



Session Report

Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.

Session Title: Whistleblowers Without Borders

Date & Time: Tuesday, 06.12.2022, 5:00 pm – 6:00 pm GMT -5

Report prepared by: Grace Schepis, Public Relations and Communications Assistant, Kohn, Kohn, and Colapinto LLP

Moderated by: Charlie Vazquez, Development Strategist, National Whistleblower Center

Panellists

- Siri Nelson – Executive Director of the National Whistleblower Center
- Ángeles Estrada – Executive Director of the Transparency and Anticorruption and Digitalization Initiative of the Tecnológico de Monterrey
- Carlos G. Guerrero – President of Derechos Humanos and Litigio Estratégico Mexicano

Webpage: <http://www.whistleblowers.org/iacc2022>

Handout used: <https://www.whistleblowers.org/wp-content/uploads/2022/12/IACC-Handout-2022.pdf>

Share the thematic focus of the session, its purpose and corruption risks.

Themes and focuses: Transnational Whistleblower protections, highlighting similarities and differences between the US and Latin America and Caribbean’s whistleblowing efforts, what other countries can use from U.S. programs, what the U.S. programs could do better to help people around the world about these programs.

“Whistleblowers Without Borders” was a panel made up of American and Mexican whistleblower attorneys and advocates. Siri Nelson, a former whistleblower attorney and current Executive Director of the National Whistleblower Center, was joined by Ángeles Estrada Executive Director of an academic anti-corruption and transparency initiative, and Carlos Guerrero, another panellist, has both non-profit and private experience in the whistleblowing field.

The goals of “Whistleblowers Without Borders” were as follows: (1) to provide audience members with a basic understanding of whistleblower protections in both the United States and Latin American and Caribbean region; (2) to ensure that audience members are aware of and know where to learn more about global whistleblower issues that exist within and outside the United States and Latin American and Caribbean region; (3) use a case study (Mark MacGann/Uber Files) to explore the whistleblower protections and intricacies that participants are familiar with, as well as those that they are weary of and want to ensure enforcement of in order to; (4) draft a letter to the United States legislators demanding the collaborative list of reforms to current U.S. whistleblower policies, laws, and norms.

Summary of panellists’ contributions & discussion points (please be as detailed as possible)

Siri Nelson – Executive Director of the National Whistleblower Center talked about whistleblowing in the United States and abroad. She gave a brief history and overview of the laws at play, including the False Claims Act, Dodd-Frank Act, Foreign Corrupt Practices Act, and more. She also talked about how some laws may originate in the United States but actually have transnational application around the world, available for non-U.S. whistleblowers to use. Siri also talked about the United States’ whistleblower reward programs, which allow for financial incentives to motivate and compensate whistleblowers who come forward with original information, cooperate throughout the government’s investigation, and help bring a sanctioned enforcement action. During the Q&A following the main event, Siri tied the discussion of award payments back to culture in saying that “what we currently have in most cultures is the idea that speaking up is bad, trouble-some, dangerous, disruptive, and something that people only do when they have bad faith,” when instead we should use monetary rewards as positive reinforcements for speaking up and doing the right thing. In this

case, we can make reporting fraud far more financially wise than ever thinking to commit it.

Carlos G. Guerrero – President of Derechos Humanos and Litigio Estratégico Mexicano argued for education about these laws, and how that knowing your rights is just as important as having them. He discussed reporting to external agencies when internal mechanisms fail, and how this external reporting should be just as protected and welcomed. Carlos talked about how just because a practice is not necessarily illegal, it can still be harmful and abusive. He discussed the dangers that exist for whistleblowers and human rights defenders in Mexico, and how the expansion of whistleblower protections and financial rewards around the world can increase the safety, and willingness, of reporters.

“Corruption is not a victimless offense,” he said, “and states need to be held liable for failing to protect whistleblowers.”

Ángeles Estrada – Executive Director of the Transparency and Anticorruption and Digitalization Initiative of the Tecnológico de Monterrey described how countries have become more cooperative in their fight against corruption as a result of the internationalization of this social cancer, yet protections for whistleblowers remain isolated to just a few countries.

She argued that even when there is a responsibility of each country to protect people who report corruption, governments that have anti-foreign corruption laws with extraterritorial jurisdiction, such the FCPA, must raise awareness among whistleblowers to letting them know that, under some circumstances, they can request to be protected by those countries even if they are not nationals.

Main outcomes of session (include quotes/highlights and interesting questions from the floor)

The participants were given an overview of whistleblowing in the United States, Latin American and Caribbean region, as well as abroad. Then, random assignment breakout groups were formed for a more intimate discussion on what to do as a whistleblower, based on a case study. This is where audience members had the chance to relay any fears or doubts they had with whistleblowing in their home countries. For many residing outside of the US, retaliation and arrest are very real consequences. We talked through these fears and imagined what an ideal whistleblower experience may look like, forming our letter to Congress.

“Economic globalization has globalized corruption, but unfortunately, it hasn’t globalized the protection of whistleblowers.” – Ángeles Estrada – Executive Director

of the Transparency and Anticorruption and Digitalization Initiative of the Tecnológico de Monterrey

“These laws empower people from around the world, no matter where they are, to report to [the SEC and CFTC], give them credible information about wrongdoing, and then the United States government takes action on the information they reported to ultimately give these whistleblowers rewards.” – **Siri Nelson – Executive Director of the National Whistleblower Center**

“Over the years, it has been proven that [financial rewards] motivate people to come forward, with significantly larger numbers of tips and higher quality of information received.” – **Siri Nelson – Executive Director of the National Whistleblower Center**

“First, whistleblowers are anti-corruption human rights defenders. Second, corruption is not a victimless crime or offense, so whistleblowers could become victims of corruption, and third, states should be financially liable for the omission to protect whistleblowers.” – **Carlos G. Guerrero – President of Derechos Humanos and Litigio Estratégico Mexicano**

Questions that arose during the panel, break out session, and Q & A period:

- Why are some countries against financial awards for whistleblowers?
- How can whistleblowers find out why the U.S. has or has not investigated or taken action on their tips?
- Are there any specific laws that are designed to protect law enforcement or members of the government who become whistleblowers?
- Does psychological harm ever occur in whistleblowing? How can we protect people from that?
- Is whistleblowing expensive? How might that exclude certain people that cannot afford to go head-to-head with financially-well-equipped corporations?
- Do you ever have to reveal your identity to anyone?
- What is the difference between a whistleblower and a witness?
- How long do these cases take?
- Who pays the attorney’s fees?

National Whistleblower Center Collected contact information from participants and gained their consent to be included on NWC’s mailing list and mailing lists to receive updates related to the workshop.

NWC will send letters to the United States Congress and U.S. regulators appraising them of the insights and questions generated by this group of global anti-corruption leaders with recommendations on how the U.S. can improve the country’s transnational anti-corruption strategy and whistleblower supported enforcement efforts to more effectively engage global partners.

Key recommendations for the future and concrete follow-up actions

- Transnational anti-corruption efforts should include effective whistleblower protections and incentives that are: well publicized; consistent across countries; easy to understand; and free where possible.
- Confidentiality and anonymity should be allowed and kept as the highest priority.
- Whistleblowers need security organizations in the position to receive whistleblower reports. It is important to create systems that ensure and demonstrate that whistleblowers who report will be protected.
- Reward provisions must be more widely proliferated and transnational cooperation around the distribution and provisions of rewards would be a strong show of support for whistleblowers.
- Tougher sanctions should be imposed on people and countries where fraud takes place, including a freeze on business
- Effective programs would benefit from a centralized reporting avenue accessible for all.
- Government's should engage in transnational agreements to ensure protection to whistleblowers residing in places where it is not yet offered.
- A whistleblower should feel a sense of protection for not only themselves but for their family as well.
- The members of the media reporting on whistleblower cases should also be protected from harm and retaliation.
- Censorship of journalists and advocates who report on whistleblower activities should be prohibited.

Using these recommendations, we will draft a letter to the U.S. Congress, explaining how whistleblower advocates and supporters of anti-corruption from around the world came together to brainstorm these necessary changes to existing and future laws.

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

We hope that we have shown workshop participants the possibilities of transnational whistleblowing and inspired them to action. While many have very real fears surrounding reporting in their countries, we hope to see this movement of free and fair practices spread to each corner of the world. In educating non-U.S. people on U.S. laws, we hope they feel encouraged to use them and are aware of the protections the U.S. government can offer for non-U.S. and transnational whistleblowers.

NWC hopes to see action by the U.S. Congress as we continue our action in drafting amended legislation through the National Whistleblower Center on a range of laws – anti-money laundering, wildlife protection, etc.

Through continued collaboration with our friends and fellow whistleblower advocates and experts in Latin America and the Caribbean, NWC hopes to spread education about the use of American laws while they continue to fight for the development of their own laws. We also hope to spread the cultural message that financial awards are not something to shame or fear, as they are empirically supported and cause an increase in the quantity and quality of tips.

Civil society organizations can continue to collaborate and build bridges between journalists, whistleblowers, whistleblower advocates and attorneys and anti-corruption enforcement authorities around the world.

Financial support is needed. From tangible economic supports to whistleblowers in countries where rewards and anti-retaliation awards are not available, and to help whistleblowers survive any economic instability arising around their whistleblowing activity. Financial support is also needed to provide more free or very low cost whistleblower legal services and education to potential whistleblowers. Finally, anti-corruption efforts both civil society and governmental, should designate programs targeting the development and support of programs which fortify and expand effective transnational whistleblower protections and incentives by engaging in legislative and regulatory advocacy and granting support to whistleblower advocates.

These solutions and possibilities will only continue to grow and strengthen as we increase the conversation about whistleblowing and the necessary protections in the U.S., Mexico, and abroad.

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

Non-U.S. governments → collaborate with the United States to integrate cooperation with U.S. anti-corruption efforts and educate your citizens about the availability of these laws and your country's support for the use of these laws. Engage in efforts to harmonize local whistleblower protections and anti-corruption efforts, establishing your own whistleblower programs which provide anonymity, anti-retaliation and reward provisions.

U.S. Government → proactively work with non-U.S. partners to establish transnational agreements to cooperate where whistleblower tips are involved, requiring that all enforcement agreements include actionable confidentiality and anti-retaliation

provisions. Improve interagency cooperation and public education efforts in the United States, for example ensuring that whistleblowers who provide assistance to several agencies are rewarded for the totality of their contributions - regardless of the existence of a reward program in every agency - and publicize the existence of cross agency confidentiality agreements. Publicize the contributions transnational whistleblowers have made to effective transnational anti-corruption efforts as part of U.S. diplomatic efforts - highlight how whistleblowers bolster the United States' ability to support non-U.S. anti-corruption, pro-democracy, public health, and economic development efforts.

Media + Lawyers → continue to protect and advocate for your sources paying special attention to improvements and risk areas for transnational whistleblowers. Avoid highlighting stereotypes about whistleblowers. Encourage whistleblowers to seek experienced whistleblower attorneys. Improve your own knowledge of whistleblower rights and protections in the region you operate so you can be prepared to safely work with whistleblowers.

General public → see rewards and speaking up as a good thing, not something that is disruptive or immoral. Work to foster an encouraging and supportive community, support people who challenge the status quo.

Civil Society and Funders → Always explore how whistleblowing connects with your work and target areas. Whistleblower issues touch every region, and industry, and safeguard every project and institution when incorporated into governance and accountability systems. Include whistleblower protections, incentives, and processes as well as support for whistleblower programs and education into every project and every aspect of your work. Dedicate resources to supporting legislative and regulatory pro-whistleblower advocacy efforts.

Rapporteur's name and date submitted

Grace Schepis, 09.12.2022