

STATEMENT FOR TOM DEVINE

Since 1978 there has been a global legal revolution in whistleblower rights that reflects international cooperation on a global scale. The Inter-American, African and European anti-corruption conventions ban whistleblower retaliation, and the European Union Directive has set the pace for global best practices. Within civil society, Whistleblowing International Network is the global hub for NGO's.

Part of the global consensus is fair burdens of proof, because they are the rules of the game for how much evidence it takes to win. So it is important to have a clear understanding. In all whistleblower laws, each side has burdens. The whistleblower must pass the first test, or the case is over. But if the whistleblower succeeds, the employer gets the last word and can still win by meeting its burden.

The EU Whistleblower Directive is the latest formula for these tests and represents the current global best practice. It states that the whistleblower must prove – 1) that he or she engaged in speech protected by the law; and 2) there was subsequent prejudice. If that happens, then the employer can still win by proving that the alleged retaliation actually was based on independent reasons that were not linked “in any way” to the challenged action. The Serbian-Palestinian resolution is a condensed mirror image of these global standards.

The bottom line is that for a valid report protected by law, an employer must prove alleged retaliation was based on an independent reason, not whistleblowing. These burdens of proof reflect the standards of 38 nations globally from the developed to the developing world. They are the rules for the First Amendment of the U.S. constitution and the 30 most significant U.S. laws.

I must offer a differing view to statements that there are no teeth to protecting reporters unless the government pays for their evidence with rewards or bounties. Contrary to common belief, studies consistently show that rewards do not serve as the primary motivator for whistleblowers. They risk

retaliation because they want to make a difference, not get paid. Data also demonstrates that after reward programs are created, retaliation increases. Employers become paranoid that those who raise concerns will sell out the organization for money and respond with preemptive strikes. Even worse, reward programs have threatened cultural solidarity with whistleblowers, a bond that is as important as legal rights. It has been a severe challenge for our movement to counter fears that whistleblower rewards revive the tradition of dictators paying citizens to turn in their neighbors.

In conclusion, burdens of proof are not merely legal constructs but reflections of our collective commitment to justice. Rewards may make it more dangerous to report corruption, the opposite impact of that intended by the resolution. That is why rewards are not part of the global consensus and only have been adopted by a handful of nations. Effective whistleblower protection means credible rights to defend themselves, not payments for evidence.