

Ted Lockhart's Commentary on "New Supervisor Policies"

Commentary On
New Supervisor Policies

I

It would be easy for Tom to convince himself that "it will make no difference" if he agrees to perform the final supervisions alone without Charles' oversight. Both he and Charles are convinced that he understands the installation procedures very well at this point. There is only one more day of Charles' monitoring of Tom's work, and it is very unlikely that one day more would make any significant difference in Tom's ability to handle the job that he will have to handle alone starting the very next work day. However, for Charles to "put... [his]... tag on" with-out actually supervising Tom's work would constitute a deliberate deception. Of course, Tom might think that such a deception would be entirely Charles' responsibility--not Tom's--since, after all, Tom does actually supervise the installation and thus he would not be guilty of any misrepresentation.

Moreover, Tom may not believe that it is his obligation to police Charles' actions in the situation. After all, Charles is Tom's supervisor and not conversely. However, it is arguable that this way of looking at the situation is distorted. For Tom to perform his supervision without Charles' oversight and knowingly to allow the impression to be given that his work was overseen as called for by Howard's inspection policy might be regarded as Tom's being a party to that deception. Perhaps Howard's policy is too careful and needlessly restrictive. Perhaps Tom and Charles should try to convince Howard that this is the case and that the rules should be relaxed in this particular situation. However, Howard would probably resent learning after the fact that his rules were violated without his prior knowledge.

The only apparent reason for violating those rules without informing Howard is that doing so might cost Charles a day's pay. Tom may be very sympathetic to Charles' plight and very reluctant to risk confronting Charles with a refusal to handle things the way Charles wants to handle them. However, these seem insufficient to offset the opposing ethical considerations--viz. that for Tom to do as Charles wishes might be knowingly to participate in a deception and a serious breach of trust. Therefore, the most reasonable course of action for Tom is to insist, as sensitively and sympathetically as possible, that he and Charles contact Howard and involve him in their deliberations.



There is a good chance that Howard would not really want to know that Charles did not oversee Tom's supervision of the installation of the containers on the last day of Tom's trial period. For Howard to know that his policy was violated might mean that Axtell's defense against Cameron's suit would be seriously weakened if this information were to come out. Therefore, Tom might reason that it would be better for both Axtell and himself for him not to disclose to Howard or to anyone else that his work was not overseen on the day in question. This would be particularly true if Tom doubted that Cameron's problems resulted from their own faulty maintenance of the containers and not from the installation. Then, Tom might reason, not only would the outcome be better for Axtell, but also justice would be done in the sense that Axtell would not unjustly have to pay damages for something that it did not cause and had no responsibility for.

However, it is very questionable that the above considerations are the only considerations that are relevant. There is still the issue of truth-telling. If Tom withholds the information from Howard, when clearly that information is relevant to Howard's present inquiry and to Axtell's legal position in the suit that Cameron is planning to bring against Axtell, then he would clearly be engaged in suppression of information and deception. Whether Howard really would rather be deceived than to know the truth is perhaps unimportant. It is entirely possible that Axtell would be able to mount an effective defense against Cameron even if the facts came out, since it may be only a coincidence that the containers that leaked were among those the installation of which Tom supervised without Charles' oversight. However, even if this were not the case, it is doubtful that Tom would be ethically justified in

concealing the information.

Fair adjudication of disputes between individuals or between corporations requires that pertinent information be available for consideration by the adjudicators. If the situation were reversed and Tom's employer were suing some corporation for supplying defective products, would Tom be willing for pertinent information about those products to be suppressed? I strongly suspect that the answer is "No". If so, for Tom to conceal what he knows about the circumstances under which the containers were installed at Cameron would not be universalizable. Perhaps for Tom to tell Howard what he knows will not help Tom's career at Axtell. However, his doing so is more likely to be ethically justified than his concealing that information.

Option 1:

Assuming that Howard would not know that the regular routine was not followed unless Tom told him so, Howard would not know that his asking Tom to testify that it was followed would constitute asking Tom to commit perjury. Therefore, Howard's instructions to Tom would be based on false beliefs about important aspects of the situation and would not be binding on Tom. Again, the only reason apparent for Tom to conceal information and to misrepresent pertinent facts about the situation would be to protect his and his employer's interests. And it is highly questionable whether, in the long run, those interests would best be served in this way. For Tom to go ahead with perjured testimony would be more serious, certainly legally and probably ethically, than for him simply not to volunteer information about the departure from the regular routine. Consequently, Tom should not give perjured testimony, and if so he must now come clean and tell Howard about that departure.

Option 2:

Perhaps Howard's request that Tom testify and that he not reveal that the regular routine was not followed gives some additional weight to the hypothesis that Axtell's interests would best be served by Tom's falsely testifying that the regular supervision and oversight routine was followed. However, given the stakes that are involved both to Axtell and to Tom, it is debatable whether this is so. Moreover, even if it is true, Tom's false testimony would be a blatant lie and deception. As noted above, proper adjudication of disputes requires that pertinent information be available for consideration by the adjudicators.

Even if one regards lying or deception as justified in some situations by the good consequences that it produces, or perhaps the bad consequences that it avoids, this does not seem to be true of the situation in which Tom finds himself. It is very questionable that concealing information and misrepresenting the facts would have the best overall consequences in the long run. As noted above, Axtell may have an effective defense even if all the facts are revealed, since its installation and supervision procedures are perhaps more careful and deliberate than they need be. Presumably Tom would not want someone to suppress such pertinent information if the roles were reversed--i.e. if his employer were the party bringing the suit against some supplier of equipment. Tom should agree to testify but refuse to lie in court. There is no need for him to talk to Axtell's attorneys about Howard's request that he conceal important information during his testimony. He should simply tell Howard politely but straight-forwardly that if he testifies he will tell the truth and the whole truth.



The situation here is very complicated, ethically speaking. One perspective is that the legal system should be allowed to function and that this means that, in an adversarial system, the attorneys, both Axtell's and Cameron's, should be in charge of the arguments that the parties bring before the court.

In favor of this view is the rule-utilitarian argument that the "system" has been time-tested and has been found to work better than other systems. Accordingly, Tom should defer to the attorneys and rely on them for direction about whether and how he should participate in the legal process. An opposing argument is that, even if the adversarial system of justice works best in general, it sometimes breaks down in particular cases. For Tom to suppress information about the departure from the regular routine at the advice of the attorneys would be to deprive the process of important information and thus not serve the purpose of having all pertinent information available to those who must adjudicate the dispute. Of course, Axtell's attorneys may point out that, after all, the process is adversarial and that Cameron's attorneys can be expected also to control the information that comes out in testimony and perhaps to conceal any information that, if revealed, would compromise its position.

Moreover, for Axtell not to use legal strategies would place it at a competitive disadvantage in this dispute. It is plausible that, given the legal system and how it works, in fairness and in loyalty to his employer, Axtell, Tom should be willing to listen to and perhaps defer to Axtell's attorneys in deciding how much information he will volunteer and how he will present the information that he has in his testimony if that becomes necessary. Perhaps he can safely assume that he will be called as a witness by Cameron if not by Axtell because of the important role that he played in the events leading up to Cameron's suit against Axtell. It might not be clear to Tom what the attorneys meant when they said that they would "coach" him in preparing him to give testimony. If it means that they will help him to present information in a manner that is accurate and not misleading so that he will not be victimized by the opposing attorneys, then there would seem to be no reason why he should not allow this coaching. However, if it means that they will help him to testify in a way that is deceptive and misleading although not strictly perjurious, then honesty and integrity require that he resist such "coaching". He should ask them exactly what they mean by "coaching" and then determine his course of action based on their response and the above considerations.

IV

If one bears in mind that Friday is the last day of Tom's trial period and that to this point he has demonstrated exceptional ability to do the job of supervising container installation, and that it is important to fulfill Axtell's commitment to complete the job by Friday, then it would seem entirely reasonable to have Tom complete the supervision without Charles' oversight. Of course, against the very low probability of anything going wrong on the remaining installations must be weighed the seriousness of the harm that might occur if something does go wrong--e.g. serious injury or death of Cameron personnel or damage to expensive equipment with the resulting legal liability of Axtell. Thus the risk (= probability of harm x seriousness of the harm) may be significant.

Furthermore, to depart from the established policy in this instance may make it easier to do so on future occasions. If that policy is a sound one, then it may be best not to violate it in this situation even if there is little reason to suppose that doing so will lead to dire consequences. Several alternatives are apparent:

1. explain the situation to Cameron and find out if it would be acceptable to complete the installations on Monday,
2. temporarily transfer an installation supervisor from a less urgent project to the Cameron installation to replace Charles for the Friday installations (assuming that such a person would be able to get there in time), or
3. have Howard himself go to Cameron to replace Charles for one day (assuming that Howard has no more urgent business to take care of in the home office).

Regarding (1), even if Cameron refuses to grant the one-day delay without insisting that Axtell pay a (\$25,000) penalty, it may be in Axtell's long-term interest to go this route in order to preserve its reputation as a company that does good, careful work usually on schedule and that does not cut corners in ways that would jeopardize the health of affected parties. None of the above alternatives, including allowing Tom to complete the supervision of the installations alone, is clearly superior to any of the others. Uncertainties about the consequences of the different possible courses of action abound, and foresight is much less accurate than hindsight will be. Given the information available to Howard, any of the above alternatives would appear to be reasonable choices.

V

As noted above, it would be an error for Tom not to notify Howard that Charles was unable to oversee his supervision of the final container installations, although perhaps an understandable one for someone in Tom's position--i.e. a relatively inexperienced installation supervisor who is being urged to act in a certain way by his assigned mentor in the company. Whether Tom recognizes his error and corrects it by telling Howard about the circumstances of the final equipment installations or compounds it by continuing to conceal important information from Howard will reveal much about Tom's honesty and integrity. Therefore, it matters greatly how Howard learns of the violation of the established routine.

In any event, Howard should make it clear to Tom that he (Howard) cannot do his job if he is kept in the dark on important matters and therefore that he must insist that, in the future, Tom notify him of any departure from established policy and that any deception will not be tolerated. If Tom responds to being "called on the carpet" in a constructive way, then he may turn out to be a much more valuable employee

than if the situation had not occurred at all. This case is complex, with many possible variations, and it is realistic. It truly depicts the way a simple event such as Charles' illness on the last day of Tom's training period can escalate into all sorts of significant consequences.

In other respects it was the most difficult to comprehend and comment upon. Some of the issues raised by the case are compelling and relevant to many other engineering cases. Whether Tom should cover for Charles' illness at the very start of the case, or call Howard and get advice on what to do raises the important issues of team playing, loyalty to the company, signing reports truthfully, not performing services in areas of one's (officially certified) competence, acting as faithful agents of the client or employer, and holding paramount the public's safety. In one way or another almost all of the items of NSPE Code of Ethics are called into question at the very onset of this case.

In scenario #2, following the accident of Cameron, whether Tom tells Howard or not about his having departed from the regular routine is almost an order of magnitude in difficulty below the ethical issues involved in scenario #1. This is almost a transparently obvious set of circumstances involving the general desirability of honesty and integrity and the almost immediately obvious potentially disastrous consequences of Tom not telling Howard. Once the scene shifts to the court room in options #1 and #2 in scenario #2 still additional issues surface. No company or its lawyer can morally request someone to do anything that is illegal or that violates that person's morals. With that understood, some of the alternatives presented in option #1 and #2 become easier to deal with. The same issue applies to the questions raised in Version II of the case.

Scenario #3 now puts the responsibility squarely on Howard's shoulders. The same moral guidelines and ethical codes that drove Tom to share his quandary with Howard apply equally well to Howard now that he must decide what to do. The above cited applicable items in the code of ethics, combined with standard Axtell professional practices, should guide Howard to what he must do; even at the cost of large penalty payments, additional installation costs and delays in job completion. What is at stake is public safety, Axtell reputation and future liability.

In scenario #4 the question raised about how Howard should deal with Tom depends upon when and how Howard learns of Tom's actions. This strikes me as more an issue of personnel management policy than an ethical case issue. In any event, if Tom has willingly withheld important information from Howard, this then comes

under the heading of Tom's loyalty to the company and his ability to act as a faithful agent of Axtell.