Harnessing knowledge, generating evidence, and supporting innovative policy and practice for more effective anti-corruption programming

This event is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the Targeting Natural Resource Corruption project and do not necessarily reflect the views of USAID, the United States Government, or individual TNRC consortium members.
Whistleblower protection: An essential tool for stopping corruption that threatens the world’s forests, fisheries and wildlife
TNRC Learning Series

Whistleblower protection: An essential tool for stopping the corruption that threatens the world’s forests, fisheries and wildlife

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George Mason University (Discussant)

Rachel Kramer
Targeting Natural Resource Corruption (Moderator)
Ground rules...

1. Pose questions at any time by clicking on the “Q&A” icon
   “Like” questions to “upvote” them for the moderator and/or answer from your experience

2. Exchange thoughts with other participants via chat
   Introduce yourself and share your own insights and ideas in the chat window

3. Respond to polls as they are launched
   Make your selections and remember to click “submit”!
POLL

Where are you based?

a. Africa
b. Asia
c. Latin America and the Caribbean
d. North America
e. Europe
f. Other
Whistleblower protection: An essential tool for stopping the corruption that threatens the world’s forests, fisheries and wildlife

LEARNING QUESTIONS

1. What are effective strategies for reporting corrupt practices under U.S. whistleblower laws?
2. What are some of the most important innovations in whistleblower protection?
3. How do we assess opportunities to advance whistleblowing, and strategies for managing risks, in a wide variety of contexts?

Stephen M. Kohn
Founder and Chairman of the Board
National Whistleblower Center
Partner at Kohn, Kohn, & Colapinto

John Kostyack
Executive Director
National Whistleblower Center
WHISTLEBLOWER PROTECTION:
An Essential Tool for Stopping the Corruption that Threatens the World’s Forests, Fisheries and Wildlife

Stephen M. Kohn and John Kostyack
National Whistleblower Center
Goals of Today’s Presentation

By the end of this webinar, participants will be able to:

Understand effective strategies for reporting corrupt practices under U.S. whistleblower laws

Identify the most important innovations in whistleblower protection

Assess opportunities to advance whistleblowing, and strategies for managing risks, in a wide variety of contexts
Honest behavior is not rewarded . . . Given [the] costs [of whistleblowing] the surprising part is not that most employees do not talk, it is that some talk at all.

The Solution

Qui Tam - “The Lincoln Law”

On March 2, 1863, President Abraham Lincoln signed the original whistleblower qui tam reward law, the False Claims Act ("FCA"), targeting fraud in government contracting.

It was modernized in 1986.

The FCA incentivizes reporting and is the model for all current whistleblower reward laws.
How whistleblowing under U.S. law works around the world

Case Study – The Act to Prevent Pollution from Ships (APPS)

Offers whistleblowers a reward of up to 50% of sanctions obtained

Covers transnational crimes and is available to non-U.S. whistleblowers
Act to Prevent Pollution from Ships (APPS)

- Pollution on the high seas occurs outside of the U.S. territorial waters

- The ships and crew members violating the laws are almost all non-U.S.

- Corruption is at the heart of the crimes (saving money, greed, falsification of documents)

- The U.S. is the number one enforcer of MARPOL because of whistleblowers
The Reality
“On The Ground”

“The availability of the award aptly reflects the realities of life at sea... A monetary award both rewards the crew member for taking that risk and may provide an incentive for other crew members on other vessels to alert inspectors and investigators regarding similar crimes.”

— U.S. Department of Justice, Natural Resources Division
Brief in U.S. v. Odfjell
Whistleblowers Rewarded for Reporting Worldwide Ocean Pollution

In 2015, Overseas Shipping Group, Inc., which operates one of the largest oil tanker fleets in the world, was prosecuted for illegally discharging sludge and oily waste and concealing the pollution by falsifying records.

Overseas Shipping paid a US$37 million penalty, which included a criminal fine.

Twelve Filipino whistleblowers reported APPS violations and received a US$5.2 million reward (largest ever under APPS)
Whistleblowers were key to $60M penalties imposed on Carnival Cruise Lines for pollution & cover up
Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover.” (U.S. DOJ Filing in U.S. v. Noble Drilling)
The U.S. government has awarded 205 whistleblowers a sum of approximately $33 million in the 100 most recent prosecution under APPS.

The largest reward paid for an individual whistleblower was $2,100,000 (USA v. Omi Corporation).

$5,250,000 is the largest amount paid to a group of APPS whistleblowers from the Philippines (USA v. Overseas Shipping).

The average reward paid per whistleblower in a recent survey of 75 cases was $163,575.
Sample of Groups That Obtained Restitution or Community Service Payments

- The National Fish and Wildlife Foundation
- The National Marine Sanctuary Foundation
- The National Parks Foundation
- The National Marine Fisheries Service of Oceanic and Atmospheric Administration (NOAA)
- Smithsonian Environmental Research Center
- Florida National Keys Marine Sanctuary
- Alaska Sealife Center
- Pinellas County, Florida Environmental Fund (PCEF)
- International Arctic Research Center
- Puget Sound Marine Conservation Fund
- Stenson Bank National Marine Sanctuary
- North American Wetlands Conservation Fund
- Columbia River Conservation
- Channel Islands National Park

Examples of Projects Targeted for Use From These Payments

- Benefit, preserve and restore the environments and ecosystems in U.S. waters
- Activities of conservation and management of fish, wildlife, and plant resources of the U.S. coastline
- Restoration of marine and aquatic injured resources and protected coral reefs, sea grass beds, and species dependent on that habitat
- Scientific research of marine resources and habitats
- Education regarding protection of the marine environment from pollution
- Louisiana habitat conservation
The Framework for Qui Tam and Reward Laws

Initial disclosures are filed with the agency responsible for enforcing the whistleblower law. Most laws have confidential reporting procedures.

Emphasis is on the quality of the information, not on a whistleblower’s employment discrimination case.

Whistleblowers who provide original information that leads to a successful enforcement action are entitled to a mandatory reward under the modern reward laws of between 10-30% of the collected proceeds triggered by their disclosures.

False Claims Act | 31 U.S.C. § 3729-3732
Rewards for reporting fraud in government contracting, procurement or failure to pay mandatory fees, including customs violations.

Foreign Corrupt Practices Act | 15 U.S.C. §§ 78m, 78dd, 78ff
Rewards to whistleblowers who provide original information about bribes paid to foreign government officials.

Securities and Exchange Act | 33 U.S.C. § 1908(a)
Rewards to individuals who provide information to the SEC which leads to the recovery of monetary sanctions which exceed $1 million.

Rewards to qualified persons who provide information concerning violations of the Commodities laws, including violations of money laundering laws.

Act to Prevent Pollution from Ships | 33 U.S.C. § 1908(a)
Permits federal courts to grant rewards to whistleblowers whose disclosure pollution on the high seas

Fish and Wildlife Improvement Act | 16 U.S.C. § 7421(c)(3)
Rewards for reporting violations of any wildlife protection laws enforced by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Rewards can be paid for information prior to a prosecution.

Permits the Departments of Agriculture, Commerce, Interior, and Treasury to reward whistleblowers who disclose violations of the Endangered Species Act.

Internal Revenue Act | 26 U.S.C. § 7623
Rewards to IRS whistleblowers who report tax frauds and underpayments of taxes. Covers all laws investigated by the IRS, including international money laundering.
The False Claims Act whistleblower law is “the most powerful tool the American people have to protect the government from fraud.”

— Former Assistant Attorney General Stuart Delery - Remarks at American Bar Association’s 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014)
The False Claims Act has provided ordinary Americans with essential tools to combat fraud . . . their impact has been nothing short of profound.

A Whistleblower Program Delivers Significant Benefits

• In FY 2017, the U.S government recovered over $3.7 billion through its civil fraud program.

• Of this amount, whistleblowers were directly responsible for the detection and reporting of over $3.4 billion under the FCA.

• Whistleblowers were the source of the detection of 92.8% of civil fraud recovered in FY 2017.

In 2017, of the $3.4 billion recovered through the FCA and as a result of whistleblower assistance, $392 million (11.5%) was awarded to whistleblowers.
How You Can Help

How can you strengthen laws within the country you work in?

The most effective whistleblower laws have the following components:

- Confidential handling of whistleblower disclosures
- Financial awards linked to the whistleblower’s role in producing a successful outcome
- Executive branch reporting channels

How can you build cases under U.S. laws?

- Confidential and anonymous reporting using qualified attorneys to ensure rights are protected
- Work with NGOs to network internationally and provide local support for whistleblower
- Focus on cases where there are strong civil, criminal and administrative sanctions or significant environmental impact

...Learn more in the next section
APPLYING U.S. WHISTLEBLOWER LAWS TO HELP STOP NATURAL RESOURCE CORRUPTION AROUND THE WORLD
Many people witness corruption every day that threatens their forests, fisheries and wildlife

BUT law enforcement agencies in most countries do not adequately protect whistleblowers

Long Term Solution: Strengthen whistleblower programs in home countries

Short Term Solution: Report under U.S. laws with track records of providing confidentiality and awards
Sources of Whistleblower Tips Received by U.S. Securities and Exchange Commission
2011 - 2017
Whistleblowers, whether they are located in the U.S. or abroad, provide a valuable service to investors and help us stop wrongdoing... This award recognizes the continued, important assistance provided by the whistleblower throughout the course of the investigation.

— Jane Norberg, Chief of the Office of the Whistleblower, Securities and Exchange Commission, [Press Release](#) on award to overseas whistleblower
• Between 2011-17, 2,655 whistleblowers from 113 countries outside the U.S. have filed claims under the Foreign Corrupt Practices Act whistleblower reward provision.

• Over $40 million has been paid to non-U.S. citizens who reported bribes paid overseas, in a single case.

Foreign Corrupt Practices Act (FCPA)
Key FCPA Provisions

The FCPA prohibits publicly-traded corporations that trade through ADRs, from paying bribes to foreign officials and mandates proper financial recordkeeping.

The FCPA establishes U.S. jurisdiction for bribes paid in foreign countries by foreign nationals.

FCPA whistleblowers can obtain financial rewards even if bribes are paid in a foreign country and the whistleblower is a foreign national.
In 2015, BHP, the world’s largest mining company, paid US$25 million to settle allegations that the company paid bribes to dozens of foreign government officials.

The case was brought to the SEC by a whistleblower who ultimately received a US$3.75 million reward.
Other FCPA Cases For Which Whistleblowers Are Eligible For Rewards

- **Quad/Graphics**: Bribes paid in Peru and China — $10 million sanction
- **Telefonica Brasil**: World Cup bribery — $4.125 million
- **Fresenius Medical**: German based company — $231 million
- **Petroleo Brasileiro**: Brazil based company — $1.78 billion
- **Sanofi**: corrupt payments in Kazakhstan and Middle East — $25 million
- **Credit Suisse**: Swiss based company corrupt payments in Asia-Pacific—$77 million
- **Telia**: Sweden-based company — bribery in Uzbekistan — $965 million
- **SQM**: Chilean based company — $30 million
- **Biomet**: Polish based company — $30 million
U.S. False Claims Act

The most powerful whistleblower law

- Whistleblowers can file cases “qui tam” (in the name of the government) and receive 15 to 30% of amount recovered, plus attorney fees and costs
- Government intervenes and litigates 20% of these cases itself
- Treble damages provision, plus mandatory penalty (US $5500 - $11K per false claim) sends powerful message to wrongdoers
- Applies to conduct outside the U.S. – so long as there is a financial transaction with the U.S. government
- Anyone with original information can serve as a whistleblower, including NGOs
- Suitable for building criminal cases as well as civil
As global supply chains grow more complex, it is important for American businesses to know their suppliers and be confident of their integrity. The outcome of this case is a testament to [our] dedication . . . in enforcing our nation’s trade laws and holding accountable those perpetrating this type of fraud.

U.S. Department of Justice Press Release in U.S. v. Yingshun Garments
Prudent Importers Avoid FCA Liability by Understanding their Supply Chains

• “The FCA is a particularly powerful enforcement tool as it allows for treble damages and penalties, and because FCA claims can be initiated by private qui tam plaintiffs [whistleblowers].”

Jones Day law firm (April 2015)
Key Cases Using False Claims Act to Prosecute Importers

- **Tokyo Ink SC Holdings Ltd**: Misrepresenting the country of origin — $45 million sanction, $7.8 million whistleblower reward
- **Z Gallerie LLC**: Evading antidumping duties — $15 million sanction, $2.4 million whistleblower reward
- **Basset Mirro Co**: Evading antidumping duties — $10.5 million sanction, $1.9 million whistleblower reward
- **Noble Jewelry**: Underpaying customs duties — $3.8 million sanction, $726,000 whistleblower reward
- **Motives Inc.**: Underpaying customs duties — $13.3 million sanction, $2.1 million whistleblower reward
Securities and Commodity Exchange Acts

Whistleblowers can file anonymous and confidential claims of fraud in connection with purchases or sales of securities and commodities futures.

Eligibility does not depend on U.S. citizenship.

Whistleblowers who provide original information that leads to a successful enforcement action entitled to a mandatory reward of between 10-30% of the collected proceeds.

Since 2012 the SEC has paid over US$500 million in rewards.
Whistleblower Exposes Securities Fraud in Connection with Wildlife Trafficking on Facebook

In August 2017, an anonymous whistleblower supported by the National Whistleblower Center filed a complaint with the SEC, detailing how Facebook failed to disclose to shareholders its lack of controls of illegal wildlife trafficking on its website.

The complaint explains how Facebook sells advertisements on web pages it knows or should know are being used by traffickers to market endangered species.
Corruption is a key facilitator of wildlife crime and, conversely, wildlife crime facilitates other law-breaking.

The Lacey Act is the most powerful law for addressing illegal trafficking in timber, seafood and wildlife parts.

This and other wildlife reward laws enable U.S. law enforcement authorities to enlist allies in other countries to assist in broader campaigns against corruption.
Current wildlife whistleblower laws identical to the Lacey Act’s provisions:

- Endangered Species Act | 16
  U.S.C. § 1540(d)
- Rhinoceros and Tiger Conservation Act | 16
  U.S.C. § 5305a(f)
- Antarctic Conservation Act | 16
  U.S.C. §§ 2409; 2439
- Fish and Wildlife Improvement Act | 16
  U.S.C. § 7421(c)(3)
- Wild Bird Conservation Act | 16
  U.S.C. §§ 4912(c); 4913(b)

Other laws that permit rewards to whistleblowers who report trafficking in fish, animals, and plants:

- African Elephant Conservation Act
- American Fisheries Act
- Atlantic Tunas Convention
- Bald and Golden Eagle Act
- Fur Seal Act
- Illegal, Unreported, and Unregulated Fishing Enforcement Act
- Magnuson-Stevens Fishery Conservation
- Marine Mammal Protection Act
- Migratory Bird Treaty Act
- National Wildlife Refuge System
- Ocean Thermal Energy Conservation Act
- Shark Finning Prohibition Act
- Sustainable Fisheries Act
- Whaling Convention
  ... among numerous other wildlife protection laws

*These laws were enacted after Congress amended the Lacey Act in 1981 to include whistleblower rewards.*
Whistleblowers Key to Jail Terms for Smuggling Jaguars into U.S. from Mexico in Violation of Lacey Act
Whistleblowers Key to Large-Scale Penalty for Smuggling Illegally-Harvested Lumber into U.S. from Russia in Violation of Lacey Act

Siberian Tiger - Beneficiary of whistleblower’s contribution to prosecution in *Lumber Liquidators* case

Credit: Magnus Johannsen, https://www.flickr.com/photos/120374925@N06/35241818024
FWS Recognizes the Critical Role of Whistleblowers in Successful Wildlife Prosecutions

- The whistleblower “provided crucial information resulting in saving the U.S. Fish and Wildlife Service thousands of dollars and investigator hours.”
  
  Asian Elephant Tusk and QT Aquarium Cases, FOIA document p. 630.

- “In order to complete the mission and purpose of the USFWS, Office of Law Enforcement, it is extremely important and critical to provide a monetary award to the individuals who come forward and provide information to investigators.”
  
  Case Name Redacted by FWS, FOIA document p. 132.
Are Concerns About U.S. Whistleblower Laws Valid?

Key Findings from U. Chicago Study:

• “A strong monetary incentive to blow the whistle does motivate people with information to come forward.”

• “There is no evidence that having stronger monetary incentives to blow the whistle leads to more frivolous suits.”

• “Fraud tends to be revealed by people who find out about it in their normal course of business and who do not have a strong disincentive (or even better some positive incentive) to reveal it.”
How Can You Help?
Tips for NGOs and Other Whistleblower Allies

- Urge governments to establish confidential reporting procedures
- Learn how to protect whistleblower communications (e.g., encrypted channels) and effectively deliver their information
- Anti-corruption laws must also have strong civil, criminal and administrative sanctions and incentivize informants to come forward (rewards)
- Use transnational anti-corruption laws with a track record of success
“You may want to add this book to your… wish list. Just don’t let your boss catch you reading it.”

—Wall Street Journal

Links to the legal authorities including statutes, regulations, and cases relied upon in The Handbook can be found online, including:

- New Legal Tools: Rule 1
- False Claims Act / Qui Tam: Rule 6
- Tax Whistleblowers: Rule 7
- Foreign Corrupt Practices Act: Rule 9
- Non-Disclosure Agreements: Rule 28
- International Whistleblowing: International Toolkit
APPENDIX

Most Important Mandatory Reward Laws

Statements from Officials

Reports
Most Important Mandatory Reward Laws

• False Claims Act | 31 U.S.C. § 3729-3732
• Internal Revenue Code | 26 U.S.C. § 7623
• Commodity Exchange Act | 7 U.S.C. § 26
• Foreign Corrupt Practices Act
Statements from Officials

- Bill Baer - Remarks at American Bar Association’s 11th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2016)
- Chad A. Readler, Department of Justice, Civil Division, in press release titled, “Justice Department Recovers Over $3.7 Billion From False Claims Act Cases in Fiscal Year 2017” (December 2017).
- Charles Grassley, Chairman of Senate Judiciary Committee, speech given on National Whistleblower Day (July 30, 2018) --- Watch the Video --- Read the Speech
- Christopher Ehrman, Director of the CFTC’s Whistleblower Office, Press Release “CFTC Announces Multiple Whistleblower Awards Totaling More than $45 Million”
- John A. Koskinen, Commissioner of the IRS, Remarks before the U.S. Council for International Business-OECD International Tax Conference
- Kevin M. O’Neill, Deputy Secretary, Securities and Exchange Commission, Order Determining Whistleblower Award Claim
- Stuart Delery - Remarks at American Bar Association’s 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (2014) and U.S. Department of Justice, remarks at American Bar Association’s 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement (June 5, 2014).
- SEC Enforcement Action on NDAs, In re KBR.
. . . it makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas.”

— Kevin M. O’Neill, Deputy Secretary, Securities and Exchange Commission, Order Determining Whistleblower Award Claim
The SEC “whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud.

— Chairman Mary Jo White, Securities and Exchange Commission, Remarks at the Securities Enforcement Forum, Washington DC (October 2013)
• “Rewards expand the informant reporting network critical to law enforcement success.” Case Name Redacted by FWS, FOIA document p. 199.

• “Without [the whistleblower's] candor in coming forward with this information, his willingness to aid Service agents by contacting former employees, and to provide testimony in federal court, this case would have never reached fruition.” Lochridge Ranch Case, FOIA document p. 104.

• The whistleblower’s “assistance was of such significance that it is highly unlikely this case would have been successful without [it].” Case Name Redacted by FWS, FOIA document p. 423.
U.S. Fish and Wildlife Service to U.S. Congress: “It has been found in case after case that the most effective technique for combatting this type of crime [wildlife trafficking] is purchasing evidence and information through informants and offering cash rewards to private citizens for useful information.”

“Without the assistance of [the whistleblower] it would have been unlikely we would have received the information about the illegal activity and never been able to identify the subjects involved in the activity.” “The initial targets are believed to have ties to organized crime organizations in Mexico and were suspected of having created fake identities to acquire U.S. citizenship and travel freely between both countries.”

“This case would not have been possible had [the whistleblower] not first made law enforcement aware of the crime and second, worked with law enforcement over a two and one-half year period to gather evidence necessary to charge and convict those involved in criminal activity...”

“I have approved the payment ... for an individual who provided crucial information resulting in saving the U.S. Fish and Wildlife Service thousands of dollars and investigator hours. Without the individual’s cooperation, knowledge, and commitment, the investigation would not have been successful.” “The recipient was instrumental in obtaining three successful felony convictions for trafficking in Endangered Species...”
Reports

• National Whistleblower Center, Exposing a Ticking Time Bomb, How Fossil Fuel Industry Fraud is Setting Us Up for a Financial Implosion – and What Whistleblowers Can Do About It (2020)
Whistleblower protection: An essential tool for stopping the corruption that threatens the world’s forests, fisheries and wildlife
TNRC's goal is to expand and deepen understanding of anti-corruption in natural resource management. Did this event provide you with new information?

a. Yes
b. No
c. Unsure
After attending this webinar, would you say that you have:

- A better understanding of effective strategies for reporting corrupt practices under U.S. whistleblower laws?
- A better understanding of important innovations in whistleblower protection?
- A better sense of assessing opportunities to advance whistleblowing, and strategies for managing risks?
Targeting Natural Resource Corruption

Harnessing knowledge, generating evidence, and supporting innovative policy and practice for more effective anti-corruption programming

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