

# Legal Updates:

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## Doing the Right Thing – Creating a Culture of Accountability

February 17, 2012

# Did Penn State do the right thing?

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- A. Yes
- B. No
- C. It depends
- D. I'm not sure

# “Doing the right thing” = ethics ... What do we mean by “ethics”?

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An array of definitions exists:

- The branch of philosophy that deals with issues of right and wrong in human affairs
- A system of moral principles, rules and standards of conduct
- With regard to professions, a code of professional standards comprised of duties to the profession and the general public
- “Doing the right thing”

# Different ways of understanding ethics...

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- Teleological theory (telos=goal)
- Moral value of an act depends on the consequences (e.g., seek the greatest good for the greatest number)

# Different ways of understanding ethics...

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- Deontological theory (deon=duty)
- Moral value of an act is intrinsic to the act ... it's not just about consequences, but what is your duty
- Some things we should not do ... regardless of the consequences

# Different ways of understanding ethics...

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- Virtue theory
- Focus on the character of the person, not the consequences or duty
- Moral virtue is judged by the choices a person makes + can be acquired through training

# Ethics in the workplace

## - Business Ethics

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- Ethical rules and principles within a commercial (or non-profit) context
- Right or wrong, acceptable or unacceptable behavior *within* the organization
- Determined by key stakeholders, customers, and the market in which the business operates

# Why do ethics matter?

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- Doing the “right” thing – duty, virtue, morality as personal values
- Organizational values – stewardship over assets (and donations in non-profit organizations)
- Practical reasons – unethical behavior results in loss of money, criminal penalties, poor morale

# Culture

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- Culture = the sum of behavioral norms of a group or organization
- There can be (are often) different cultures within one organization
- The importance of the individual to the group: "*Corporations* don't make the ultimate decisions about ethics. Ethical choices are made by *individuals*."

(M. Euel Wade, Jr.)

# Accountability

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- A sense of responsibility; a willingness to be answerable to others
- Responsibility ... not blame
- Responsibility = ability to make a response ... future and action-focused

[Blame is past-focused and is more about isolating people, making them feel bad rather than accountable.]

# What are the elements of a culture of accountability?

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- Communicating what the organization + culture values
- Living the values of the culture; setting an example individually
- Keeping promises + commitments to the values
- Supporting actions that reflect these elements

# The “Legalization” of Business Ethics

## Federal Sentencing Guidelines for Organizations:

7 steps of an “effective program to prevent & detect violations of law” may mean lower criminal sentences for organization’s officers:

- standards and procedures (code of ethics)
- high level oversight of compliance with laws
- care in delegation of authority
- effective communication (training)
- systems to monitor, audit & report
- consistent enforcement
- continuous improvement

# Relevant University Policies

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- Finance & Administration Code of Ethics
- Ethical Conduct in Academic Research, Scholarship, & Creative Activities
- University Conflict of Interest Policy
- Non-Retaliation Policies – Policy on Harassment, Whistleblower Policy
- Disclosure of Investigator Significant Financial Interests Related to Sponsored Projects
- Nepotism Policy (Hiring of Relatives)
- Student Code of Conduct: *Academic Integrity; Respect for Others; Respect for the University Community; Respect for the Law*
- Reporting Policies – Clery Act, Workers Compensation, Insurance Claims

# Scandals: Real Life Lessons in Ethics

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- Child Sexual Abuse – Penn State, Syracuse U. (2011)
- Fraudulent Research Data – Dutch researcher, Diederik A. Stapel invented data for dozens of research papers in social psychology (2011).
- Corruption in Athletics - Ohio State U. players traded memorabilia for tattoos, car deals (2011).
- Fraudulent Degrees – Dickinson State U. (2012) – degrees awarded to students (hundreds) who didn't finish coursework; others enrolled who couldn't speak English or hadn't achieved "C" average required for admission.
- Cheating – Long Island high school students paid others to take their SATs; criminal charges against 13 students for participating in testing fraud (2011).

# Top 10 Unethical Behaviors Reported by Employees:

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- conflicts of interest
- discrimination
- drug or alcohol abuse
- gift/entertainment violations
- improper accounting procedures
- lying on reports or falsifying records
- lying to supervisors
- sexual harassment
- theft
- violation of environmental laws

*Business Ethics* (4<sup>th</sup> ed.) Ferrell,  
Ferrell, and Fraedrich (1999)

# Key Influences on Ethical Behavior:

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- personal values
- friends/coworker influence
- supervisor influence
- senior management influence
- internal drive to succeed
- performance pressures
- lack of consequences or punishment (no retaliation)

# Key Causes of Unethical Behavior:

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- personal gain, personal problems, financial pressure, addictions
- meeting overly aggressive financial or business objectives
- meeting schedule pressures
- helping the organization survive
- resisting competitive threats
- saving jobs
- rationalizing that others do it

# Why Misconduct Is Not Reported:

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- fear of not being considered a team player
- did not think corrective action would be taken
- fear of retaliation (from management)
- "no one else cares, why should I?"
- did not trust the organization to keep report confidential

# Factors Influencing Organizational Ethical Behavior:

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Ethical Issue Intensity

+

Individual Factors

+

Corporate Culture

(including significant others & opportunity)

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= Ethical or Unethical Behavior

# “Call the police!...?”

## – Reporting Crime

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In Pennsylvania, a citizen must report:

- A. Any crime to which he/she is a victim, witness, or is otherwise aware.
- B. Any crime involving a victim who is a minor (<18 yrs.).
- C. Only crimes that are felonies.
- D. Any crime involving use of a deadly weapon.
- E. None of the above.

# Who must report crime that occurs on the Lehigh campus?

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- A. Everyone.
- B. Only the LUPD is required to report crimes to the federal/state governments under the Clery Act.
- C. Any 'Campus Security Authority' is required to report crimes to LUPD.
- D. Only crimes that violate Student or Employee conduct codes must be reported (to Student Conduct Office or HR).

# Who must report crime that occurs on the Lehigh campus?

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- **EVERYONE** should report crimes that occur on campus to LUPD

Note: Under the Clery Act, LUPD must report statistics annually on all crimes reported to LUPD and any 'Campus Security Authority'

CSA is defined as: "an official of the institution who has significant responsibility for student and campus activities, including but not limited to student housing, student discipline, and campus judicial proceedings – includes, e.g., coaches, faculty advisors to student groups, etc.

## Beyond Penn State: When to Report Suspected Child Abuse

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- A person's legal obligation to report suspected child abuse is imposed by state, not federal, law.
- State reporting laws vary considerably.

# Pennsylvania Law on Reporting Suspected Child Abuse

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- **“Child”**: A person less than 18 years of age; a minor
- **“Child abuse” includes:**
  - Any act or failure to act which:
    - causes non-accidental serious physical injury to a child;
    - causes mental injury, sexual abuse or sexual exploitation of a child; or
    - creates an imminent risk of serious physical injury, sexual abuse or sexual exploitation of a child.
  - Serious physical neglect that endangers a child’s life or development.

[23 Pa. Cons. Stat. Ann. § 6303]

# Pennsylvania Law on Reporting Suspected Child Abuse: General Rule

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- **A person who, in the course of employment, occupation or practice of a profession,**
- **comes into contact with children**
- **shall report** or cause a report to be made . . .
- **when the person has reasonable cause to suspect,** on the basis of medical, professional or other training and experience,
- **that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated**
- **is a victim of child abuse,** including child abuse by an individual who is not a perpetrator.

# Partial List of Persons required to report under Pennsylvania law

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- Licensed physician
- Medical intern
- Registered Nurse/Licensed practical nurse
- Member of the clergy
- School administrator, teacher, or nurse
- Day care center worker or any other child-care worker
- Mental health professional
- Peace officer or law enforcement official

# Pennsylvania Law on Reporting Suspected Child Abuse: Institutional Reporting

- “Whenever a person is required to report under subsec. (b) in the capacity as a staff member of a medical or other public or private institution, school, facility or agency, **that person shall immediately notify the person in charge** of the institution, school, facility or agency or the designated agent [of such person]. Upon notification, **the person in charge [or agent] shall assume the responsibility and have the legal obligation to report**
- This chapter does not require more than one report from any such institution, school, facility or agency.”

# Scenario 1: "A Secret"

## What do you do?

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- A. Respect and follow the wishes of Emily and not tell anyone.
- B. Report it to LUPD.
- C. Try a few times in the coming days or weeks to convince Emily to convince her roommate Allison to report it to LUPD.

## Scenario 2: “In the Parking Lot” What should you do?

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- A. Contact Jerry and tell him what you saw so he has the chance to explain, then decide what to do.
- B. Report what you saw to your supervisor.
- C. Report what you saw to LUPD.
- D. If Jerry does not volunteer at Lehigh for any activities involving children, you don't need to report it.
- E. Mind your own business; people have the right to raise their children as they wish.

# “Ouch!” – Reporting Injuries

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If someone is injured on the Lehigh campus ...

- A. Under the HIPAA privacy law, the person injured has the right to decide if he/she wants the injury reported.
- B. It should be reported if it occurs on the job.
- C. It should be reported to Risk Management.
- D. It should be reported if the injured person mentions suing Lehigh.

# Reporting Injuries

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- ALWAYS report injuries
- The right thing to do: get help, follow up on injuries + safety measures
- Workers compensation compliance
- Reporting for insurance coverage

If you are subjected to, or witness, discrimination or harassment at Lehigh ...

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- A. You can report it to the Harassment Policy Officer.
- B. You can report it to the Bias Response Team.
- C. It's your decision on whether to report it.
- D. You wouldn't know what to do.

# Where do I go to report discrimination or harassment?

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The best institutional policies for reporting discrimination or harassment:

- A. Have multiple places where people can go to report discrimination or harassment.
- B. To avoid confusion, have a single place or person where people can go to report discrimination or harassment.
- C. Have a clearly designated official who is responsible for ensuring that action is taken after a report of discrimination or harassment.

# If you are subjected to, or witness, discrimination or harassment at Lehigh ...

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You can report it to:

- Harassment Policy Officer
- Anyone in the Informal Network (Harassment Policy)
- Human Resources
- Bias Response Team
- Provost or VP for Finance & Administration
- Dean of Students
- Ombudsperson
- General Counsel
- ... and more

The highest number of charges filed with the Federal Equal Employment Opportunity Commission (EEOC) in 2011 was based upon:

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- A. Disability
- B. Sex
- C. Race
- D. None of the above

# Retaliation Claims with the EEOC

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The number of retaliation claims filed with the Equal Employment Opportunity Commission in 2011 was:

- A. 7,000
- B. 37,000
- C. 87,000
- D. The number is confidential under Federal law.

# Protections against Retaliation

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- Retaliation occurs when an employer:
  - takes an adverse action (termination, refusal to hire, unjustified negative references, etc.)
  - against a covered individual (persons who have opposed unlawful practices, etc.)
  - because (s)he engaged in a protected activity (opposition to practice believed to be unlawful, participation in proceeding, request of accommodation, etc.).

## Retaliation is Unethical and Illegal because ...

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- It punishes employees for “doing the right thing”
- It creates a culture of silence rather than one of accountability
- It places the University and its resources at risk

# Protections Against Retaliation

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- **Policy on Harassment:** "... prohibits retaliation against anyone who reports or is believed to have reported harassment, or who is a witness or otherwise involved in a harassment proceeding. Such retaliation will be considered a serious violation of this policy, regardless of whether an informal or formal complaint is upheld. Encouraging others to retaliate is also prohibited."
- **Policy on Ethical Conduct in Acad. Research**  
"...the potential vulnerability of Complainant and witnesses must be recognized and efforts made to prevent retaliation for allegations made in good faith, even if found unjustified."

# University Whistleblower Policy

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- Lehigh University expects its employees to perform their duties in accordance with applicable laws and regulations, University policy and procedures, and the highest ethical standards.
- Employees and others who have good-faith serious concerns about misconduct are encouraged to raise them with the University before seeking external resolution.
- University faculty, staff, students or volunteers shall not retaliate against any individual who, acting in good faith, reports suspected or actual wrongful conduct.

# University Ethics Hotline: Protection Against Retaliation

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- University faculty, staff, students or volunteers shall not retaliate against any individual who, acting in good faith, reports suspected or actual wrongful conduct.
- University faculty, staff, students or volunteers shall not directly or indirectly use or attempt to use the official authority or influence of their offices for the purpose of interfering with the right of an individual to make such disclosure to the individual's immediate supervisor or other appropriate administrator or University official.
- Any violation of these prohibitions against retaliation shall constitute a violation of University policy and may result in disciplinary action.

# Lehigh Amnesty Policy?

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Lehigh has an amnesty policy that applies to students when:

- A. A student violates the Code of Conduct but it occurs off campus.
- B. A student violates the Code of Conduct due to intoxication and agrees to visit the Counseling Center.
- C. A student calls for help when another student is sick because of alcohol or drug use.

# University Medical Amnesty Policy

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- Students who seek emergency medical attention for themselves or someone else related to consumption of drugs or alcohol will not be charged with violations of the Lehigh University Code of Conduct related to that consumption provided that the student subsequently completes an evaluation and any recommended treatment at the University Counseling and Psychological Services Center within a reasonable time frame to be determined by the Office of Student Conduct.

## Scenario 3: “Expensive Software”

### What should the coordinator do?

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- A. Follow the professor’s direction since software licenses are a rip-off and students shouldn’t have to pay more.
- B. Call the Business Software Alliance’s “No Piracy” hotline and report the professor.
- C. Call the University’s Ethics Hotline.
- D. Find additional funds in the department’s budget and use them to buy the 10 additional software licenses.

## Scenario 4: “A Win-Win”

### Is there a problem?

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- A. The problem is that the equipment was purchased with a government grant.
- B. There is a conflict of interest under the University’s Conflict of Interest Policy.
- C. There isn’t a problem – Lehigh policy permits this, the faculty member approved it, and it is a “win-win”.

# University Conflict of Interest Policy

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Excerpt:

“A conflict can occur if a faculty or staff member has a relationship (including full/part time employment or ownership interest) with any entity engaged in the delivery of educational or other services that fall within the scope of the University’s activities...”

# Conflicts of interest that arise on campus must be reported:

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- A. Once per year on the Conflict of Interest Questionnaire sent by the Internal Audit Office.
- B. Whenever a conflict of interest arises.
- C. Whenever a conflict of interest is significant – i.e., an interest over \$10,000 is involved.

## Scenario 5: “The Pleading Mother”

### What should the staff member do?

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- A. Cite the FERPA privacy requirements again and decline to provide any information.
- B. Suggest information generally to help her, without violating FERPA:  
“Let’s just say he’s not an ‘A’ student according to his record.”
- C. Tell her about her son’s record because FERPA has an exception for telling parents info. to protect a student’s health or safety.
- D. Hang up immediately.

## Scenario 6: "Honesty is the Best Policy?" What do you answer?

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- A. \$15,000
- B. \$10,000
- C. \$5,000
- D. Reply that your budget is confidential.

## Scenario 7: “Unforeseen Consequences” What should Professor Smith do?

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- A. Follow the University’s Academic Integrity Code and treat the student as she would treat any other student.
- B. Be compassionate, make an exception, and allow the student to rewrite his paper.
- C. Refer the case to the Assistant Dean of Students in the Office of Student Conduct.

# Questions?

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