

AN EXCESS?

I

Stephanie Simon knew Environmental Manager Adam Baines would not be pleased with her report on the chemical spill. The data clearly indicated that the spill was large enough that regulations required it to be reported to the state. Stephanie perceived Adam to be someone who thinks industry is over-regulated, especially in the environmental area. At the same time, he prided himself as a major player in maintaining XYZ's public reputation as an environmental leader in the chemical industry. "We do a terrific job," he often said. "And we don't need a bunch of hard to read, difficult to interpret, easily misunderstood state regulations to do it. We got along just fine before the regulators ran wild, and we're doing fine now."

When Stephanie presented her report to Adam, he lost his temper. "This is ridiculous! We're not going to send anything like this to the state. A few gallons over the limit isn't worth the time it's going to take to fill out those damned forms. I can't believe you'd submit a report like this. Stephanie, go back to your desk and rework those numbers until it comes out right. I don't want to see any more garbage like this."

What should Stephanie do?

II

Stephanie refused to rework the report. Instead she went back to her desk, signed the report, wrote a memo about her conversation with Adam, and then returned to Adam's office. She handed him the report and said, "You don't want to see any more garbage like this? Neither do I. Here's my original report--signed, sealed, and delivered. I've had it here. I'm not fudging data for anyone." As she turned to leave, she added, "By the way, Adam, before you get any ideas about making it hard for me to get another job, I have a nice little memo about our earlier conversation. I won't hesitate to send it right upstairs at the slightest provocation."

Discuss Stephanie's way of handling this problem.

III

Bruce Bennett was pleased to have the job vacated by Stephanie Simon. It was an advancement in both responsibility and pay. He knew about the circumstances of Stephanie's angry departure. All went well for the first several months. Then there was another spill. Bruce's preliminary calculations indicated that the spill exceeded the specified limit requiring a report to the state. He also knew how Adam would react to the "bad news".

Bruce had worked hard to get his present position, and he looked forward to "moving up the ladder" at XYZ. He certainly did not want to go job hunting at this time in his career. He thought, "These numbers are so close to falling below the limit that a little 'rounding off' here or there might save us all a lot of grief."

What should Bruce do?

IV

Imagine how the above situations would be evaluated from the following perspectives:

1. A member of the state's environmental protection agency.
2. The CEO of XYZ.
3. Attorneys at XYZ who handle environmental affairs.
4. Other industries faced with similar environmental problems.
5. Members of the community whose health may be adversely affected if XYZ and other industries do not responsibly handle environmental problems.

To what extent do you think Stephanie, Bruce, and Adam should take into consideration these perspectives in determining what their responsibilities are?

[Prepared with James Jaksa.]

COMMENTARIES

Joseph Ellin

I

Stephanie Simon is asked to 'rework those numbers' so that the environmental report no longer indicates an excessive chemical spill. Reworking numbers to fit management's pleasure is dishonest, wrong and should never be done. There is no ethical problem about this; the problem is a personal one for Stephanie since presumably her career is at risk. The problem may seem complicated because manager Adam Baines thinks the regulations are excessive and the company's spill is trivial, which could very well be the case (Stephanie may even agree with this assessment); nevertheless falsification of the report is not the way to handle the problem.

So what Stephanie should do is patiently explain to manager Adam why it would be wrong for her to falsify her data. Ultimately, her line must be that if he wants different data, he can provide it himself; let him write his own report. There's no need to indicate on the report why Stephanie didn't write it! Her course is to politely but firmly refuse, stating her reasonable grounds: it is a violation of ethics codes, it's legally risky, it compromises her credibility, it undermines public respect for engineers and for XYZ company. This refusal puts the ball in Adam's court; what move Stephanie will make next would depend on how Adam handles the situation. (Does he try to fire her for insubordination? Does he do nothing immediately, only to begin a campaign of harassment against her later? Does he refuse to recommend her for promotion? Each of these possibilities raises different problems. On the other hand, maybe he'll respect her integrity).

II

Unfortunately her way of handling the situation is confrontational and indeed apocalyptic. She quits! Is she really resigning because of this one incident? If so, she demonstrates instable temperament at worst and bad judgment at best, so perhaps the incident may have served a useful purpose in provoking her departure. (Maybe manager Adam deliberately causes such incidents to see how his subordinates will react?)

As for her threat to send Adam's upstairs, this threat of course amounts to blackmail. Adam may have to face up to his own indiscretion in order to get out from under Stephanie's threats; otherwise she may find other

opportunities to use it against him. So maybe he'd better write up the incident, admit what prompted her resignation, and send it upstairs himself. Presumably he'll learn not to ask subordinates to do something illegal and unethical.

III

There's no special problem here. Bruce, Stephanie's successor, is creating problems for himself by volunteering to alter the data. If 'rounding off' is within acceptable engineering practice, so that the state agency receiving the report may be expected to understand that figures might be rounded off, then Bruce is within his rights to round off, and might as well do so in a way that does save the company grief. (A note could be added to the report indicating that figures have been rounded off to nearest hundred, or whatever). If 'rounding off' is a grey area--no consensus on whether it's acceptable or not--then Bruce ought to follow company policy as presumably stated by manager Adam. To clarify that rounding off is company policy, Bruce might first ask Adam how he wants the numbers handled. But if rounding off is prohibited, Bruce can't do it.

IV

To evaluate from different points of view:

1. Presumably the state agency wants correct figures, and would regard Adam's demands as unacceptable and possibly illegal; the agency thus might consider legal action against XYZ company.
2. Does the CEO of XYZ share Adam's views about over-regulation? Probably he does; he therefore conforms to regulations in order to avoid legal problems and for reasons of image. There are costs which XYZ must bear, but finding out how to pay costs associated with regulation is part of the CEO's job. At the same time, if he thinks the regulations are excessively burdensome or environmentally unnecessary, the CEO has means of trying to get them changed, which he is undoubtedly pursuing. However skirting the regulations by falsifying data isn't among the CEO's options.
3. If the attorneys haven't told CEO officials to obey the law, they ought to.
4. It's not clear why other industries have any different problems from XYZ, or would have a different point of view. They may all be unhappy with the regulations, but they all share an equal interest in obeying them, while trying to change them via accepted channels.
5. That someone's health may be adversely affected seems to beg the question against Adam, who presumably thinks that the regulations are not necessary to protect anybody's health. We'd want to know more about what's behind Adam's views; he could be wrong in thinking that the industry is over-regulated. As for other employees, if Adam doesn't think the regulations are necessary, maybe the other employees at XYZ don't think so either. Since they have no responsibility for managing XYZ, they are in a good position to favor evasion of the regulations, which cost the company money and thus endanger profits and jobs. Of course someone could take the view that since the regulations are put into effect by a state agency, they must be necessary. Perhaps this is the view of some of the employees at XYZ. Obviously these employees will want the regulations obeyed, at least up to the point where their own jobs are threatened.

This question refers to "responsibly handle environmental problems." However the case doesn't raise this broad issue, but only the question of false reporting of marginal data. There is no challenge to Adam's statement that

XYZ does a terrific job, environment-wise. Obeying regulations characterized as difficult to interpret and so on, should not be equated with being responsible. Nonetheless the community is likely to think so, because of the adverse publicity that attends revelations that certain companies violated regulations. What the community's real environmental interests are, is a question not within the scope of this case.

Should the actors take into account how the community is likely to react to revelations of data falsifying? Certainly; the reaction will be adverse and against the interests of XYZ. If the fact that it's wrong isn't enough reason not to do it, then this reason might be sufficient. However lower-level employees might be excused for not considering the wider interests of the company, or even of the community. They ought to be honest and obey the law, for ethical reasons. They are entitled to their opinions about other matters, but aren't necessarily required to incorporate these opinions into their actions.

C.E. Harris

Before evaluating morally the actors in this drama, it may be helpful to look at Stephanie's way of handling the problem. Even if she did the right thing, did she do it in the right way? One of the important things that young professionals should learn as quickly as possible is that how one does something is sometimes as important--or almost as important--as what one does. The aim of a conscientious professional should be to avoid whistleblowing while still doing the right thing. Becoming a martyr should not be one's goal; rather, one's goal should be to act morally and responsibly while not becoming a martyr. This depends to a great extent on how one goes about doing what he believes ought to be done.

Assuming for the moment that Stephanie did the right thing, how could she have done it in a way that would not be so confrontational? Here is where imagination is crucial. Suppose Stephanie had said,

Adam, I know you are concerned about the employee time it takes to fill out the reports, but I feel so strongly about this that I would be willing to work up the reports on my own time if you will agree to submit them. Even if the company has to pay a fine, we will be on the right side of the law.

Expressions of personal conviction such as this often have a strong influence on other people. However, Stephanie might decide that this approach would never persuade Adam and that another more hard-headed approach might work. She might point out to Adam that these excessive leaks are eventually going to find their way back to regulators. If the company manages to conceal this one, there will be others. And when the regulators find out, the company will be in for some severe fines and its reputation as an environmentally conscious manufacturer will be clouded.

She might even decide that it is ethically permissible to agree to go along with Adam this time on the condition that he consider a different approach next time. Or perhaps she might simply confront him with her own misgivings--without accusing him of anything--and ask to be transferred. This might serve to stimulate his own conscience in a non-threatening way. Or perhaps the company has an ombudsman with whom she could consult.

If none of these ameliorating tactics works, Stephanie (and, later, Bruce) must make more difficult decisions. It is probably safe to assume that the small amount of additional pollutant is not going to be a significant health hazard. One moral issue, however, has to do with whether or not Stephanie and Bruce will participate in actions which are at least minor infractions of the law. There are certainly considerations of self-interest here. Could these two young professionals get into serious legal difficulties if the infractions were discovered?

Let's say that both Stephanie and Bruce decide that a single minor infraction might be something their consciences could accept. They might reason from a **utilitarian** perspective, which requires that we maximize the well-being of everyone who is affected by the action. From this perspective they might reason that, if they refuse to obey their superior, the harm to their own careers would be so great and the good that would accrue to the public would be so small, that their harm outweighs the public good. (After all, from a utilitarian perspective, their own well-being should be considered as important as the well-being of any other individuals.)

The real difficulty with this solution is that this type of incident will probably be repeated. It is clear to Stephanie and even clearer to Bruce that Adam intends to violate the law on a regular basis. This means that the harm to the public will be multiplied by many similar incidents. Stephanie and Bruce must also ask themselves about the consequences to other managers in the company and to other companies of violating the law on a regular basis. Whatever the final outcome of the analysis, this consideration makes complicity in Adam's actions more difficult to justify.

Ted Lockhart

I

The most obvious interpretation of Adam's comments to Stephanie is that he is directing her to falsify the data so that the spill appears to be under the limit requiring reporting to the state. To be sure what he has in mind, Stephanie might ask him to be clearer about what he wants her to do. For example, she might ask him exactly what he means by "rework the numbers." Probably he would resist saying directly that he is telling her to falsify data, since this would incriminate him, or at least embarrass him, if the facts were to come out. Moreover, he might regard her request for clarification as an attempt to trap him in an illegal or improper action and this might anger him even more. However, it would be advisable to try to avoid any misunderstanding about what she is being directed to do even if she is already fairly sure.

If it becomes clear that falsifying data is what Adam has in mind, then Stephanie must weigh her duty to respect institutional authority, in the person of Adam, against her duties to conform to the environmental regulations and generally to protect the safety, health, and welfare of the general public as well as her duty not to lie or misrepresent the facts. While it may be true that in this one case a "few gallons over the limit" would have no discernible negative effects on the public, Stephanie should consider what the effects would be if everyone in the industry "bent the rules" in the way that Adam appears to be demanding. It is not clear even that Adam's directive to "rework the numbers" is a legitimate exercise of his authority at XYZ or that loyalty to her employer in this situation means doing as he says. Quite possibly, XYZ's long-term interests would best be served by Stephanie's refusing to "rework the numbers," since there is a possibility that the falsification would be exposed and result in criminal charges against XYZ or serious damage to its reputation.

Adam's main concern seems to be the amount of time that would be required to fill out the forms that would go to the state, which is of dubious ethical significance. Based on all these considerations, the most reasonable course of action for Stephanie would be to tell Adam politely and calmly but firmly that she will not falsify data in her report.

II

Besides agreeing to falsify data as Adam directs, it is difficult to think of a less constructive course of action than the one that she pursues here. Perhaps there is little chance that Adam's mind can be changed, but her actions

eliminate that as a possibility. At the very least, Stephanie should give him her reasons for refusing to do as he requests. Probably he will not be willing to listen to Stephanie, but at least she should try. Furthermore, by resigning precipitously, she may be leaving a job that is in most respects a very good job and endangering her career. If the problem she is having with Adam could be resolved within XYZ without her taking such drastic action, then that would seem to be a much more satisfactory outcome. Also, by leaving XYZ abruptly, she does nothing to prevent similar situations in the future. Perhaps, Adam's superiors at XYZ are not fully aware of his behavior and would put a stop to it if it were reported to them.

If Stephanie resigns without attempting to correct the problems Adam is causing her, then it is likely that her successor(s) will encounter the same difficulties and that Adam's mode of behavior will not change unless someone contests his decisions. Therefore, Stephanie's passing the buck to someone else will at best only postpone resolution of the problem. Adam may well make Stephanie's life unpleasant if she decides to defy him, and Adam's superiors may take his side of the argument. However, if there is a significant chance that Adam's behavior would be modified or curtailed in such situations as this one by her staying on the job, then this seems the most constructive choice.

III

The situation that Bruce faces appears somewhat more problematic than the one that Stephanie found herself in, since it is less clear that for Bruce to "round off" in order to have the numbers fall below the limit for reporting to the state would constitute falsification of data and ethically impermissible lying or deception. In Bruce's case, there seems to be genuine uncertainty about the accuracy of the measurements (data) and, in particular, how significant are the digits that he is considering "rounding off". Engineers are taught early in their professional education how to tell which digits in calculated quantities are significant and should be taken into account. They also learn that measurements are often imprecise and can reliably be placed only within certain tolerances associated with the accuracy of the measuring instruments, the circumstances under which the measurements are obtained, etc. Thus, in some situations, whether a certain measurement is above or below a certain limit may be impossible to determine with assurance.

In general, there is nothing wrong with "rounding off" if it is done in accordance with established engineering and mathematical precepts. However, if Bruce's rounding off were in violation of those precepts and were motivated by his desire not to antagonize Adam or not to jeopardize his job standing at XYZ, then this would be a violation of the ethical considerations discussed in Scenario I above. It would be wrong for the same reasons that Stephanie's agreeing to falsify data at Adam's insistence would be wrong. Bruce should make the most reasonable estimate possible of the dimensions of the spill in light of the available data and what he knows about the accuracy of the measuring instruments or processes, and then he should use that estimate in his report. He should not "round off" primarily for the purpose of not confronting Adam with "bad news". No doubt Bruce's job and his career at XYZ are important to him. However, it is difficult to see what ethical significance they have in this case.

IV

A member of the state's environmental protection agency would likely consider conformity with the state's environmental regulations regarding chemical spills to be the most important consideration and would argue that XYZ should always make a good faith effort to determine whether spills exceed the limits set by those regulations in deciding whether they should be reported to the state.

The CEO at XYZ would perhaps adopt a "bottom-line mentality" about reporting chemical spills and want to consider the total long-term expected consequences based on risks of sanctions if the spills are reported as exceeding the regulatory limits, the risks of being discovered and prosecuted if the spills should be but are not reported to the state, the effects on consumer confidence in XYZ's products of the various possible outcomes, the effects on present and future XYZ stockholders of those outcomes, and the ultimate effects on profits, both short-term and long-term.

XYZ's attorneys would perhaps be interested primarily in the likelihood that the state would file charges against XYZ for violating regulations by not reporting chemical spills and, if so, whether XYZ would be able to defend itself against the state if required to do so.

XYZ's competitors in the chemical industry would perhaps be concerned about whether XYZ was gaining a competitive disadvantage over them by not incurring the expense of having effective protection of the environment against chemical spills and instead flouting the state's environmental regulations intended to curb such spills.

Members of the community would, of course, be concerned about the risks to their lives and health that would result from environmental regulations concerning chemical spills not being conformed to by the chemical industry or not being effectively enforced by the state.

It is often considered important that, in making ethical decisions, one's actions must be universalizable. In general terms, one's action is universalizable if he/she would make the same moral judgment if anyone else were to perform the same action in any situation that is similar to the current situation in relevant respects. This means that, if one's action is to pass the universalizability test, then he/she must be able to imagine himself/herself on the "receiving end" of the sort of action being contemplated and also willing to make the same moral judgment about the other person's performing the same action.

This requirement means that Stephanie, Bruce, and Adam should all consider whether the actions that they are contemplating can be universalized before adopting them, and it is quite possible that doing so would allow them to eliminate certain courses of action from further consideration. However, the universalizability test will not always enable moral agents to resolve their disagreements, since one person may consent to the universalization of a certain sort of action while another may dissent from the very same universalized action. It seems that universalizability is a necessary but not a sufficient condition of the ethical justifiability of actions.

Lea P. Stewart

Tad Tuleja in his book, Beyond the Bottom Line (Penguin Books, 1985), discusses five stakeholders of the modern corporation--owners, employees, customers, community members, and society. He claims that companies are ethically obligated to consider the best interests of each of these groups when making decisions. And he even contends that it makes good business sense to do so. This case can be analyzed by examining XYZ's responsibilities to these five groups.

Assuming that XYZ is a public company, the stockholders are the owners of the company. It would be easy to say that XYZ stock will do better if the company never reports a chemical spill to the state. This is a valid assumption if XYZ truly never has a chemical spill. Under the present circumstances, however, it seems that XYZ has had a number of spills. What will happen to the company's stock (and, thus, the owners' investments) if people learn that XYZ has been covering up chemical spills for years? Is the potentially bad publicity worth the

short term gain of not reporting several relatively minor spills as they occur?

What are the implications of this case for the employees of XYZ? Clearly, Stephanie Simon's refusal to modify her data cost her a job. Bruce Bennett is now in the ethically uncomfortable position of feeling that he has to change his calculations to avoid angering his boss. Adam Baines' reluctance to report chemical spills to the state encourages his employees to change their data to avoid the necessity of filing reports--in other words, to lie. Sissela Bok reminds us in her book, Lying (Vintage, 1978), that lies harm the liar as well as the person being lied to. Adam's reluctance to file reports with the state is potentially harmful to both the state and to Bruce.

How are XYZ's customers affected by this situation? XYZ has a reputation as "an environmental leader in the chemical industry." XYZ probably has gained a number of customers because of this reputation, but this reputation appears to be unjustified. Is it ethical to solicit business from customers based on a corporate reputation that is misleading? Can an "environmental leader" ignore regulations when it feels that the industry is over-regulated? Do its customers deserve to know this fact?

XYZ has violated its responsibility to its local community when it refuses to report chemical spills that the state has mandated should be reported. The state has determined the acceptable limits for reporting spills. XYZ violates the trust of the community if it does not comply with these regulations. If XYZ truly believes that these regulations are excessive, it should work to change them at the state level.

The final corporate stakeholder, according to Tuleja, is society. How is society affected by XYZ's actions? Our democratic society is based on principles of openness and trust. Businesses are expected to deal with their stakeholders in an open manner. Individuals trust corporations to deal with them ethically. Of course, all corporations do not uphold these principles at all times. But if the majority of companies grossly violated these principles most of the time, our system would collapse. Adam Baines' actions may seem like a minor violation of the system. He refuses to report "a few gallons over the limit." But how much is enough to report? If a company begins to violate reporting standards, when does it decide that a spill is big enough to report? What happens when each company decides to draw the line differently? Eventually, who will report anything?

Adam's actions are like the ripple that occurs when a rock is thrown into a pond of water. One action has an effect that reaches far beyond the initial circumstance. Failing to report a "small" chemical spill is a violation of ethics that can have an impact on a company's owners, employees, customers, community members, and even on society.

Henry West

I

Some ethical decisions are a matter of principle, such as whether an action would be honest or dishonest. It would be dishonest of Stephanie to rework the report. But ethical decisions often involve considerations of consequences as well. One is sometimes justified in telling a lie to avoid hurting someone's feelings or in professional undercover work, such as espionage. Would dishonesty in Stephanie's situation be justified?

Stephanie could be persuaded by Adam's claim that the few gallons don't matter, that the regulations are an unnecessary nuisance anyway, and follow his order. On this one occasion, by this one company, the few gallons don't make much difference in the preservation of a clean environment. But what if every company reasoned the same way. The question, "What if everyone did that?" is ethically relevant. What if everyone who did just a little

damage to the environment rationalized that it was so little as to be negligible? If each company violates environmental standards by just a little, rationalizing that such a little bit is negligible, the sum total of so many little bits is a lot and is not negligible.

Another issue here is the question of legality. Even if the spill is so minor as to hardly be worth reporting, to falsify data to avoid reporting it is breaking the law. In some cases, breaking the law is justified, when the law is unjust, such as racist laws in South Africa. If a law is regarded as a nuisance, as these regulations are regarded by Adam, is that grounds for ignoring it?

If Stephanie isn't willing to rework the report, she still has several options. She can resign from the company. Or she could ask to be reassigned to another department. Or she can try to keep her job but ask Adam to get someone else to rework the report. In any of these ways, she can maintain her personal integrity by not being a participant in a dishonest and illegal manipulation of the figures. Is that all that is ethically required of her, or does she have an obligation to engage in a stronger protest, such as by making a public issue out of Adam's asking her to do something dishonest and illegal? She could begin by pointing out to Adam, on the spot, that is what he is trying to do. She could also try to report it to his superior. If Adam proceeded to have the figures reworked by someone else, she could report it to the press or to state investigators.

II

Stephanie is refusing to be dishonest and standing up to Adam. She is maintaining her integrity and self-respect. She is also taking herself away from the company, which will probably continue its practices as before. She is looking out for her future career, but not doing everything that she could to make an issue out of Adam's unethical demand upon her. Should she do more, and would it be worth the trouble? The record of whistleblowers isn't very good. Usually they are personally hurt by demotions and firings and don't get anything done to change improper practices. Is that grounds for taking care of herself and leaving the company to carry on in its harmful ways?

III

Bruce's position may be different from Stephanie's. He might have much more difficulty getting another job. The spill may not have so clearly exceeded the minimum requiring its report. He hasn't yet been ordered by Adam to fudge any data. But in other respects it is the same. If he deliberately changed the figures, it would be dishonest and illegal. And he could still ask, "What if everyone did that?"

IV

The state's environmental protection agency is charged with enforcing regulations, but sometimes the violations are so minor that it is not worth the trouble to make an issue of them. The agency would, however, want its data to be accurate in order to make informed decisions. Falsified reports interfere with informed public policy.

The CEO of XYZ has a responsibility to owners to run an organization with a good reputation, and spills, even minor ones, are bad publicity. But then engaging in falsifying data, if found out, might be even worse publicity. The CEO, however, ought to want XYZ to be an organization operating within the law, even aside from the bad publicity if illegal activities became known.

Attorneys for XYZ would find it very difficult if data clearly indicated that the spill should be reported, and it

came to be known that data was falsified to avoid that. But they are paid to defend the company in such situations; their job is to present the company's point of view in the adversarial system, and it is environmental regulations and their apparent violation which keeps them in business. The adversarial legal system makes attorneys the agent of their employers, not judges as to whether the company was correct or incorrect in its practices. If the attorneys think that they are defending the company in irresponsible practices, should they refuse to represent the company?

Other industries faced with similar environmental problems may be in competition with XYZ. They might regard it as unfair competition if XYZ is failing to acknowledge spills and not having to spend the money to clean them up or the public relations money to combat the bad publicity. Or they may take the attitude that it is common practice to fudge data when a little rounding off would save a lot of grief, and feel justified in doing the same. If it is common practice, does that make a difference in the ethics of the matter?