking the time to come in to talk about them.

The Office of the Inspector General within the Department of Justice, Inspector General Michael Horowitz, established the Whistleblower Ombudsperson Program in the summer of 2012 and the primary purpose is to do what we are doing today, to educate and train employees and managers within the Department of Justice about the rights and protections that each of us have as employees related to whistleblower matters.

Additionally, we want to ensure that when we receive information from whistleblowers at the Office of the Inspector General, that we're reviewing that thoroughly and promptly, and that we're getting back to whistleblowers in a timely fashion.

Also the Whistleblower Ombudsperson Program is designed to help coordinate with the U.S. Office of Special Counsel which we'll talk about in a minute; they have a very important piece in all of this.

And also with other agencies and with nongovernmental organizations that have very active programs in the whistleblower area.

One thing we can't do at the OIG and with the Whistleblower Ombudsperson Program is act as an advocate or representative for any particular whistleblowers.

Stephanie Smith: Well, Rob, who are the whistleblowers? What is this all about?

Rob Storch: Well, we're all employees of the Department of Justice so at some level, we are they and they are us. They're employees who see wrongdoing in the course of their everyday activities and they come forward and they blow the whistle. You know sort of like the Office of the Inspector General is well positioned within an agency to look for and deter waste, fraud, abuse and misconduct, each of us as employees knows what's going on in our office, and so if we see wrongdoing, we're particularly well positioned to bring that information to light. And doing so really performs an important service for the Department of Justice because it enables someone else to look into that to see if there's something to it and if it's appropriate, to take corrective action. And you know one thing that should never happen, is if somebody comes forward with what they reasonably believe to be wrongdoing, they should never suffer an act of reprisal or retaliation for doing that.

You know, I had the opportunity to speak recently with a whistleblower, Special Agent John Dodson. He is with the Bureau of Alcohol, Tobacco, Firearms and Explosives within the Department of Justice.

He was transferred out to ATF's Phoenix Division in December 2009 and shortly after he got there, he started to express concerns about an operation there in which large numbers of illegally obtained firearms were being allowed to walk or not being seized. And he became a whistleblower in the inquiry into the operation known as Operation Fast and Furious. And as you may know, that ultimately resulted in hearings before Congress and there was an extensive report by the Office of the Inspector General. And we found that by the time the indictment was returned in that case in January 2011, close to 2,000 illegally obtained firearms had been allowed to walk, including two AK47-style rifles that were recovered at the scene of the tragic shooting of a Border Patrol agent in December 2010. The OIG report made significant findings regarding the conduct of that operation and its handling.

So when I spoke with Dodson, I asked him, what they were doing when he first arrived on the Task Force in Phoenix.

John Dodson: I guess ultimately what we did and what we were supposed to do were two different things. What we were

supposed to do was to combat the illegal firearms trafficking to the Mexican drug cartels.

Rob Storch: And you from the time you got out there pretty soon thereafter you started to raise concerns about the way things were being handled. Describe that.

John Dodson: We were allowing a lot of firearms to walk and when I say walk, as I've said many times, it's when we have the legal authority or obligation that we should do something, we should interdict, we should recover, seize those firearms and the decision is made not to and then you let it walk.

The more that I was told that this is how these cases are worked, the more it troubled me that my experience had led me to believe that that's not how we should work these cases. So when we watched these individuals who we knew were straw purchasing, that these guns were ultimately going to be trafficked and in a very short time frame were going to be recovered in similar crimes, for us to do nothing and go home, just seemed wrong. It's not what I went to Phoenix to do.

Kent: Rob, what sort of disclosures are protected under the law?

Rob Storch: Well, Kent, there are several categories that are protected.

Disclosures regarding any violations of law, rule or regulation; disclosures involving gross mismanagement -- and here we're talking about something that generally is not just a disagreement with management, but where there's really something that raises a substantial risk of a significant impact on the mission of the agency. Also, gross waste of funds -- and again we're not talking about debatable expenditures here, but where there's clear evidence of a gross waste of funds, that would be a protected disclosure. Also, evidence of abuse of authority by somebody obviously who's in a position of authority; and any substantial and specific danger to public health or safety.

Kent: Okay now, Rob, you talked about a protected disclosure. What does it mean to be protected?

Rob Storch: Well, Kent, it means that it's illegal for the agency or a supervisor in the agency to take an adverse personnel action against an employee for coming forward with one of those categories of information.

Stephanie Smith: Well, Rob, what if I report something and it turns out that I'm wrong, am I still protected?

Rob Storch: Well that's a great question, Stephanie. Basically, the way the law works is that you're protected if you reasonably believe what you've reported is true. So it's really kind of a

subjective and an objective test, as we say in the law, right.

It's subjective in the sense did you actually believe it and then it's objective in the sense that was that belief reasonable. But as long as you reasonably believe that what you're reporting is true, then you're protected even if it turns out that you didn't understand what was going on or you were wrong about it.

Kent: Now, Rob, what sort of personnel actions are covered by the whistleblower laws?

Rob Storch: Well, Kent, there's a broad range of actions that are covered. It includes decisions on things like appointment, promotion, demotion, reassignment, disciplinary action, performance review, suspension, termination -- a whole range of personnel actions.

Additionally, it's illegal for you to suffer retaliation or for any of us to suffer retaliation for exercising an appeal or a complaint right or a grievance right or for helping somebody else to do that, for refusing to obey an order that would require a violation of law. And this one is pretty important for us, for cooperating or disclosing information to the OIG or to the Office of Special Counsel, it would be prohibited for someone to take an action based on that.

Stephanie Smith: Well if I came forward, what type of reaction should I expect?

Rob Storch: Well you know that's something that varies

tremendously, but I asked John Dodson about his experience and why don't we see what he said.

During this time you're expressing concerns to your colleagues, to people within your office, what sort of reaction do you get?

John Dodson: It got to the point where several of us that saw what was going on, that recognized it, you know we talked to each other about it and we always tried to address it with the case agents and the supervisor. Every time we were met with the resistance of, this is Phoenix, we know more about firearms trafficking than Virginia does or Ohio does or Alabama, wherever you are from. This is the Southwest border. Everyone at Headquarters is familiar with this case; they know what we're doing. They're all behind it 100 percent. You guys are the only ones that are trying to rock the boat, that think this isn't a good idea. So that's you know the resistance that I was met with.

Rob Storch: And what did you do then?

John Dodson: You've got to understand, it gets -- when you're in a situation for so long and you have everyone around you telling you, this is how you're supposed to do it; this is how it's supposed to be done; there's something you're not getting; you know after trying to argue with them or point out what I saw as the flaws in

this and always getting you know the contrary back and then I started to ask okay what am I missing? You know fill me in on the piece of this puzzle that I don't get. You know there has to be something to clear this up. And then when you don't get that or there isn't anything, then you start to -- then you even start to second guess yourself a little bit. Well maybe I am wrong, you know. I mean, here I am; I'm in their neck of the woods for the most part. They're all telling me this is how it's supposed to go.

Rob Storch: Stephanie, Special Agent Dodson went on to tell me that after he came forward with his concerns, many of his colleagues just basically stopped communicating with him, but others agreed with his position. And he also received e-mails of encouragement from agents with different agencies from all around the country.

So you know I think it's fair to say that the reaction on this varies and it's going to change significantly depending upon the circumstances of each case and your individual office.

Stephanie Smith: Well, Rob, if I decide to make a report, where do I go?

Rob Storch: Well there are a number of choices there, Stephanie. You can report to your immediate supervisor or somebody higher up within management within your office. I should point out

here that the rules for the FBI are a little bit different on that, but generally you can report within your office and to the immediate manager. And a lot of things can be addressed at that local level and you know if it can be fixed like that, that's great. If you find that that doesn't work or it isn't going to work, you always can bring that information to the Office of the Inspector General.

We have a hotline. You can access it on the internet or you can call by phone and we have people who are trained to take that information in and to get the appropriate information so that it can be reviewed.

Also, you can contact the Office of Special Counsel, which I've mentioned a couple of times. It's a separate federal agency outside the Department of Justice and it has a number of different functions and one of them is to receive those sorts of whistleblower complaints, so you can contact them, they have a website, they have a phone number as well.

Stephanie Smith: Well Rob, if I decide to report something, what should I expect to happen?

Rob Storch: Well, Stephanie, when someone reports information to the Office of the Inspector General, we'll review whatever it is that's provided and we'll make a decision as to whether further investigation is appropriate or whether it may be appropriate to

refer to somewhere else. I should mention in making that decision, that the Office of the Inspector General is an independent entity within the Department of Justice. We do report to the head of the agency, but we also report to Congress, and so that sort of dual reporting that helps to ensure the independence and the integrity of our operations. But we will review the material and determine if an investigation is appropriate.

I spoke with John Dodson about his experience with the OIG and let's see what he says.

Once you've made contact, once you're talking with the IG, how was that experience for you, what was it like?

John Dodson: Well working with or talking to your guys, the two guys that came down from Denver were great, I mean they just seemed to me to be agents, you know just like me, 13s, out there doing a job.

Now I had apprehensions in the beginning because everything I had been told was that you know you can't trust the OIG. It's a political position. They are going to split the baby. There's as much wrong with you as with whatever you are reporting. And I had been told quite clearly in the beginning of all this, that you know this never works out well for the whistleblowers. It doesn't. So I was just waiting on the guillotine to drop. I just didn't know who was -- you

know who had their hand on the rope, who was going to pull it. So there was a lot of apprehension there. And then other than the waiting, I didn't have a bad experience working with the IG's Office.

Stephanie Smith: Now, Rob, will your office inform me of the outcome of the investigation?

Rob Storch: Absolutely, Stephanie, you know some investigations take longer, Fast and Furious obviously very extensive, took a while. Other ones are quicker. But one way or another at the end of it, we'll let you know what happens.

Kent: Rob, who would I contact if I think somebody's taking a personnel action against me in retaliation for a whistleblower action?

Rob Storch: Well, Kent, the answer to that may depend a little bit upon where you work in the Department of Justice and the nature of the reprisal. And there are some choices here as well.

Jurisdiction over claims of retaliation by employees within the Executive Branch of the U.S. government, generally that jurisdiction is with the Office of Special Counsel, the separate agency I mentioned before. They will investigate the retaliation claim and if it's not resolved, they actually can litigate it before the MSPB, the Merit Systems Protection Board.

Also, it's possible for somebody to go to their unions or to

go directly to the MSPB.

There are exceptions where the OIG or others may have jurisdiction. Those include for the Department of Justice, employees of the FBI -- FBI whistleblowers, contractors, subcontractors and grantees.

Also, claims related to the expenditure of funds under the Recovery Act, and employees who claim that their access to classified information has been impacted by having made a protected disclosure.

Whether or not the OIG is the entity that actually investigates the claim of retaliation, we may be very interested in the underlying claim of wrongdoing, and so in many cases, we'll want to coordinate with whomever is looking at the retaliation piece.

Stephanie Smith: Now, Rob, if I made a report to my supervisor or my chain of command, am I still protected?

Rob Storch: Well, Stephanie, that's a very timely question. In 2012, the law was amended to address a number of cases that had limited different types of protection and where the disclosures could be made. So again, there are some different rules for the FBI. But as a general matter, disclosures made to an immediate supervisor or to a participant in wrongdoing, those are protected.

Similarly, disclosures that are made in the ordinary course of duties or in your normal course of duties, those are going to be

protected as well. And again the idea here is really we want to encourage people to come forward when they're aware of wrongdoing and, as I said before, if that can be remedied at the local level, that's great.

Other categories of information that would be protected would be disclosures regarding information even if some of that had already previously been disclosed, it still could be protected. Oral communications can be protected, and it's protected even if there's been a delay since the events in question.

Kent: Now, Rob, for someone like me who's got over 30 years with the Department, am I jeopardizing my career if I made a report?

Rob Storch: Well, Kent, no one should ever suffer reprisal or an act of retaliation for coming forward with what they believe to be evidence of wrongdoing. You know each situation is different, but if that ever happens, you should immediately let the OIG or OSC know about it.

Stephanie Smith: Now, Rob, can I report something anonymously?

Rob Storch: Yes you can, Stephanie. It may or may not affect our ability to follow up on it depending upon the nature of the allegation. We have had situations where we were able to follow up

successfully on an anonymous complaint.

If you are willing to identify yourself, but you want to maintain your confidentiality, we'll make every effort to honor a request for confidentiality and would only disclose your identity if it became inevitable that we had to do so. For instance, if a case went to litigation, we might be required by the court to disclose your identity or if the facts and circumstances of the matter might make it clear who would have come forward with the information. But absent a situation like that, we would make every effort to maintain your confidentiality.

Kent: Rob, what are my remedies if it's found that somebody's retaliated against me for coming forward with whistleblower information?

Rob Storch: Kent, the remedies may include both corrective action and damages. The corrective action would include things like reinstatement to your position or rescinding of an adverse job action. It may also include back pay.

In terms of damages, you could recover things like attorney's fees, medical costs, travel costs and the like.

Kent: If I could follow up on that for a second, can anything happen to the person who retaliated against me?

Rob Storch: Absolutely. Retaliating against somebody for coming forward with a protected disclosure, that's a prohibited

personnel practice; it's illegal and an individual, a supervisor, who is found to have engaged in an act of reprisal, can suffer a wide range of penalties up to and including termination from their position. And they also could be subjected to civil penalties.

Stephanie Smith: So, Rob, why should I come forward?

Rob Storch: Well let's see what Special Agent Dodson said.

John Dodson: All I did was what I thought we were supposed to do, you know the minimum standard. I told the truth and I reported wrongdoing. Ultimately -- and this is what I would say to everybody in the Department -- that ultimately the system is only as good as the people that make it up, you know, as the people working it, the people in charge of it. You know it's -- I describe it as there's this safety net, you know. And it's made up of a million little ropes crisscrossing and we all have one of our hands on the rope you know. And the other hand can be on our political views, our personal views, our finances, you know our careers, our advancement, whatever you want, but you always have to keep one hand on your rope, you know your part of the system. And when it needs to or when the time comes, if the time comes, well, you've going to put both hands on it and the net's only as strong as the people that are holding it. And that's all of us.

Stephanie Smith: Well, Rob, what sorts of things should I

consider on someone that wants to come forward, what should I think about?

Rob Storch: Well you know, it's a personal decision for each person, and you know sometimes it's not easy. I asked John Dodson about that and this is what he said.

John Dodson: Ultimately you have to do what you have to do for you; you know, what gets you to sleep at night, you know how can you live with yourself? There was a part of me and I remember standing you know in front of the mirror as I was in Phoenix and I was so much wanting someone else to do it you know. It had to be done; I just wanted someone else to do it. And then there was a part of me that was asking -- that was dreading that, because then what would be wrong with me, like what was I deficient in that I couldn't do it? It would take someone else.

Rob Storch: So the bottom line is employees perform a service to the Department of Justice when they help to deter waste, fraud, abuse, and misconduct by coming forward when they reasonably believe that they've seen wrongdoing and they never should suffer retaliation for doing so.

[Turns to camera] If you feel that you have witnessed or uncovered evidence of wrongdoing within your offices, you can report that within your office to your immediate supervisor or if that doesn't

work or isn't working, you always can report that to the Office of the Inspector General or to the Office of Special Counsel. And if, and I hope this never happens, but if you feel that you've suffered an act of reprisal for coming forward with such evidence of wrongdoing, you should report that immediately.

If you'd like more information regarding the rights and protections for whistleblowers under federal law, there are materials available with this presentation, including a very helpful two-page summary prepared by the Office of Special Counsel entitled, "Know Your Rights When Reporting Wrongs." If you still have questions, you can contact my office or the Office of Special Counsel.

I want to thank you, Stephanie. I want to thank you, Kent, for taking the time, and thank all of you for listening to talk about this important issue, the protection of whistleblowers under federal law.

Thank you very much.