Joseph Ellin's Commentary on "Company Interests and Employee Involvement in Community"

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I

This case involves questions of employee freedom, loyalty, conflict of interest, and conflict between conscience and interest. In general, what you do on your own time is your own business. Employees ought to have the freedom off the job to participate in community affairs according to their own lights. The employer should not try to dictate or influence what form that participation takes. However it could be said that employees owe off-the-job loyalty to the their employer, at least to the extent of not opposing the company's interests. Employee off-the-job freedom extends first and foremost to questions not directly related to the company's business concerns, such as supporting political candidates or taking positions on issues such as abortion. When the company has a direct stake in some matter, however, the situation changes and the employee might well have an obligation to support the company or at least not to oppose it. This is especially true when the company has a lot at stake, such as whether it can expand or replace its physical plant. What you do on your own time doesn't affect your job performance, but if it hinders your company's operations, it might affect whether the company has a job for you to perform.

On the other hand, suppose your company is about to do something you disapprove of, because you think it is against the public good. Imagine further that the project does not any way relate to your normal job responsibilities. Are you obliged to go along out of loyalty? Are you obliged to help the company accomplish its unworthy goal, if you should be asked to do so?

Elizabeth Dorsey's employer, CDC Inc, plans to build a facility on environmentally sensitive land in the small community in which she lives. It is evidently important for CDC that the facility be built on this location. As luck would have it, Elizabeth not only values the quality of life in Parkville, she is a member of a citizen's environmental group, which has already successfully opposed rezoning of recreational land. Elizabeth, we may assume, does not like CDC's plans, and she is inclined to oppose them. However the case does not state what her reasons are for hesitating. Perhaps she is concerned only with her self-interest as an employee who is not expected to oppose the company, at least not in public. However she may wonder whether she is within her rights to assume that she's free to do what she wants, even on her own time. She may think that it's disloyal for an employee to cause problems for the company; or she may recognize how important this project is for CDC and not want to cause CDC harm. Also, she may feel a conflict of interest, since as a Parkville resident who enjoys small-town life, it would be better for her if CDC built somewhere else.

II

CDC official Jim Bartlett learns that Elizabeth lives in Parkville and tells her boss, David, to ask her to lobby for the CDC proposal with the Parkville City Council. Should David comply? No reason is given why David should not agree to the request to try and enlist Elizabeth on the side of CDC. Absent special circumstances, it doesn't seem unethical for a company to ask its employees to help it in the political process. For all CDC knows (circumstance #1), Elizabeth would favor the project and be happy to help by exercising her right to lobby her elected representatives. The ethical problem would be if Elizabeth were subject to undue pressure, but to this point such pressure is at most hypothetical and implicit, and Elizabeth is free to resist it. Even if David knew of E's environmental concerns, (circumstance #2), this should not prevent him from talking to her; to assume that she's necessarily opposed to the CDC proposal would be presumptuous. To this point, he hasn't been asked and doesn't intend to exert any pressure on her, merely to ask her assistance.

What David should say is basically what Jim Bartlett asks him to say, assuming Jim hasn't asked anything outrageous: the CDC needs this facility and since Elizabeth lives in Parkville, maybe she'll support it. If he's aware of Elizabeth's environmental concerns, presumably he'd want to make the environmental pitch to her, as CDC has

made it to the City Council. If CDC's environmental pitch is sincere, David thinks he's got a good case and a reasonable environmentalist ought not oppose the project. But even if CDC's environmental approach is window dressing, there's no good reason why David can't try it out on Elizabeth. She can always shoot it down if she sees it that way.

III

David's request puts Elizabeth on the spot and she had better be up front from the first. Although she's an environmentalist, to this point she hasn't made up her mind about CDC's request, though, she's inherently suspicious of it. She shouldn't conceal the fact that she's an environmentalist and that David or Jim will have to sell her on the environmental points, though there might not be much point in going into the gory details of past battles. CDC wants her help, and she owes it to David to give him the chance to convince her of the merits of CDC's plan. If she's not convinced, she should be able to explain why. She might, for example, point out that she has a conflict of interest because development would alter the life style in her quiet town.

One might even note that talking to Elizabeth is actually a good opportunity for CDC officials. If they can persuade Elizabeth, they should be able to persuade the City Council. If they can't persuade Elizabeth, they should at least have a better idea of the weakness in their plan and the kind of opposition they're about to run into.

Of course David and Jim may not appreciate this new turn, and may expect unquestioned obedience ('loyalty') from employees such as Elizabeth. If she suspects this, she may be tempted to conceal her involvement with the Council as a way of trying to get off the spot (option 1); but she should realize that pretending to be uninvolved is foolish as well as dishonest. She might foresee that David would press her further (as he does in IV). And her denial that she knows anyone on the City Council is a bit implausible. In a town of 5,000, there's probably a member of the Council living next door. Further, by denying involvement at this point, she's making it more difficult for herself to become involved later: if she ever does decide to act against CDC, her past activities will obviously come to their attention, which would be embarrassing to say the least.

IV

Elizabeth foolishly tries to pretend she's not in a position to help, and David foreseeably presses her to contact a member of the Council. Predictably, her feeble dodge hasn't succeeded in averting the issue. Elizabeth has to realize that sooner or later she's going to have to face the question of whether she wants to fight the CDC project, or not. Why doesn't she give David and Jim the chance to make the environmental pitch to her? If she's not convinced, she can make her rebuttal points and explain that therefore she can't help them. If she is convinced, then she has no excuse for not helping.

Elizabeth's action seems to be motivated by a fear that CDC will hold it against her if she doesn't co-operate. It may be this fear that leads her to try to dodge the issue by prevaricating. She may have some reason for this fear, based on what she may know about CDC, but to this point there's been no indication that the fear is warranted. But even if it is, it doesn't follow that deception is her best means to avoid the problem.

V

Now Elizabeth's ill-advised attempt at deception backfires. You can never escape the Mafia. Everyone knows everything in a small town and someone rats on Elizabeth to Jim: her dirty secret is out, she's an environmentalist! Now she's about to be given a direct order to cool it. The order itself may be illegitimate, but Jim is understandably angry with Elizabeth. David's been told to transmit this order, and perhaps he doesn't like this task. He may think Elizabeth has a right to do what she likes, and perhaps he might try to persuade Jim to let her alone. He might point out that there's no gain in antagonizing a valuable employee, and after all Elizabeth does live there. So she has a right to defend her town's way of life. On the other hand, Jim's reaction seems to suggest that Jim is worried that Elizabeth's opposition could influence the outcome, and the project is presumably quite important to CDC. David is not being asked to advice Jim, but to talk to Elizabeth, and all things considered perhaps he'd better do so. We don't know that David personally doesn't support the CDC project. So it's not that he feels Elizabeth is in the right. Even if he's sympathetic to her position, he's wearing his company hat at the moment; all he's

being told to do is to relay Jim's message not to get involved.

What David should do after relaying Jim's message is another question, and that depends on how Elizabeth responds. David hasn't been told not to give advice and counsel to Elizabeth according to his best lights. So if she asks him what he thinks she should do, he is free to tell her.

VI

Under this hypothesis, (following III 2), Elizabeth very wisely comes clean with David from the beginning. But inconsistently with her own honesty, she asks David to prevaricate for her in order to cover her refusal to cooperate. She now has a reason, however, supplied by David: "Jim won't like it" (that she won't co-operate). Fear of Jim is her reason for concealing her opposition. But why should she be afraid of Jim before she's even heard CDC's case? David ought to ask Elizabeth for a chance to make the pitch. Time enough then to worry about what Jim will do; perhaps CDC's environmental case is so poor, Jim won't have the heart to retaliate. As for lying, David shouldn't do it. He knows that if she had told him that she didn't know anyone on the City Council, he was prepared to ask her to make such a contact. So he can now tell her that Jim will probably ask the same. Deception is still deception, and nothing's gained by passing it up the ladder from David to Jim.

David can tell Elizabeth that he understands that she can't cooperate with CDC, but he doubts that she can avoid the problem so easily. Even if Jim accepts her truthful but not quite honest response that she "can't help," she will still have to face the question of whether she will oppose the CDC request. Isn't it better to pass on to Jim that she doesn't approve the CDC proposal and so can't co-operate? She doesn't want the swamp paved over and a big facility built in her little town: Jim should be able to understand that. If she's fearful of saying that little, then she may really have a problem at CDC, which is very likely going to recur sooner or later; but at least she won't have the added problem of having tried to deceive her boss.

VII

As in V, Jim finds out through someone else what the true state of the question is: despite her attempt to conceal it, Elizabeth is an environmentalist. Again, David is

told to relay the 'cool it' message, which he should do, as there are no grounds for his refusing to tell her what Jim has commanded. Whether David adds that he agrees with Jim depends on whether he does agree. If he does he can say so. If he does not, perhaps he shouldn't say that unless Elizabeth asks him for advice or help. He is certainly not under any obligation to Elizabeth to volunteer his own opinion, but he has no reason to conceal it if she asks. If David basically agrees with Jim, he might feel that he ought to make an attempt to get Elizabeth to see the light. Jim will expect this. It's the right thing (he thinks), and it's better for her. After all, Elizabeth could be in the wrong and tilting at windmills: maybe the CDC plan really won't hurt the environment, and no doubt Parkville, which is near a big city, can't remain a small town forever. If there's any reason why David shouldn't make these arguments to Elizabeth if he feels they're valid, it would be that Elizabeth could take the whole thing as threats from her boss. Whether this is realistic depends on circumstances not stated in the case, but in general, the fact that David is her boss shouldn't by itself prevent him from advising her to co-operate with the company.

David of course can anticipate that Jim expects him to persuade Elizabeth to obey, or at least make an attempt to do so (as happens in sec. X below). Given this, he'd better make the attempt, certainly if he believes in the CDC project; but even if he doesn't, Elizabeth has a right to hear the CDC arguments. David is free to point out that CDC won't like Elizabeth's opposition, but he should be careful not to appear to otherwise threaten her: she can hardly expect that by opposing the project, she's going to win any points with CDC officials! Disapproving what she does and using coercion against her aren't the same. The difficult question at this point for David is if he anticipates that Jim is apt to take an unfair tack and try to force Elizabeth to do something she doesn't feel she can do. If David tells Elizabeth he anticipates this, he might expect problems from Jim later. Since Jim has put David on the spot, he'd better think out carefully what view he takes of the situation. There's no point risking his own neck if he basically thinks Elizabeth is a disloyal employee who's digging her own grave. David might agree that Elizabeth has a right to her freedom of action, but that she's overstepped the lines. Maybe he thinks that the environmentalist concerns are wrong and that Elizabeth should show loyalty and help the company, and he should be free to try telling her this and see what she says. But if he thinks she's got a right to act independently and Jim is unfairly running over her, then he may feel he's got an obligation, based on friendship or his own loyalty to a subordinate, to help her; and if he thinks he can advise her or in some way run interference for her and protect her from Jim, he should offer to try.

David has to make a complicated assessment which we can't make for him because the case doesn't give enough information. For all we know, Elizabeth is a crank or an environmental extremist. She might be a romantic who thinks small towns are forever and who simply can't face inevitable change and development. Or she might be making a false choice of values, preferring another swamp for the pleasure of the wealthy Parkville suburbanites when real people lack jobs. David seems to be caught in the middle of the Elizabeth situation and has to take into account the realities as well as abstract questions of Elizabeth's rights.

VIII

In section II it is stated that CDC has made a presentation to the City Council. So it is not clear why it is said now that the Parkville environmental group is unaware of CDC's intentions. In any case, having made a presentation to a public body, CDC can hardly claim that its intentions are confidential. Elizabeth is perfectly within her rights to discuss the CDC proposal to the City Council with the other members of her environmental group or anyone else.

Assume however that CDC's plans, though known to Elizabeth, are still in the formative and confidential stage. Elizabeth should not rush to the environmental action group (CEQ) with what she knows. Confidential plans should be considered confidential until they have been explicitly said to be not confidential; employees should not draw inferences from what has been said to them that plans are no longer confidential. CDC's intentions are not public property and there may be good business reasons why they do not want their plans revealed prematurely. Until CDC makes an official move, it is always possible that it will change its plans, or that what it presents will be significantly different from what Elizabeth has heard about. Further, it is not clear what the environmentalists are going to gain by having advance knowledge of CDC intentions. Sooner or later CDC will have to come public, and then there will be time for study of the CDC plans and formulation of a response. (If no such adequate response time is given, the CEQ's quarrel will be with the City Council for acting in haste, and not with Elizabeth for failing to reveal company confidential information). That Elizabeth even considers violating company confidentiality in order to give an edge to the CEQ indicates that her loyalties are so much with her environmental interests that there may be a real question whether she can in good conscience continue as a CDC employee.

IX

The environmental committee learns of CDC's apparently still secret plans, and wants to mobilize quickly against them. But they have no right to ask Elizabeth what she knows or doesn't know. Such a question would be a provocation and could be construed as a deliberate attempt to cause problems for Elizabeth at CDC. If she answers, they may well press her for further inside information; she might be put in the position of undercover spy for the CEQ, which would totally undermine her position at CDC. She should reluctantly, even indignantly, refuse to answer. If the CEQ wants to mobilize, they can do so based on whatever they already know: it didn't take much knowledge to get the CEQ members up in arms, so why shouldn't they assume that the same knowledge is sufficient to mobilize everyone else?

Elizabeth actually has an acute conflict of interest problem with regard to CEQ. How can she support them while on the payroll at CDC? Can they trust her to do her best and give them honest advice? She is compromised as a member of CEQ from the beginning. Suppose she honestly comes to the conclusion that CDC's proposal is not so bad, can the other members of CEQ trust this judgment? May she not feel impelled to attack CDC more stridently than necessary just to prove her environmental correctness? It is probably best for Elizabeth to offer to quit CEQ as soon as this situation develops. No one is indispensable.

But suppose this difficulty is resolved because of the trust the other people on CEQ have in Elizabeth's environmentalism. They may not accept her offer to quit, since they have a strong interest in her propaganda value against CDC. (Headline: "CDC Engineer Denounces Project"). Should she take an active role in opposing CDC? This is really the core problem of this case. It is useful to remember that activity can take many forms, not all of which require a front-line presence. Perhaps CDC will accept her opposition if it isn't also faced with very loud and embarrassing public protest by one of its own employees. Elizabeth should remember that as a citizen, she's got the right to act politically, and that her employer has no right, legal or moral, to determine what she does. Yet at the same time she might very well want to take into account the claims of loyalty to the company which pays her salary. And she also needs to remember that her right to political action is one that is going to be difficult to enforce and might prove costly for her if her action makes the employer sufficiently angry. So she has to make a judgment taking all this into account. She

has to decide how important it is to oppose this project, whether there aren't other people who might oppose it as effectively as she but at less personal risk (too bad for the CEQ if any of its members is indispensable), how angry CDC is likely to be at her, etc. Perhaps there are certain things she can do, like provide behind the scenes technical advice, which won't upset CDC at all; other things-marching, making speeches, etc. might prove more embarrassing to her company and costly to herself.

X

We now imagine that David has had his little heart-to-heart with Elizabeth (as in section VII), but in vain: the next thing Jim knows, one of his engineers is all over the newspaper speaking against development of the CDC target area. Jim is understandably not pleased and asks David what's going on? David can reply to Jim that he passed on Jim's message and urged Elizabeth to cool it. What else he says depends on what he told Elizabeth and how she replied. If he's promised to try to protect her, he'll have decided in advance how best to talk to Jim about her (as Jim sees it) disloyalty and disobedience. It's become pretty clear now that Jim is a person who brooks no interference; when he gives orders he expects results. David must have known this, and probably has acted to Elizabeth more or less as Jim would wish. If he hasn't, he's presumably prepared to stand up to Jim and persuade him to go easy on Elizabeth. Whether he's got an obligation to do so or not would depend on the considerations referred to in section VII.

Elizabeth has certainly not made life any easier for David by getting herself in the newspapers. Perhaps David didn't make it clear to her how big a problem Jim could be. Or perhaps she wasn't interested in knowing. By putting David in jeopardy, Elizabeth puts her own fairness and integrity into question. One wants to know whether Elizabeth alerted David about her statement to the City Council, and whether his support was conditional on her not going public is such a visible way. There are limits to how far you can help someone who won't help themselves. If Elizabeth is counting on David to get her out of trouble with CDC, she may be asking for more than anyone can deliver. She is going to have to accept that if you do risky things you may suffer the consequences.

XI & XII

There cannot be two different 'points of view;' what's ethical is ethical. Elizabeth has every right to act politically as she sees fit when she's off the job, and the company has no right to expect that she will act as its front. Nevertheless the company does have some call on her loyalty, which means that it's not unreasonable for them to think that if she can't support them, at least she ought not to oppose them either, or at the very least not to cause them too much embarrassment by overt public activity. If Elizabeth has decided that CDC's proposal is so destructive that it must be stopped at all costs (to it and her), then perhaps she can no longer honorably continue to work for them. Can you work for a company that is as bad as all that?

Much depends on the merits of the case: if the CDC proposal really is as good as CDC says it is, or at least arguably so, then the company could take the position that Elizabeth shows both disloyalty and bad judgment in opposing it as vigorously as she has. But if the CDC proposal is essentially a snow job, then Elizabeth might think she has no choice but fight it. She's certainly within her rights and the company would be entirely unjustified to penalize her for exposing its fraudulent claims. If this should happen, CDC is probably not the kind of company Elizabeth wants to work for anyway.