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FOR FURTHER REFLECTION

1. How important is privacy to you personally? Describe a situation, work-related or otherwise, in which you felt your privacy was threatened.
2. Describe your experiences with drug testing or personality testing. Have you or has anyone you know been subjected to job monitoring that seemed too intrusive?
3. Does business have a responsibility to provide employees with more satisfying work lives? Or to better accommodate their family needs?



CASE 9.1

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Unprofessional Conduct?

TEACHING ELEMENTARY SCHOOL CHILDREN with intellectual disabilities requires skill, patience, and devotion, and those who undertake this task are among the unsung heroes of our society. Their difficult and challenging work rarely brings the prestige or financial rewards it deserves. Mrs. Pettit was one of those dedicated teachers. Licensed to teach in California, she had been working with mentally challenged children for over thirteen years when her career came to an abrupt end. Throughout that career, her competence was never questioned, and the evaluations of her school principal were always positive.

Teaching was not Pettit's only interest, however. She and her husband viewed with favor various "nonconventional sexual lifestyles," including "wife swapping." Because so-called sexual liberation was a hot topic at the time, the Pettits were invited to discuss their ideas on two local television shows. Although they wore disguises, at least one fellow teacher recognized them and discussed Mrs. Pettit's views with colleagues. A year later Pettit, then forty-eight years old, and her husband joined "The Swingers," a private club in Los Angeles that sponsored parties intended to promote diverse sexual activities among its members. An undercover police officer, Sergeant Berk, visited one of

those parties at a private residence. Amid a welter of sexual activity, he observed Mrs. Pettit perform fellatio on three different men in a one-hour period.

Pettit was arrested and charged with oral copulation, which at the time contravened the California Penal Code (although now it does only if one of the parties is under eighteen). After a plea bargain was arranged, she pleaded guilty to the misdemeanor of outraging public decency and paid a fine. The school district renewed her teaching contract the next academic year, but two years later, disciplinary proceedings were initiated against her. The State Board of Education found no reason to complain about her services as a teacher, and it conceded that she was unlikely to repeat her sexual misconduct. But the Board revoked her elementary school life diploma—that is, her license to teach—on the ground that by engaging in immoral and unprofessional conduct at the party, she had demonstrated that she was unfit to teach.

Pettit fought the loss of her license all the way to the California Supreme Court, which upheld the decision of the Board of Education.¹¹⁶ In an earlier case, the court had reversed the firing of a public school teacher for unspecified homosexual conduct, concluding that a teacher's actions could not constitute "immoral or unprofessional conduct" or "moral turpitude" unless there was clear evidence of unfitness to teach. But Pettit's case was different, the court hastened to explain.

The conduct in the earlier case had not been criminal, oral copulation had not been involved, and the conduct had been private. Further, in that case the Board had acted with insufficient evidence of unfitness to teach; by contrast, three school administrators had testified that in their opinion, Pettit's conduct proved her unfit to teach. These experts worried that she would inject her views of sexual morality into the classroom, and they doubted that she could act as a moral example to the children she taught. Yet teachers, the court reaffirmed, are supposed to serve as exemplars, and the Education Code makes it a statutory duty of teachers to "endeavor to impress upon the minds of the pupils the principles of morality . . . and to instruct them in manners and morals."

In a vigorous dissent, Justice Tobringer rejected the opinion of the majority, arguing that no evidence had established that Pettit was not fit to teach. The three experts didn't

consider her record; they couldn't point to any past misconduct with students, nor did they suggest any reason to anticipate future problems. They simply assumed that the fact of her sexual acts at the "swingers" party itself demonstrated that she would be unable to set a proper example or to teach her pupils moral principles.

Such an attitude is unrealistic, Tobringer argued, when studies show that 75 to 80 percent of the women of Pettit's educational level and age range engage in oral copulation. The majority opinion "is blind to the reality of sexual behavior" and unrealistically assumes that "teachers in their private lives should exemplify Victorian principles of sexual morality." Pettit's actions were private and could not have affected her teaching ability. Had there not been clandestine surveillance of the party, the whole issue would never have arisen.

DISCUSSION QUESTIONS

1. In concerning itself with Pettit's off-the-job conduct, did the Board of Education violate her right to privacy? Or was its concern with her lifestyle legitimate and employment related?
2. Was Pettit's behavior "unprofessional"? Was it "immoral"? Did it show a "lack of fitness" to teach? Explain how you understand the terms in quotation marks.
3. Was the Board of Education justified in firing Pettit? Explain.
4. Was the court's verdict consistent with its earlier handling of the case of the homosexual teacher?
5. If teachers perform competently in the classroom, should they also be required to be moral exemplars in their private lives? Are employees in other occupations expected to provide a moral example—either on or off the job?
6. Which of the following, in your view, would show unprofessional conduct, immorality, or lack of fitness to teach: drunken driving, smoking marijuana, advocating the use of marijuana, forging a check, resisting arrest for disorderly conduct and assaulting a police officer, being discovered in a compromising position with a student, propositioning a student, cheating on income tax, calling attention to one's openly homosexual lifestyle?
7. Under what conditions do employers have a legitimate interest in their employees' off-the-job conduct?

"That's not true," Mary replied. "I'm no troublemaker, and I have always worked hard for Whitewater. But I do think they and the other companies are wrong to market malt liquor the way they do. It only makes a bad situation worse."

The next day Mary met with Ralph Jenkins and told him that she felt Whitewater was "invading," as she put it, her rights as a citizen. In fact, she had been invited to speak about wine and beer marketing at a local high school as part of its antidrug campaign. She intended to keep her speaking engagement and would not subject her remarks to company censorship.

Jenkins listened but didn't say much, simply repeating what he had already written in his memo. But two days later Mary received what was, in effect, an ultimatum. She must either conform with his original order or submit her resignation.

DISCUSSION QUESTIONS

1. Do you think Mary Davis acted irresponsibly or disloyally? Does Whitewater have a legitimate concern about her speaking out on this issue? Does the company have a right to abridge her freedom of expression?
2. Is your answer to question 1 affected by whether you agree or disagree with the views Mary Davis expressed?
3. Should there be any limits on an employee's freedom of expression? If not, why not? If so, under what circumstances is a company justified in restricting an employee's right to speak out?
4. The case presentation doesn't specify whether the newspaper article identified Mary Davis as an employee of Whitewater. Is that a relevant issue? Does it matter what position in the company Mary Davis holds?
5. What do you think Mary Davis ought to do? What moral considerations should she weigh? Does she have conflicting obligations? If so, what are they?
6. Is the company right to be worried about what Mary Davis writes or says, or is the board of directors exaggerating the potential harm to Whitewater of her discussing these issues?
7. Assume a CEO like Ralph Jenkins is legitimately worried that an employee is making damaging statements about the company. How should the CEO handle the situation? Is discharge or some sort of discipline called for? Should the company adopt a formal policy regarding employee speech? If so, what policy would you recommend?



CASE 8.4

Have Gun, Will Travel . . . to Work

ORGANIZATIONAL THEORISTS AND EMPLOYEE advocates frequently emphasize the importance, from both a moral and a practical point of view, of companies' respecting the rights of their employees. Many employees spend long hours at work and remain tethered to the job by phone or computer even when they are off-site; not just their careers

but also their friendships, social identity, and emotional lives are tied up with their work. All the more reason, it seems, that companies should recognize and respect their moral, political, and legal rights. But enshrined in our Constitution is one right that frequently gets overlooked in discussions of the workplace: the right to bear arms.⁸⁸

In 2002 Weyerhaeuser, the Seattle-based timber-products company, fired several employees at an Oklahoma plant who were discovered to have violated company policy by keeping guns in their vehicles. Their dismissal provoked a response from the National Rifle Association (NRA) and other gun-rights advocates, which since then have been lobbying for legislation that would make it illegal for companies to bar employees from leaving guns in their cars in company parking lots. Although no state requires companies to allow workers to carry weapons into the workplace, four states have passed laws guaranteeing them the right to keep guns in their cars, and several other states are weighing whether to follow suit. Gun advocates argue that licensed gun owners should have access to their weapons in case they need them on the trek to and from work. If an employer can ban guns from workers' cars, "it would be a wrecking ball to the Second Amendment" of the U.S. Constitution, says Wayne LaPierre, executive vice president of the NRA.

Brian Siebel, a senior attorney at the Brady Center to Prevent Gun Violence, thinks otherwise. He sees these laws as "a systematic attempt to force guns into every nook and cranny in society and prohibit anyone, whether it's private employers or college campuses . . . from barring guns from their premises." But that's not how UCLA law professor Eugene Volokh looks at it. "It's part of the general movement," he says, "to allow people to have guns for self-defense not only at home, but in public places where they're most likely needed." For his part, LaPierre of the NRA contends that the legal right of people to have guns for personal protection is largely nullified if employers can ban guns from the parking lot. "Saying you can protect yourself with a firearm when you get off work late at night," he argues, "is meaningless if you can't keep it in the trunk of your car when you're at work."

Interpreting the somewhat ambiguous language of the Second Amendment is not easy. It only says, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." All jurists agree, however, that the Second Amendment does not make all forms of gun control unconstitutional and that, like the rest of the Bill of Rights, it places restrictions only on what government, not private parties, may do.

In particular, the Second Amendment does not give gun owners a constitutionally protected right to carry their

weapons onto somebody else's private property against the wishes of the owner. "If I said to somebody, 'You can't bring your gun into my house,' that person's rights would not be violated," explains Mark Tushnet, a Harvard law professor. For this reason, the American Bar Association sides with business owners and endorses "the traditional property rights of private employers and other private property owners to exclude" people with firearms. Steve Halverson, president of a Jacksonville, Florida, construction company agrees that business owners should be allowed to decide whether to allow weapons in their parking lots. "The larger issue is property rights," he says, "and whether you as a homeowner and I as a business owner ought to have the right to say what comes onto our property." However, Tennessee state senator Paul Stanley, a Republican sponsor of legislation requiring that guns be allowed in company parking lots, begs to differ. "I respect property and business rights," he says. "But I also think that some issues need to overshadow this. . . . We have a right to keep and bear arms." Other gun advocates think that the property-rights argument is a red herring. Corporations are not individuals, they argue, but artificial legal entities, whose "rights" are entirely at the discretion of the state. What's really going on, they think, is that some companies have an anti-gun political agenda.

Property rights, however, aren't the only thing that companies are concerned about. Business and other organizations have a widely acknowledged duty to keep their workplaces—and their employees—as safe as possible, and that means, many of them believe, keeping their campuses free of weapons. There are more than five hundred workplace homicides per year; in addition, 1.5 million employees are assaulted at work, many of them by coworkers or former employees. Having guns anywhere in the vicinity, many employers worry, can only make volatile situations more deadly. "There's no need to allow guns [into] parking lots," says the Brady Center's Siebel. "The increased risks are obvious." Steve Halverson drives that point home, too. "I object to anyone telling me that we can't . . . take steps necessary to protect our employees." For him it's no different from banning guns from his construction sites or requiring workers to wear hard hats. "The context is worker safety, and that's why it's important."