

BLOWING THE WHISTLE: ETHICAL AND LEGAL ISSUES

By Stavros Togias

Abstract

What is common between Brigitte Heinisch, a geriatric nurse in Berlin, and Sherron Watkins, the Vice President of Corporate Development at the Enron Corporation? What are the legal and ethical regimes governing whistleblowing? Reporting misconduct in an organization is an act of courage or disloyalty? What goes through an employee's mind when deciding whether and where to report? What separates those who choose to disclose such information from those who turn a blind eye to perceived impropriety in the workplace? The author attempts to address the foregoing questions and gain some insight into the conflicting demands inevitably confronted by those who blow the whistle, having to choose between highly esteemed values, such as loyalty to one's colleagues or serving the public interest.

1. The Concept of Whistleblowing

Whistleblowing is an emerging *sui generis* field of law, which integrates disparate elements of the law of privacy, labour and employment, civil procedure, contracts, ethics, defamation, the constitutional rights of expression and conscience, professional responsibility and administrative law, criminal law, confidential information and privilege, business organizations and corporate governance, codes of conduct, dispute resolution and various regulatory instruments [Haigh/Bowal 2012]. "Whistleblowers sound an alarm from *within the very organizations in which they work*, aiming to spotlight neglect or abuses that threaten the public interest" [Petersen/Farrell 1986]. It has been further suggested that "organizations are traditionally viewed as rational, hierarchically oriented entities". Correspondingly, "employee behavior exists only within the formally defined role boundaries and is regulated by the norms and goals of the organization". It follows that, from the organization's point of view, whistleblowing –as an act which effects a breach in the structure of the organization by detouring internal channels of dissent and seeking for help outside its boundaries– is typically *irrational* [Petersen/Farrell 1986]. A whistleblower usually attracts widespread *public attention*: one need only recall the famous quotation of *Diogenes the Cynic*: "Discourse on virtue and they pass by in droves; *whistle* and dance the shimmy, and you've got an audience" [Leiter]. For purposes of this discussion, the relevant provisions of international and European legal instruments will serve as a starting point for conceptualizing whistleblowing [Banisar 2006].

The Parliamentary Assembly of the Council of Europe in its *Resolution 1729 (2010)* on "Protection of 'whistle-blowers'" expressly recognized the importance of whistleblowers –concerned individuals who sound an alarm in order to stop wrongdoings that place fellow humans being at risk– while it adopted the definition of protected disclosures as "all *bona fide* warnings against various types of unlawful

acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies”.

Moreover, the Parliamentary Assembly urged all Member States to review their legislation at issue in order to cover both public and private sector whistle-blowers, including members of the armed forces and special services, and expand its regulatory scope to fields such as (i) *employment law* –in particular protection against unfair dismissals and other forms of employment-related retaliation– (ii) *criminal law and procedure* –in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses– (iii) *media law* –in particular protection of journalistic sources– and (iv) specific *anticorruption measures* such as those foreseen in the Council of Europe Civil Law Convention on Corruption.

The dominant criterion of *good faith* is therein two-fold approached: “Any whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosure was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives”. Regarding the criterion of *reasonable grounds*, the Technical Guide on article 33 of the United Nations *Convention against Corruption* (2005) on “Protection of reporting persons” invites States Parties to adopt an *ex ante* approach. Hence they may question whether the reporting person had reason to believe that information existed to support a report. However, this *bona fide* norm seems to ignore the fact that whistleblowing is conceptualized as a form of *pro-social behaviour*, thus instigated by both selfish (egoistic) and unselfish (altruistic) motives [Rauhofer 2007].

Further, the Parliamentary Assembly encouraged whistleblowing as “a safe alternative to silence” by relieving the employee of the *burden of proof* in the sense that it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistleblower were motivated by reasons other than the action of whistleblowing.

Addressing the controversial question, whether whistleblowers have an *obligation to exhaust internal channels of dissent before going public*, the Parliamentary Assembly adopted a realistic approach: where internal channels either do not exist, have not functioned properly or could be reasonably expected not to function properly given the nature of the problem raised by the whistleblower, *external* whistleblowing, including through the media, should likewise be protected. Therefore it is of utmost importance that *journalistic sources* are provided sufficient protection. The foregoing guidelines were also referred to in the Parliamentary Assembly’s related Recommendation (1916) 2010 on “Protection of ‘whistle-blowers’” which stressed the importance of whistleblowing as a tool to increase accountability and strengthen the fight against corruption and mismanagement.

In this regard, Appendix to Article 24 of the *Revised European Social Charter* on “Valid reasons of termination of employment” specifies that as such shall not serve “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent

administrative authorities”. The above formulation is *verbatim* adopted in Article 5 of the *Termination of Employment Convention* of the International Labour Organisation (1982).

Further provisions of international instruments addressing the protection of whistleblowers in the context of the fight against corruption are Section II.9 of the *OECD Guidelines for Multinational Enterprises* (2000), article 22 of the *Criminal Law Convention on Corruption* (1999) on “Protection of collaborators of justice and witnesses” and particularly article 9 of the Council of Europe *Civil Law Convention on Corruption* (1999) on “Protection of employees” which reads as follows: “Each Party shall provide in its internal law for appropriate legal protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities”.

2. What happens inside the mind of a whistleblower?

According to the findings of a recent survey titled “*Inside the Mind of a Whistleblower*” [A Supplemental Report of the 2011 National Business Ethics Survey, Ethics Resource Center, 2012] the percentage of employees who reported the misconduct they witnessed in 2011 was at an all time high of 65%. Below are set out the dominant motivating factors in the reporting process:

2.1 Awareness

In many cases, although employees observe misconduct in work environment, they do not report it, because they are not attuned to the ethical dimension of workplace conduct and thus do not recognize a behavior violating corporate standards and values as such. What separates those who choose to disclose such information from those who look the other way?

2.2 Agency (or Can I Make a Difference?)

Agency is perceived in two senses: (a) *objectively*, namely the company’s commitment to moral integrity expressed either by rewarding ethical conduct or by taking corrective action, and (b) *subjectively* i.e. those who consider themselves more influential on the way things are done in their company are more likely to expose organizational malpractice or misconduct than those who feel their voice too weak to be heard. That explains why managers report at a higher rate than non managers.

2.3 Security and Investment (or Should I Be the One to Do Something?)

Employees are more likely to raise the alarm over workplace irregularities, when they feel both confident in their company’s financial situation and per se financially secure and not concerned of being subjected to retribution, varying from minor harassment or marginalization at the workplace to unjustified termination of employment or forced resignation. In some cases their life has taken a Kafkaesque turn. That explains why union employees, who as a rule enjoy certain contractual protections, have considerably higher rates of stepping forward and reporting of specific wrongdoing than non union employees.

2.4 Support and Correctedness (or Who can I Rely on for Help?)

The more primary sources of personal (e.g. family, religious community, neighbors, classmates, online friends, social clubs and public resources) or workplace support an individual has, the more encouraged he or she is to report.

2.5 I Have Decided to Report. Who Should I Tell? Where Do Most Employees Report?

According to the findings of the aforesaid survey, the majority of employees would rather sacrifice anonymity (provided by a hotline) and report their witnessing of wrongdoing to someone they already know and trust: their immediate supervisor and/or someone in a higher rank of the organizational hierarchy.

2.6 I Can't Trust Them. Why Do Some Employees Go Outside Their Organization?

A potential internal reporter is more likely to turn to an external whistleblower, if the overall culture or the ethics of his/her top managers or supervisors is perceived to be weak. Furthermore, the seriousness of the issue at hand is an important motivating factor for reporting.

2.7 The Impact of Whistleblower Bounties: Does Money (Get Employees to) Talk?

The issue of financial rewards reveals a sharp contrast in the mentality of reporters and non reporters: in essence, bounties do not really matter to the people who are most likely to report. On the contrary, non reporters can be motivated by money, particularly if they face financial constraints.

3. The Case of *Heinisch v. Germany*. The Whistleblower on the Verge of Duty of Loyalty and Public Interest in Information

The European Court of Human Rights (“the Court”) in its landmark ruling in the case of *Heinisch v. Germany* (no. 28274/08, 21 July 2011) had the opportunity to address most ethical and legal tension points in whistleblowing [Branahl 2012].

3.1 The principal facts

The case concerned the dismissal without notice of the applicant, Brigitte Heinisch, from her employment as a geriatric nurse by Vivantes Netzwerk für Gesundheit GmbH –a limited liability company specializing in health care, geriatrics and assistance to the elderly, which is majority-owned by the Land of Berlin– on the ground that she had brought a criminal complaint against her employer alleging deficiencies in the institutional care provided, and the refusal of the domestic courts in the ensuing proceedings to order her reinstatement, a practice that according to the applicant’s allegations had infringed her right to freedom of expression pursuant to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

Ms Heinisch and her colleagues repeatedly indicated to the management that they were overburdened due to staff shortage and thus encountered difficulties carrying out their duties; they further mentioned that services were not properly documented. The applicant on several occasions fell ill as a result of overwork and was partly unable to offer her services. Following an inspection of the nursing home, the medical review board of the health insurance fund noted serious shortcomings in the care provided, substantiating the foregoing concerns of Ms Heinisch. Thereafter, the applicant's legal counsel, in a letter to the company's management, pointed out that, on account of the lack of staff, patients' hygienic care could no longer be guaranteed and asked the management to stipulate how they intended to avoid criminal responsibility –also for the staff– and ensure that sufficient care could be taken of the patients.

Following the rejection of those accusations on behalf of the management, Ms Heinisch brought a criminal complaint through her counsel against Vivantes in on account of aggravated fraud. According to the complaint, owing to the lack of staff and insufficient standards, the company knowingly failed to provide the high quality care promised in its advertisements and paid for and was putting the patients –partly bedridden, disoriented and generally dependent on special assistance– at risk. The applicant also alleged that the company had systematically attempted to cover up those deficiencies and had urged staff to falsify service reports. However, the public prosecutor discontinued the preliminary investigations against the company instigated by the applicant's complaint on grounds of lack of sufficient reason for bringing public charges.

Ms Heinisch was dismissed with prior notice a few days later on account of her repeated illness. Together with friends and supported by a trade union, she issued a leaflet which denounced the dismissal as a “political disciplinary measure taken in order to gag those employed” and brought to Vivantes' attention the aforesaid criminal complaint. The company subsequently dismissed her without notice, on suspicion of having initiated the production and dissemination of the leaflet. Preliminary inquiry proceedings against Vivantes were resumed at Ms Heinisch's request, but discontinued again.

The applicant challenged her dismissal without notice before the Berlin Labour Court (*Arbeitsgericht*), which found that the leaflet –the content of which was attributable to the applicant– albeit polemical, was covered by her right to freedom of expression and did not amount to a breach of her duties under the employment contract, since it had been based on objective grounds and had not upset the “working climate” in the nursing home. This judgement was quashed by the Berlin Labour Court of Appeal (*Landesarbeitsgericht*), stating that the applicant's criminal complaint had provided a “compelling reason” for the termination of the employment relationship without notice as provided by Article 626(1) of the Civil Code and had made continuation of the employment relationship unacceptable. It found that the applicant had frivolously based the criminal complaint on facts that she could not prove in the course of the proceedings. The Labour Court of Appeal further held that the criminal complaint amounted to a disproportionate reaction to the denial of Vivantes to recognise shortcomings as regards personnel, since the applicant had never attempted to have her allegation of fraud examined internally and since, moreover, she had intended to put undue pressure on her employer by provoking a public discussion of the issue. In any case, the applicant could have awaited the outcome of the on-going inquiry of the

medical review board and therefore her reaction constituted an unnecessary breach of her duty of loyalty towards her employer. That decision was upheld by the Federal Labour Court (*Bundesarbeitsgericht*), while the Federal Constitutional Court (*Bundesverfassungsgericht*) refused to admit Ms Heinisch's constitutional complaint.

3.2 The decision of the Court

The Court in its reasoning noted that it was undisputed between the parties that the criminal complaint lodged by Ms Heinisch fell within the concept of whistleblowing, thus within the ambit of Article 10 of the Convention. It was also common ground that her dismissal, as confirmed by the domestic courts, amounted to an interference with her right to freedom of expression, which is guaranteed as well in the sphere of relations between individuals [see *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000]. Therefore the crux of the matter was whether such an interference (a) was "prescribed by law", (b) pursued a legitimate aim under second paragraph of Article 10 and (c) was necessary in a democratic society" for the achievement of such aim.

As regards the first issue, the Court shared the German Government's view that the said interference had been "prescribed by law", as the German Civil Code allowed the termination of an employment contract with immediate effect by either party if a "compelling reason" –a criminal complaint amounting to a "significant breach" of the employee's duty of loyalty should be perceived as such– rendered the continuation of the employment relationship unacceptable to the party giving notice. It was further undisputed that the dismissal had pursued the legitimate aim of protecting the business reputation and interests of the applicant's employer. Therefore it remained to be determined whether a fair balance had been struck by the domestic courts between those interests and Ms Heinisch's right under Article 10. The Court has summed up its standpoint in the following rationales:

The information disclosed by the applicant about the alleged deficiencies in the care provided was undeniably of *public interest*, in particular given that the patients concerned might not have been in a position to draw attention to those shortcomings on their own initiative. As regards the question, whether the applicant had in her disposal *alternative channels* for making the disclosure –pursuant to her duties of loyalty, reserve and discretion– instead of external reporting by means of a criminal complaint, the Court referred to the jurisprudence of the Federal Labour Court, which also applied in the case at hand: "Seeking a previous internal clarification of the allegations could not be reasonably expected of an employee, if the latter obtained knowledge of an offence of which the failure to report would result in him or herself being liable to criminal prosecution. In addition, previous internal clarification of the matter was not required if redress could no legitimately be expected". Regarding the *authenticity* of the information disclosed –in the sense that any person who chooses to disclose information must carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable– the Court concluded that it was not devoid of factual background and there was nothing to establish that she had knowingly or frivolously reported incorrect information. The fact that due to lack of evidence –which is primarily attributable to the law enforcement authorities– the preliminary investigations were discontinued, exercised no influence to the Court's assessment.

As convincingly emphasized by the Court, even assuming that the amelioration of her own working conditions might have been an additional –*egoistic* in accordance to the concept of whistleblowing as a pro-social behaviour– motive for her actions, nevertheless there were no sound reasons to doubt that Ms Heinisch acted in *good faith* and in the belief that it was in the public interest to disclose the alleged workplace malpractice to the prosecution authorities and that no other, more discrete means of remedying the situation was available to her.

Ms Heinisch’s allegations had certainly been *prejudicial* to the –worth protecting according to the Court’s jurisprudence– company’s business reputation and commercial interests. However, the Court found that the public interest in being informed about shortcomings in the provision of institutional care for the elderly by a State-owned company outweighed the interest in protecting the latter’s commercial success and viability for the benefit of shareholders and the wider economic good.

Finally, the Court noted that the heaviest *sanction* possible under labour law –namely a dismissal without notice– had been imposed to the applicant. It not only had negative repercussions on her career but it could also have had –in view of the media coverage– a serious *chilling effect* on other employees of Vivantes or other companies in the nursing service sector and discourage them from reporting any shortcomings to the detriment of society as a whole. In a nutshell, the domestic Courts had failed to strike a fair balance between the need to protect the employer’s reputation and rights on the one hand and the need to protect the applicant’s right to freedom of expression. There had accordingly been a violation of Article 10 [similarly see *Guja v. Moldova* (GC), no. 14277/04, 12 February 2008 concerning the applicant’s dismissal from the Prosecutor General’s Office for divulging two documents which disclosed interference by a high-ranking politician in pending criminal proceedings].

4. Whistleblowing and Data Privacy

4.1 The Sarbanes-Oxley Act

The allegation of a whistleblower against an individual on grounds of perceived violations e.g. of a company’s code of ethics will necessarily entail the collection and processing of certain information related to that individual (e.g. his or her name and position inside the company) and the whistleblower himself [Fahring 2011] provided that the latter takes no recourse to anonymity. As far as that information can be defined as “information relating either to an identified person or a person who can be identified, directly or indirectly, by reference to a reference number or by one or more factors specific to him” [see Article 2(a) of the Data Protection Directive], then the collection and processing of that *personal* data by an organization and the further transfer thereof to associated or external organizations within or outside the EU should be compliant with EU data protection rules.

The *Sarbanes-Oxley Act* (2002) –which was named after its architects, Senator Paul *Sarbanes* and Congressman Michael *Oxley*, and enacted following the disclosure of Enron accounting scandal by its own Vice President of Corporate Development, Sherron Watkins– requires publicly held US companies and their EU-based affiliates, as well as non US companies listed in a US stock markets, to establish procedures for dealing with confidential, anonymous employee submissions regarding questionable

accounting or auditing matters. Enterprises which fail to comply with these whistleblower requirements are to encounter heavy sanctions. However the SOX is subject to severe criticism among legal scholars, deriving from its two most prominent failings. First, over the last decade, the Act simply did not protect whistleblowers who suffered retaliation. Second, despite the massive increase in legal protection available to them, whistleblowers did not play a significant role in uncovering the financial crisis that led to the Great Recession at the end of the decade [Moberly 2012].

In 2005 *Commission nationale de l'informatique et de libertés* –the French Data Protection Authority– prevented a French subsidiary of McDonalds from establishing anonymous whistleblowing procedures on the grounds that it involved the transfer of personal data of the person incriminated for malpractice without its consent [Rauhofer 2007]. Some legal scholars detect “a deep cultural unease about the whistleblowing itself” underlying that sceptical ruling –which was succeeded by similar decisions of the German Courts– since the bitter experience of informers and denunciators recruited by Gestapo in Third Reich and Stasi in the former GDR has assigned the whistleblower a heavy social and historical stigma [Tinnefeld/Rauhofer 2008]. In 2006 the US Court of Appeal refused to extend SOX provisions on the protection of whistleblowers to employees of publicly-traded American enterprises operating abroad [Carnero v. Boston Sci. Corp., 433 F.3d 187 (1st Cir. 2006) [Cohn 2007, Jacob 2009].

4.2 The Article 29 Data Protection Working Party’s Opinion 1/2006

The Article 29 Data Protection Working Party with its *Opinion 1/2006* on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crime, attempted to settle the potential *conflict of duties* on part of companies which, while complying with SOX whistleblowing requirements, they risk breaching EU data protection rules and national constitutional and labor laws [Rauhofer 2007].

Addressing the issue of *legitimacy* of whistleblowing systems according to Article 7 of Data Protection Directive, the Working Party considered as a suitable legal basis for internal control procedures obligations deriving either from EU Member States regulations ruling the activities of credit and investment companies, or provisions set in national law as a result of the implementation of the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1997). On the flip side, “an obligation imposed by a foreign legal statute or regulation [...] may not qualify as a legal obligation by virtue of which data processing in the EU would be made legitimate. Any other interpretation would make it easy for foreign rules to circumvent the EU rules laid down in Directive 95/46/EC. As a result, SOX whistleblowing provisions may not be considered as a legitimate basis for processing on grounds of Article 7(c)”.

If the employer, as is usually the case, operates the whistleblowing system by establishing a hotline, then the collection and processing of employee personal data through this system is permitted, provided it is for the purpose of complying with a *contractual obligation*. The employer’s right to collect and process the

aforementioned data for the purpose of fulfilling the requirements of a code of conduct must therefore be an integral part of the employment contract as a clear indication of the employer's explicit consent thereto. In case that the contract remains silent on this issue, the establishment and operation of a whistleblowing system should be examined in the light of Article 7(f), i.e. its necessity for the purposes of a legitimate interest pursued by the controller provided that the latter are not overridden by the counterbalancing interest of the employee that his personal data should not be collected or processed [Rauhofer 2007].

According to the Working Party, cornerstones of that balance of interest assessment are the principles of *data quality* and *proportionality* in pursuance of article 6 of the Data Protection Directive. The number of persons entitled to sound the alarm or potentially incriminated through a whistleblowing scheme –particularly taking into account the seriousness of the alleged offences reported– is an issue coherent to the proportionality principle, albeit subject to a rather wide margin of data controllers' appreciation [Schmidt 2009].

Admittedly, the more an individual blows the whistle in the shadow of *anonymity*, the more he or she is exposed to informer-related criticism [Momsen/Grüzner/Oonk 2011]. While anonymity is intended to shield the whistleblower from reprisal, it is highly questionable whether it actually obstructs the successful guessing about the identity of the individual who raised the concern. On the other side, as the Working Party asserted, anonymity precludes both the interactive manner of investigation following the report and the comprehensive protection of the whistleblower against retaliation, while it is a fertile ground for biased or false allegations promoting a climate of suspicion among employees. Consequently, anonymous internal reports are justifiable under the notion of *fair* processing as an exception, while the rule should be the identified and confidential concerns. Nevertheless, if the person reporting to the scheme insists to stay anonymous, the report should not be rejected, but it should be examined –due to risk of abuse– with extreme caution, in a speedy manner and under the reservation of a subsequent disclosure of the whistleblower's identity before the competent public authority conducting an enquiry related thereto.

Furthermore, Article 6(1)(b) and (c) of the Data Protection Directive sets the pace of the *proportionality* and *accuracy* of data collected and processed; given that the purpose of the reporting system is to ensure proper corporate governance, the data collected and processed through a reporting scheme should be adequate, relevant and not excessive in relation to that purpose.

In addition, a comprehensive whistleblowing scheme should serve the need for *dual* protection of both the whistleblower from retribution and the target of the allegation from false or unjustified accusations. The person accused in a whistleblower's report should be competently *informed* as soon as practically possible after the data concerning him or her in accordance to Article 11 of the Data Protection Directive. "However, where there is substantial risk that such notification would jeopardize the ability of the company to effectively investigate the allegation or gather the necessary evidence, notification to the incriminated individual may be delayed as long as such risk exists".

5. Conclusion and perspective

Whistleblowers feel compelled to act, after difficult reflection upon the issue of the *right course of action*, and weighing the consequences, they usually proceed in the face of likely retaliation. It is the aspect of doing “good” or “justice” –in the face of a strong potential for retaliation, in any form and degree– which most connects whistleblowing with conscience. At the same time, *freedom of conscience* provides an effective analytical tool to assess genuine whistleblowing: a person who proceeds to blow the whistle without engaging in a conscience-based assessment prior to doing so, should not be protected [Haigh/Bowal 2012, Tinnefeld/Rauhofer 2008].

On the other hand, the emerging establishment of codes of ethics and Whistleblowing hotlines illustrates a highly questionable corporate trend, as far as management can thereby sharpen its own “panoptic view” over the company’s employees paving the way to strengthened social control and lack of social confidence inside an enterprise [Tinnefeld/Rauhofer 2008]. Most notably, the recruitment of individuals and the assignment of traditional police tasks thereto is a widespread –albeit dubious in terms of the rule of law– trend in modern criminal policy [Hafendehl 2009].

From Mark Felt –the “Deep Throat” of the Watergate scandal– to Thomas Tamm –the US Justice Department lawyer who disclosed his concerns about the Bush Administration’s warrantless surveillance program to New York Times [Leiter, 2009], whistleblowing has been perceived rather as an element of free speech and the right of individuals to express dissent [Banisar 2006], than as “a detachable burden easily shifted to foreign shoulders” [Tinnefeld/Rauhofer 2008]. Overall, whether the relevant legal regimes are sufficient to protect those who blow the whistle from reprisal or those instruments should rather be referred as “The Good Citizen Elimination Act” [Sawyer/Johnson/Holub 2006], is a question of perspective.

References

- Banisar D.** (2006), Whistleblowing: International Standards and Developments, 2006, on line at http://www.corruption.unam.mx/documentos/investigaciones/banisar_paper.pdf
- Branahl U.** (2012), Whistleblower zwischen Loyalitätspflichten und öffentlichem Informationsinteresse, Humboldt Forum Recht 1/2012, 1-8
- Cohn D.A.** (2007), Carnero v. Boston Scientific Corporation: An Analysis, Journal of International Business and Law, 2007, 203-223
- Fahring S.** (2011), Die Zullässigkeit von Whistleblowing aus arbeits- und datenschutzrechtlicher Sicht, Neue Zeitschrift für Arbeitsrecht Online 1/2011, 1-5
- Haigh R./Bowal P.** (2012), Whistleblowing and Freedom of Conscience: Towards a New Legal Analysis, 2012 online at <http://dx.doi.org/10.2139/ssrn.1974982>
- Hafendehl R.** (2009), Alle lieben Whistleblowing, in: Böse M./Sternberg-Lieben D. (Hrsg.), Festschrift für Knut Amelung zum 70. Geburtstag, Berlin 2009, 619-645
- Jakob C.** (2009), Arbeitsrechtliche Implikationen des Whistleblowing, in: Haneberg L./Heinicke T./Mülchen R./Porath J. (Hrsg.), Governance – Entscheidungsfindung und -umsetzung innerhalb staatlicher und wirtschaftlicher Strukturen, BIS-Verlag, Oldenburg, 2009, 73-86

- Leiter A.C.** (2009), Whistle...And You've Got an Audience, *Fordham Urban Law Journal* 2009, 747-772
- Moberly R.** (2012), Sarbanes-Oxley's Whistleblower Provisions - Ten Years Later, 2012, online at <http://ssrn.com/abstract=2064061>
- Momsen C./Grüzner T./Oonk A.** (2011), Whistleblowing als außordenlicher Kündigungsgrund? Zugleich Anmerkung zu EGMR, Urt. v. 21.7.2011 - 28274/08 (Heinisch v. BRD), *Zeitschrift für Internationale Strafrechtsdogmatik* 8-9/2011
- Petersen J.C./Farrell D.** (1986), *Whistleblowing: Ethical and Legal Issues in Expressing Dissent*, 1986
- Rauhofer J.** (2007), Blowing the Whistle on Sarbanes-Oxley: Anonymous Hotlines and the Historical Stigma of Denunciation in Modern Germany, *International Review of Law Computers and Technology* 2007, 363-376
- Rauhofer J./ Tinnefeld M.-T.** (2008), Whistleblower: Verantwortliche Mitarbeiter oder Denunzianten? Fragen im Feld von Ethikrichtlinien, des Datenschutzes und der Mitbestimmung, *Datenschutz und Datensicherheit* 2008, 717-723
- Sawyer K.R./Johnson J./Holub M.** (2006), The Necessary Illegitimacy of the Whistleblower, 2006, online at <http://dx.doi.org/10.2139/ssrn.917316>
- Schmidt B.** (2009), Datenschutzrechtliche Anforderung und Internationale Rechtspflichten zum Betrieb von Whistleblowing-Systemen, in: Haneberg L./Heinicke T./Mülchen R./Porath J. (Hrsg.), *Governance – Entscheidungsfindung und -umsetzung innerhalb staatlicher und wirtschaftlicher Strukturen*, BIS-Verlag, Oldenburg, 2009, 57-71