

ITMM 485 / 585

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Legal and Ethical Issues in
Information Technology



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Ch4: Professional Ethics and Codes of Conduct in IT

P2: Divided loyalties, whistleblower



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Learning Objectives:

Upon completion of this lesson the students should be able to:

- Define Professional Ethics and why a separate category of Professional Ethics in IT might be needed
- Describe the Purpose of Professional Codes
- Differentiate between Codes of ethics, Codes of conduct and Codes of practice
- Identify situations where divided loyalties pose significant ethical challenges - whistleblower
- Distinguish between Responsibility, Liability, and Accountability

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Conflicts of Professional Responsibility: Employee Loyalty and Whistle-blowing

- **What, exactly, is employee loyalty?**
- **Do employees and employers have a special obligation of loyalty to each other?**
- **Should loyalty to one's employer ever preclude an employee from "blowing the whistle" in critical situations?**
- **In which cases can whistle-blowing be justified?**

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Slide 1-7

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Do Employees Have a Special Obligation to Employers?

- Some believe we have a *prima facie* obligation of loyalty in employment contexts.
- In other words, all things being equal, an employee should be loyal to his or her employer and *vice versa*.

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Employer Loyalty (Continued)

- Consider some examples of employer loyalty where an employer either:
 - a) keeps an employee on the payroll even though that employee has a chronic illness, which causes her to miss several months of work.
 - b) retains several employees, despite the fact that their medical conditions have caused the corporation's health insurance costs to increase significantly, thereby reducing the company's overall earnings.

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Do Employees Have Special Obligations of Loyalty to Their Employers?

- Employees have to balance their obligation of loyalty owed to an employer against other obligations of loyalty they also may have?
- Loyalty is not something that an employee must give exclusively or blindly to one's employer.
- Loyalty should also be seen as an obligation that employees, as ordinary individuals, have to society as a whole, especially where safety and health issues are at stake.

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Divided Loyalties

- Divided loyalties can result in serious conflicts for employees.
- In certain cases, the moral dilemmas these conflicts generate are so profound that an employee must determine whether or not to "blow the whistle."

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Whistle-blowing (Continued)

- Boatright's definition identifies three key requirements regarding the nature of the *information* revealed in a whistle-blowing act,
- The information must be:
 1. nonpublic,
 2. voluntarily disclosed by a member, or former member, of an organization,
 3. presented to an "appropriate" audience.

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Whistle-blowing (Continued)

- Bok notes that whistle blowers "sound an alarm" from within the organizations in which they work.
- She also notes that whistle blowing can be viewed as a form of *dissent*, because those who blow the whistle make public their disagreement with their employers or with some authority.
- While dissent can include all forms of disagreement (e.g., religious, political, etc.), whistle blowing has the "narrower aim of casting light on negligence or abuse, or of alerting the public to a risk."

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Whistle-blowing

- What, exactly, is whistle-blowing?
- There is no "standard" or universally agreed upon definition of this controversial activity.
- A plausible definition has been put forth by John Boatright (2000), who describes whistle blowing as:

...the voluntary release of nonpublic information, as a moral protest, by a member or former member of an organization outside the channels of communication to an appropriate audience about illegal and/or immoral conduct in the organization that is opposed in some significant way to the public interest.

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Whistle-blowing (Continued)

- Other definitions of whistle blowing include explicit references to the role that negligence can play.
- For example, Sisela Bok (2003) defines a whistle blower as an individual who makes "revelations meant to call attention to negligence, abuses, or dangers that threaten the public interest."

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Whistle-blowing (Continued)

- Heinz Luegenbiehl (2015) and Richard De George (2010) both draw helpful distinctions for differentiating some relevant categories of whistle blowing.
- Luegenbiehl distinguishes between what he calls "open" and "anonymous" whistle blowing, noting that the identity of the whistle blower is known in the former type but not in the latter.
- De George articulates three contrasting sets of concepts affecting whistle blowing:
 - 1) internal vs. external,
 - 2) personal vs. impersonal,
 - 3) governmental vs. nongovernmental.

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Whistle-blowing (Continued)

- In the context of engineering, whistle-blowing incidents often occur in attempts to alert the public to a potentially unsafe product.
- They can occur because of either:
 - a) **overt wrongdoing** (where an employee informs the public about the immoral or illegal behavior of an employee or supervisor);
 - b) **negligence** (e.g., where one or more individuals in an organization have failed to act).

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When Should an Employee “Blow the Whistle”?

- Colleen Rowley, an FBI employee, came forth to describe the way in which critical messages had failed to be sent up the FBI’s chain of command in the days immediately preceding the terrorist attacks of September 11, 2001.
- Was it appropriate for this individual to blow the whistle on her supervisor?
- Was she also possibly being disloyal to her supervisor and fellow employees in doing so?

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When Should an Employee “Blow the Whistle” (Continued)

- Should individuals in positions of authority in corporations such as Enron and WorldCom have blown the corporate whistle about the illegal accounting practices in those firms?
- One could argue that failing to blow the whistle in the Enron incident resulted in thousands of individuals losing their retirement savings, and in some cases their entire life savings.

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Cases Where Whistle-blowing Could Have Saved Human Lives

- Consider two (now) classic cases where whistle blowing could have saved lives:
- The Challenger Space Shuttle (problems with faulty O-rings);
- Ford Pinto (problems with a faulty gas tank).

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When should Whistle-blowing Not Be Permitted?

- Sisela Bok (2003) defends whistle blowing in certain cases, i.e., where alternatives have been “considered and rejected.”
- She also believes that it should remain as a “last alternative,” due to its “destructive side effects.”
- George Brenkert (2010) notes that the whistle blower’s act of (voluntary) disclosure or revelation must also be *deliberate*; i.e., it cannot be accidental.
- Review Scenario 4-2 in the text (the Snowden case).
- Does it meet all of the criteria for whistleblowing?
- Can it be justified?

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Criteria for Blowing the Whistle in an Engineering Context

- Richard De George (1999) offers some specific conditions for when an engineer is either:
 - a) **permitted** to blow the whistle;
 - b) **obligated** to do so.

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When an Engineer is *Permitted* to Blow the Whistle

- In De George's model, one is permitted to blow the whistle when the:
- 1) harm that will be done by the product to the public is **serious and considerable**.
 - 2) engineers (or employees) have made their **concerns known to their superiors**.
 - 3) engineers (or employees) have received no satisfaction from their immediate supervisors and they have **exhausted the channels available** within the corporation, including going to the board of directors.
 - 4) The engineer has **documented evidence** that would convince a reasonable, impartial observer that his/her view of the situation is correct and the company policy wrong.
 - 5) There is strong evidence that making the information public will in fact **prevent the threatened serious harm**.

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Defending De George's Criteria

- Ladd (1991) believes that requiring engineers to **blow the whistle in non-extraordinary cases** (such as in De George's conditions 1-3) can be undesirable from an ethical point of view because it demands that these individuals be "moral heroes."
- Ladd agrees with De George that engineers should not have to be heroes or "saints."

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