

## **Video Transcript: “Whistleblower Rights and Protections,” July 2018**

**Nadia Snoddy:** If you’re working for the Department of Justice, there may be times that you observe something you think is just wrong. And if and when that happens, you may be faced with a choice about what to do about it. This video gives you information to help you feel confident in coming forward to report wrongdoing, and points you to additional resources to help inform you of your rights and protections for doing so.

I’m Nadia Snoddy and I work for the Department of Justice, and I’ll be your guide for the Department of Justice Office of the Inspector General’s latest training on whistleblower rights and protections.

Before we get started, I want to emphasize that people who come forward when they see something wrong perform an important service to the Department and the public. This allows people like the Inspector General to look into the situation and root out any waste, fraud, abuse, or misconduct. And, people who come forward and blow the whistle on wrongdoing should never suffer reprisal for doing so.

The importance of whistleblowers and their protection is recognized by the leadership of the Department of Justice.

**Rod Rosenstein:** The Department of Justice depends on employees to identify and report misconduct. Examples include acts that violate the law, contradict Department rules, constitute gross mismanagement of personnel or money, or pose a substantial risk to public health or safety. The Department of Justice is responsible for enforcing our nation’s laws, so it is particularly important for us to follow the law ourselves, and to deter waste, fraud, or abuse of government resources.

Those forms of misconduct undermine our duty to enforce the law and our responsibility to conserve government resources.

Each of us has an obligation to promote a workplace culture that supports and encourages reports about suspected wrongdoing. By disclosing evidence of wrongdoing, you enable the Inspector General and other authorities to conduct any appropriate investigation.

Department of Justice supervisors understand that no Department employee should ever face retaliation for reporting wrongdoing in good faith. We support whistleblower rights and protections.

Keep in mind that before you provide sensitive or classified information to anybody, you need to make sure it is legal to disclose it to that person.

It is always permissible to report allegations to our Inspector General. Their employees are subject to the same confidentiality obligations as other Department officials, so you can be confident that reporting suspected wrongdoing does not violate your duty to protect sensitive information.

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Thank you for taking the time to learn more about whistleblower rights and responsibilities, and for all of your work in support of the Department of Justice.

**Nadia Snoddy:** This video is part of the three-part series, which will go over information you may want to know before you blow the whistle, what happens when you decide to come forward, and what can happen after you blow the whistle. I’ll be talking with subject matter experts from across the OIG who will explain the process of blowing the whistle, each step of the way. We’ll start with what exactly is a whistleblower.

**James Mitzelfeld:** A whistleblower is any employee who sees what they reasonably believe to be wrongdoing, and comes forward and blows the whistle, using a lawful channel for their disclosure.

**Nadia Snoddy:** This is James Mitzelfeld, Senior Counsel to the Assistant Inspector General for the Investigations Division at the OIG and a former Assistant United States Attorney. He is going to help us understand some of the key things you may want to know before you decide to blow the whistle.

**James Mitzelfeld:** If we see wrongdoing, we are often in the best place to bring that information to light. And doing so really performs an important service for the Department of Justice. That’s because it enables someone else to look into the problem and take any necessary corrective action to protect the public and taxpayers.

**Nadia Snoddy:** To be a whistleblower, do I have to be a DOJ employee? Or can, say, employees of contractors and grantees be whistleblowers, too?

**James Mitzelfeld:** The laws protecting whistleblowers cover DOJ employees, and also employees of contractors, subcontractors, grantees, subgrantees, and personal service contractors. So it’s illegal to retaliate against any DOJ employees or employees who work for any of these other kinds of organizations who come forward with a protected disclosure.

**Nadia Snoddy:** You’ve mentioned “protected disclosures”– can you explain what that means?

**James Mitzelfeld:** Sure, a disclosure is protected if it satisfies two basic criteria. First, it has to be based on a “reasonable” belief. That means you don’t have to be right that the conduct you’re disclosing is improper, but you have to believe you are disclosing wrongdoing, and your belief must be objectively reasonable. Second, the disclosure has to be made to a person or entity that’s authorized to receive it. We’ll talk a little bit more about that in a minute, and the rules for FBI employees are a bit different than those for the rest of DOJ on this. Plus, it’s important to remember there are special rules if the disclosure involves classified information. That information can only be shared with an appropriately cleared audience, such as the Inspector General. And then, only through proper means of communication.

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**Nadia Snoddy:** What are examples of the different types of wrongdoing that employees should report?

**James Mitzelfeld:** The law talks about five major categories of wrongdoing that employees are encouraged to disclose. These are:

One. Disclosures regarding any violation of law, rule or regulation;

Two. Disclosures involving gross mismanagement -- and here we're talking about something that is not just a disagreement with management, and I'm going to use some legal terms here, but the employee needs to identify a problem that creates a real risk of significant adverse impact upon the agency's ability to accomplish its mission.

Three. Evidence of gross waste of funds -- and again, we're not talking about debatable expenditures, but those that are really unjustifiable and out of proportion to any benefit the government might receive from spending those tax dollars.

Four. Evidence of abuse of authority by someone in a position of authority; and finally

Five. Evidence of any substantial and specific danger to public health or safety.

**Nadia Snoddy:** Okay, so those kinds of disclosures constitute protected whistleblowing. Now how do I make a report?

**James Mitzelfeld:** Well, I'll first say that what I'm going to talk about here applies to all DOJ employees except those at the FBI. The FBI reporting procedure is a little bit different. So those employees should take a look at the OIG's other training resources that are specific to the Bureau. We also have additional resources for DOJ contractors and grantees.

What's important to remember is that we really want to encourage people to come forward if they become aware of what they reasonably believe to be wrongdoing. And there are a number of choices on where employees can report wrongdoing. You can make a report to your immediate supervisor or somebody higher up within your chain of command.

You don't have to set out to be a whistleblower either, in order to be protected. People sometimes think you have to go outside your chain of command or your organization to be considered a whistleblower, but that's not the case. If you make a disclosure to your supervisor, and the information you shared falls into one of the five categories I mentioned earlier, it's unlawful for your supervisor or anyone else with knowledge of the disclosure to retaliate against you for making it. And that's true even if you didn't necessarily set out to blow the whistle.

**Nadia Snoddy:** What if an employee doesn't feel comfortable talking with their boss about wrongdoing – what options do they have?

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**James Mitzelfeld:** If an employee doesn't feel comfortable making a disclosure to their supervisor or others in their chain of command, they can bring the information directly to us at the Office of the Inspector General. Another option they have is to contact the U.S. Office of Special Counsel, or OSC. The OSC is a separate federal agency outside the Department of Justice. It has a number of different functions and one of them is to receive and investigate whistleblower complaints.

**Nadia Snoddy:** My conversation with James covered a lot of the information you might want to know before you blow the whistle – like who are whistleblowers, what is a protected disclosure, and how to make a disclosure.

If you want to make a report to the OIG, you can do that online at [oig.justice.gov](http://oig.justice.gov) or you call 1-800-869-4499. We have people who are trained to take that information. And you can contact OSC online at [osc.gov](http://osc.gov).

Now, here's an example of someone who actually went through this process.

John Dodson is a Special Agent at the Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF. He was one of the whistleblowers who reported about Operation Fast and Furious, which came to light after the tragic death of a Border Patrol Agent in a shooting incident down on the Southwest Border. We talked to John about his experience. And we'll come back to this interview a couple of times throughout this training.

**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.

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.

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 than Ohio does or than 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

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the boat, that think this isn't a good idea. So that's you know the resistance that I was met with.

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.

**Nadia Snoddy:** Special Agent Dodson observed a practice that he thought was wrong, but he received a lot of pushback when he raised concerns about it. Ultimately, he and others decided to make a report to the Office of the Inspector General and to Congress, and it resulted in two major reports by the OIG, Congressional hearings and reports, and a number of recommendations for improvements in the operations of ATF and the Department generally.

Deciding to make a report to the Office of the Inspector General can feel like a big step, especially if you don't know what to expect. Our next segment will cover what happens when you decide to come forward. As James mentioned, the process for reporting for FBI employees and contractors and grantees is a bit different. So if you're one of those kinds of employees, before you move onto the next video in this series, make sure you check out our other resources.

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**Nadia Snoddy:** When you observe something you think is wrong, reporting it may seem like a big step. In this video, we will talk about what happens when you decide to come forward.

Elise Chawaga is the Deputy Assistant Inspector General for the Investigations Division. Elise is here to help us understand what to expect when you contact the OIG, and how you can prepare for that conversation.

**Nadia Snoddy:** So, walk me through what happens when someone makes a report of suspected wrongdoing to the OIG.

**Elise Chawaga:** When a whistleblower makes a report, they can either call our hotline or file a report online. We have trained Investigative Specialists who receive these reports.

We’ll review whatever is provided and we’ll make a decision as to whether further investigation is appropriate by the OIG, or whether it may be appropriate to refer the matter somewhere else. If we think a matter would be handled better by another part of the Department, we would not forward the matter without the whistleblower’s consent, just to make sure they want us to do that.

**Nadia Snoddy:** So help me understand, sometimes the OIG investigates my complaint but sometimes they don’t?

**Elise Chawaga:** That’s right. We focus our limited resources on those matters where it is crucial to have an independent OIG handle the investigation. For example, if there’s an allegation of serious wrongdoing by someone in the leadership of a DOJ component, it generally wouldn’t make sense to refer such a complaint back to that component. The OIG would handle that allegation.

When you come forward with a complaint, we’ll notify you that we have received your communication. If we’re not the right office to handle your complaint, we’ll provide some resources to point you in the right direction. And, again, sometimes we may think it appropriate to refer your complaint to another office, but only with your explicit, written permission, of course.

If we are the right office to handle your complaint, we’ll tell you whether we have initiated an investigation into your concern, with a few exceptions such as to protect ongoing investigations.

One more point: Whether or not the OIG opens a new investigation based on your disclosure, you are protected for communicating with us. If you believe you have been retaliated against for making a disclosure to the OIG, you should let us know or, if you prefer, you can contact the U.S. Office of Special Counsel.

**Nadia Snoddy:** And what kind of personal information might whistleblowers need to provide with their reports? Can they be anonymous?

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**Elise Chawaga:** A whistleblower can remain anonymous. It may or may not affect our ability to follow up depending on the nature of the allegation. We have had some situations at the OIG where we were able to follow up successfully on an allegation even though the complainant remained anonymous.

When whistleblowers are willing to identify themselves to the OIG, but want to maintain their confidentiality, we make every effort to honor that request, and actually, the law requires us to do so. We would only disclose the whistleblower's identity if it's unavoidable during the course of the investigation. For instance, if a case went to litigation, we might be required by the court to disclose a whistleblower's identity. And, there may be situations where the facts and circumstances of the matter might make it clear who came forward with the information, even if we didn't disclose it. But, the bottom line is that you're encouraged to come forward with information you reasonably believe to be evidence of wrongdoing, and we'll make every effort to protect your confidentiality if you do so.

**Nadia Snoddy:** ATF Special Agent Dodson, the whistleblower who reported on Operation Fast and Furious, decided to make a report to the Office of the Inspector General after reporting within his chain of command did not result in any changes. Here is his perspective on what it was like to make this report.

**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.

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.

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.

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

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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.

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**Nadia Snoddy:** Whistleblowers really are heroes because they come forward and try to make things better. But they're not always treated that way. Sometimes it can be difficult for whistleblowers to feel comfortable in their jobs if it becomes known that they made a disclosure, and especially if they believe their position is in jeopardy because of their disclosure. But no one should ever be retaliated against for making a protected disclosure. The law protects you from retaliation.

**Nadia Snoddy:** This is Adam Miles, Counsel to the Inspector General. He talked with me about protections under the law for employees who blow the whistle.

What kinds of actions, retaliations, or threatened retaliations are prohibited in response to making a protected disclosure?

**Adam Miles:** That's a good question. So after you make a protected disclosure, it's unlawful for any adverse personnel action to be taken against you because of your whistleblowing. You can't be fired, suspended, reprimanded, reassigned, or subjected to any other retaliatory personnel action.

Also, any action affecting your access to classified information or your security clearance can't be taken in retaliation for protected whistleblowing. Also it's illegal for you to be punished for cooperating or disclosing information to the IG or to the Office of Special Counsel.

But I want to make one additional point here. After you've made a protected disclosure, you can still be disciplined for a non-retaliatory reason, so something unrelated to your disclosure. So, as always, even after you've blown the whistle, you need to make sure that you continue to do your job effectively and professionally.

**Nadia Snoddy:** If a whistleblower does experience an act of retaliation or reprisal, what should they do?

**Adam Miles:** No one should ever suffer retaliation for coming forward, and if you do, you should report that retaliation right away. The process for reporting or making a retaliation complaint depends a little bit on where you work in the Department of Justice and the nature of the reprisal.

Generally, jurisdiction to investigate claims of retaliation by employees within the Executive Branch is with the Office of Special Counsel, or OSC. So, for most DOJ employees, OSC has primary jurisdiction, and you can file a retaliation complaint directly with OSC, at [osc.gov](http://osc.gov).

Our office, the IG, has primary jurisdiction over investigation of retaliation cases in several other specific areas. We have jurisdiction over FBI whistleblowers; employees of DOJ contractors and grantees, and others in similar relationships with the Department of Justice. We also have primary jurisdiction over employees who believe they've been subjected to a retaliatory security clearance action. And our

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website has more information on the process for pursuing such matters, and it’s updated periodically.

If you fall in one of these categories and believe you’ve suffered reprisal for making a protected disclosure, you can file a retaliation complaint with the OIG Hotline.

And, regardless of whether the OIG has primary jurisdiction over your claim, we’ll help point you in the right direction. Our office has a Whistleblower Ombudsperson, or Coordinator, who can answer calls and help to figure out where you should go to make a retaliation claim.

**Nadia Snoddy:** What about the person who retaliated against me? What happens to them?

**Adam Miles:** Well accountability is important, and retaliating against somebody for blowing the whistle is a prohibited personnel practice. It’s illegal. And anyone who does that can be subjected to a wide range of penalties up to and including termination from their job.

In fact, Congress made it mandatory to discipline any employee who is found to have engaged in an act of retaliation, and the OIG will work to make sure that those mandatory penalties are enforced.

The bottom line, Nadia, is that employees perform a public service when they disclose evidence of waste, fraud, and abuse and they should never be retaliated against for doing so.

**Nadia Snoddy:** If you believe that you have witnessed or uncovered evidence of wrongdoing within your offices, you can report that within your office to your immediate supervisor or others in management. Or if you prefer, you can report the wrongdoing directly to the Office of the Inspector General or to the Office of Special Counsel. If you feel that you’ve suffered an act of reprisal for disclosing such evidence of wrongdoing, you should report that immediately to the OIG, or OSC.

If you’d like more information regarding the rights and protections for whistleblowers under federal law, you can go to [oig.justice.gov/hotline](http://oig.justice.gov/hotline) which has links to additional information and other relevant websites. If you still have questions, you can contact the OIG or OSC.

Thank you for watching.

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