

## Bruce Barry speaks up since you probably can't.



A Tennessee computer consultant who published a letter in a local newspaper offering his views on welfare policy. A worker for a Connecticut defense contractor who refused to participate in a Gulf War celebration. A flight attendant who blogged under a pseudonym about her adventures in the sky. What do these three have in common? They were fired. In *Speechless: The Erosion of Free Expression in the American Workplace* (Berrett-Koehler), Bruce Barry, a professor of management and sociology at Vanderbilt University and president of Tennessee's ACLU, scrutinizes what happens when free speech isn't so free once corporate America has its say. Barry, 49, spoke from his office in Nashville about how companies are silencing their workers and why we should all speak up if we value our freedoms. —VADIM LIBERMAN

### Why is free expression at work important?

Because we have so little of it. I will not make the indefensible claim that there is a rampant movement afoot in the American workplace to silence and punish every outbreak of non-work-related speech. But the freedom and discretion employers have to silence worker speech creates a chill that really does have a wide effect on people. This is a bigger problem than the occasional blogger who gets canned; almost everyone I talked to about this topic could cite a story they knew personally or had heard about. The fact that it is so easy for people to get in trouble for their expressive activity—especially during times of rising economic insecurity, fewer jobs, and less unionization—has an effect on their freedom to engage in their communities, be it politically, socially, or artistically.

Opportunities to speak freely without employer interference are more than just managerial niceties that make the experience of work feel a little less tyrannical. Workplaces are important venues for shared experience and public discourse that have an impact on civil society and democracy. Work is where we form our civic ties and build affiliations that carry over to private life. Those can be recreational, civic, political, or religious. The climate that employers create to encourage this—or

not—really matters when it comes to advancing citizenship, community, and democracy.

### How often do companies punish workers for their expression?

There are so many examples that I mention in my book, such as when DuPont fired an engineer who had sixteen years' experience with the company for writing a book of satire about an imaginary company. Or when Goodwill Industries fired a sewing-machine operator because of his off-work activities as a member of the Socialist Workers Party. Or when the social-networking firm Friendster fired a Web developer for mentioning her employer in writings posted to her personal blog.

### You also cite a Delta Airlines baggage handler who was fired after he wrote a letter to a newspaper slamming the airline's cost-cutting employment practices. But should Delta, or any company, be forced to tolerate public criticism by its workers?

I think it should. The idea that you cannot write a letter to the editor criticizing your employer on some civil-policy grounds is unreasonable. It's unreasonable that corporations can simply shut down that sort of speech. Just because you're willing to sell your labor to a company does not mean that you also have to sell your conscience. We

do not live in a free society when an employee of a huge corporation like Delta cannot publicly criticize policies.

### Yet a court upheld Delta's decision.

Yes, because in this country we have a system of employment at will, the essence of which is that an employer can fire you at any time for any reason. By some estimates, over half of the private-sector workforce is employed at will, so most rights to expression are largely nonexistent. Even when there are laws and protections that apply to those *not* working at will, if a case goes to court, judges tend to come down on the side of employers. Companies make all sorts of arguments about efficiency, and courts simply accept them. Not to mention that the fundamental liberties of the Bill of Rights apply only when the government acts to infringe them. Constitutional rights, including free speech, are not enforceable on private property.

Indeed, you ask in your book why a free society should tolerate violations of basic freedoms just because they are perpetrated by a private party rather than by the government. Why are we willing to check these rights at the office door?

Because people simply aren't aware of just how much power companies have. For example, in a 2001 AFL-CIO survey, fully 80 percent of respondents guessed that it is illegal to fire an employee for

expressing political views with which the employer disagrees. Unfortunately, they were wrong. I cite the case of Lynne Gobbell, an Alabama factory worker who was fired because she had a John Kerry bumper sticker on her car. Her boss had on a previous occasion inserted a flyer in paycheck envelopes pointing out the positive effects that President Bush's policies were having on workers.

Though we're raised to say, "It's a free country!", we are very unique among advanced industrialized economies by not providing most workers due process to guarantee them any redress of grievances. Most workers don't fully understand what it means to be employed at will, even though employers go to a lot of trouble to make it clear in their written policies. Of course, companies are less interested in making employees aware than they are in providing themselves with extra protection in case workers try to claim there was an implied contract that might protect them from a capricious, arbitrary, or unexplained dismissal.

#### **Is it unfair, though, to expect companies to limit a worker's personal expression if it can negatively impact business?**

Of course no employer should be expected to allow any speech on any subject at any time. This isn't like Speakers' Corner in Hyde Park, where those trying to run an enterprise must always yield to those within the organization running their mouths. And of course workers can't reveal trade secrets or harass co-workers. But I think employers do overreact. The trick is finding a balance that allows for greater freedom of speech while preserving a business's rights to run itself as it sees fit.

#### **Speechless criticizes an Oklahoma law firm's absurd guidelines forbidding any reference to an employee's race, disability, or religion in the workplace.**

I've had lawyers say that those are totally reasonable guidelines, but this is a case of where lawyers run amok and take things too far. It's absurdly dra-

conian to say none of the above should ever be mentioned in the workplace, between people who have relationships and comfort levels where they can refer to people's race, ethnicity, and religion. That's all part of the personal and social identity that people bring to work, and a policy that says you can make no reference to any of it excludes all manner of conversation about who people really are. Such a zero-tolerance rule creates a type of workplace where few people would want to work.

#### **You're not opposed to speech guidelines altogether, though—you applaud Sun Microsystems'.**

I give Sun credit for creating a sophisticated policy that's sensitive to the idea that it's not the end of the world if employees write about their workplace in a public forum. It encourages employees to blog on its servers about product and industry news, and it doesn't caution people away from free speech about their life at work. Instead of a specific list of dos and don'ts, Sun goes with constructive guidelines for effective blogging, like being interesting, exposing your personality, and remaining clear and concise. A lot of other companies' policies have only a veneer of sensibility and really amount to telling employees that if you write about work, be really careful. Sun says: "By speaking directly to the world, without the benefit of management approval, we are accepting higher risks in the interest of higher rewards."

#### **Do employers have anything to gain from allowing free expression?**

One of the mantras in modern management theory has to do with participation, openness, collaborative workplaces, and employee involvement. Encouraging freer speech enables all this because it allows employees to participate and weigh in honestly about issues that really matter to companies.

Many corporations claim to foster a culture of openness and say that employees really do engage in no-holds-barred

participation. It's nonsense; it's an open joke. People still fear the consequences about speaking up about internal business matters. In many workplaces, speaking up is seen as pointless or even dangerous, contributing to what management researchers call a climate of organizational silence. People fear that speaking up will lead them to be evaluated negatively or will damage workplace relationships. This silence is detrimental for employers, who may find their decisions and strategies undermined by limited information and a diminished ability to detect and correct errors.

#### **This brings to mind whistleblowing, which you explain is generally protected by law.**

But even when it comes to whistleblowing, laws are a real tangle. For example, a whistleblower-protection law, such as New York's, that applies only if offending behavior poses a substantial danger to public safety leaves unprotected the person who blows the whistle on the kind of financial wrongdoing that has led to so many corporate scandals in recent years.

#### **In the end, is it up to the government to reform its speech laws or corporations to change their policies?**

I advocate specific tweaks to employment law that would limit the ability of corporations to crack down on employee expression—including doing away with employment at will, even though that is unlikely to happen anytime soon. But there are lots of incremental ways to chip away at employment at will through courts, state legislatures, and workplace policies. In general, the law should be changed to make it more difficult for corporations to infringe on free-speech rights.

Also, I urge managers to rethink their role and how they deal with the intersection of corporate life and democratic culture. A lot of leaders assume that when they step into the corporate workplace, they leave their role as citizens behind. That's wrong and unfortunate. ☀