



DON'T WORRY! IT'S ALL CONFIDENTIAL

THURSDAY, AUGUST 14, 2014 ~ 8:30AM - 10:00AM

EEOC EXCEL CONFERENCE 2014

Confidential

Personal info

Gossip

Secrets

Company policies

“What happens on the tour, stays on tour”



“What happens in Vegas, stays in Vegas”

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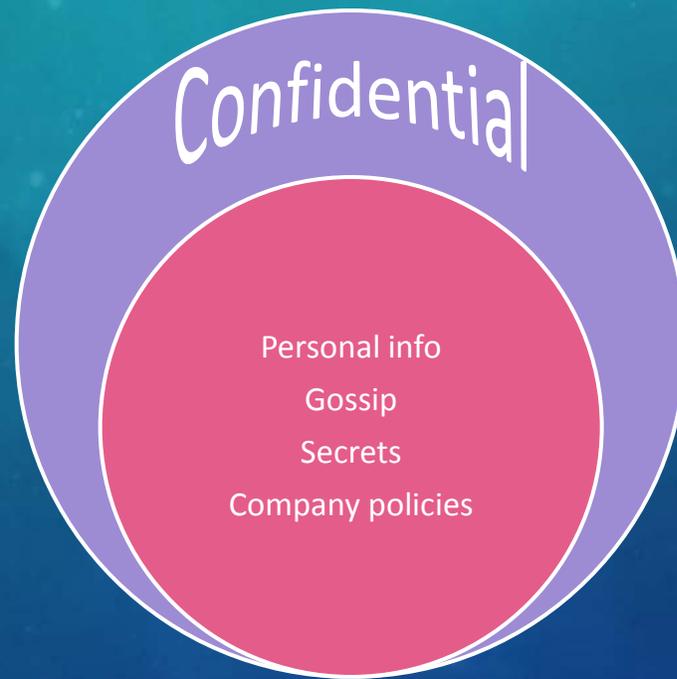
- In what settings, or under what circumstances, have *you* said, “Don’t worry, this is confidential?”

PERSONAL INDISCRETION: IS IT CONFIDENTIAL?

- Over 20 years ago, woman had a brief affair with a local guy, shortly after she got married. She never told her husband, and they moved out of town afterwards.
- Now they are moving back to that town; should she tell her husband about the affair?
- If she tells him, what value is she placing above confidentiality?



Honesty



EMPLOYEE WORK PERFORMANCE: IS IT CONFIDENTIAL?

- Your employee, Roger, is not diligent or effective; you are very relieved when he quits.
- Now someone is considering hiring Roger, and asks your opinion about his work performance.
- Do you share your concerns? If so, what value is higher than workplace confidentiality?



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- Is your answer different if you *fired* Roger for his ineffective performance?



EMPLOYEE WORK PERFORMANCE: IS IT CONFIDENTIAL?

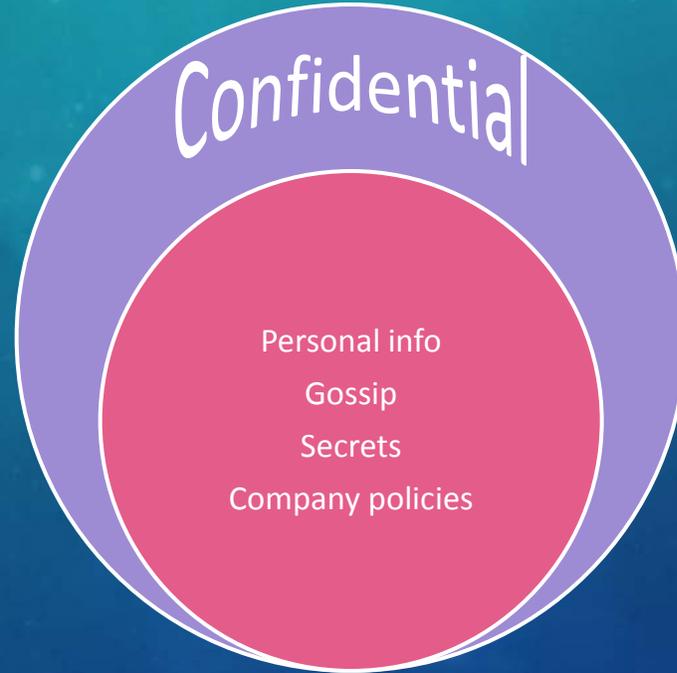
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- Now someone is considering hiring Roger, and asks your opinion about his work performance.
- Do you share your concerns? If so, what value is higher than workplace confidentiality?
- Is your answer different if the caller is a friend?



Justice

Honesty

Other?



EMPLOYER ILLEGALITY: IS IT CONFIDENTIAL?



In 2005, American banker Bradley Birkenfeld discovered that his employer, Swiss bank UBS, was violating US law by enabling tax evasion for U.S. citizens. He resigned from UBS after complaining to them and receiving no response.

In 2007, he learned that a new federal law could pay him up to 30% of any tax revenue recouped by the IRS as a result of this information. He decided to disclose what he knew to the Department of Justice.

What might have motivated him to breach employer confidentiality?

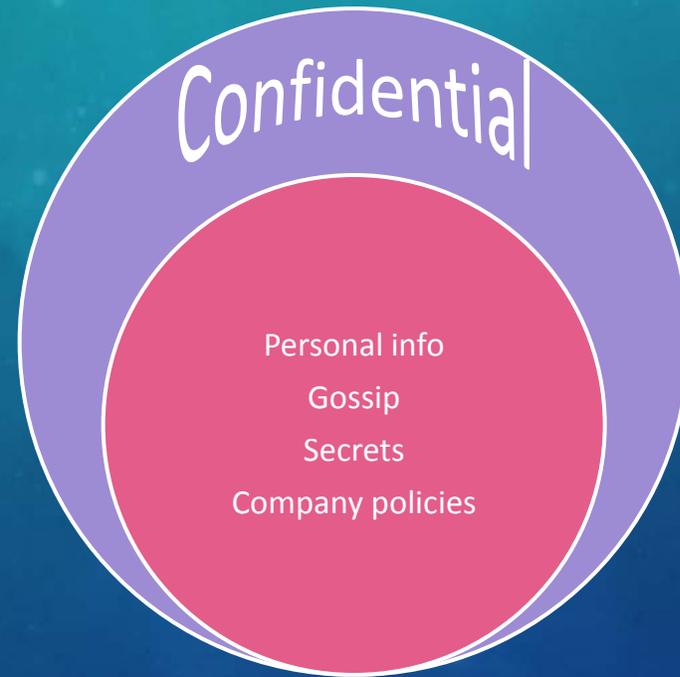
Justice

Patriotism

Honesty

Personal
Gain

Other?



EMPLOYER FRAUD: IS IT CONFIDENTIAL?

You work for the Pentagon. You are disgusted by the fraud and waste:

- \$400 for hammers
- \$600 for toilet seats
- concealed cost overruns of billions of dollars for a Lockheed transport plane.

Congress asks you to testify before its Joint Economic Committee. Your bosses tell you if you testify, you'll be fired.

Do you testify? If so, what supercedes your commitment to confidentiality?

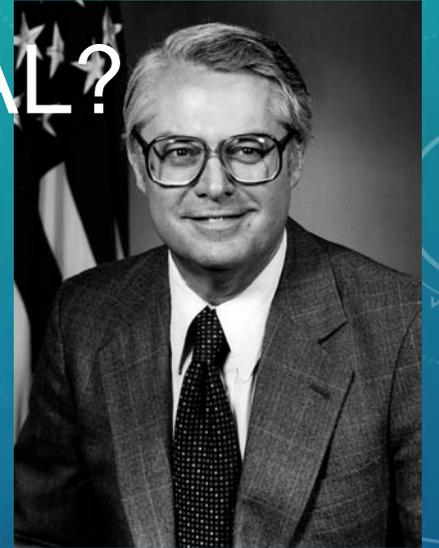
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A. Ernest Fitzgerald

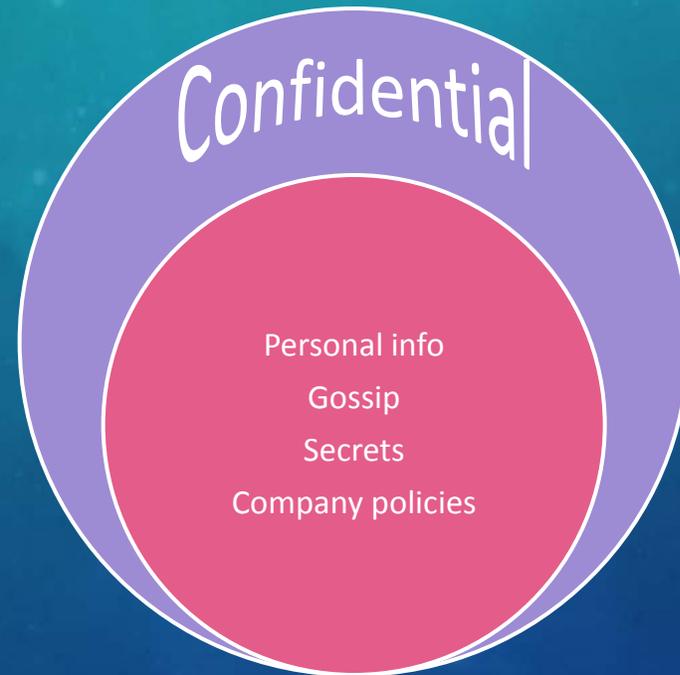
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EMPLOYER NEGLIGENCE: IS IT CONFIDENTIAL?

- Donna is a contract employee at the nation's most contaminated nuclear facility. The Department of Energy requires her to sign an agreement not to disclose to outsiders any wrongdoing until after she has obtained supervisor approval. She is a manager of environmental and nuclear safety, and she has safety concerns which she reports to her supervisor; nothing is done.
- Should she go public with her concerns? If so, what value trumps her non-disclosure agreement?

Justice

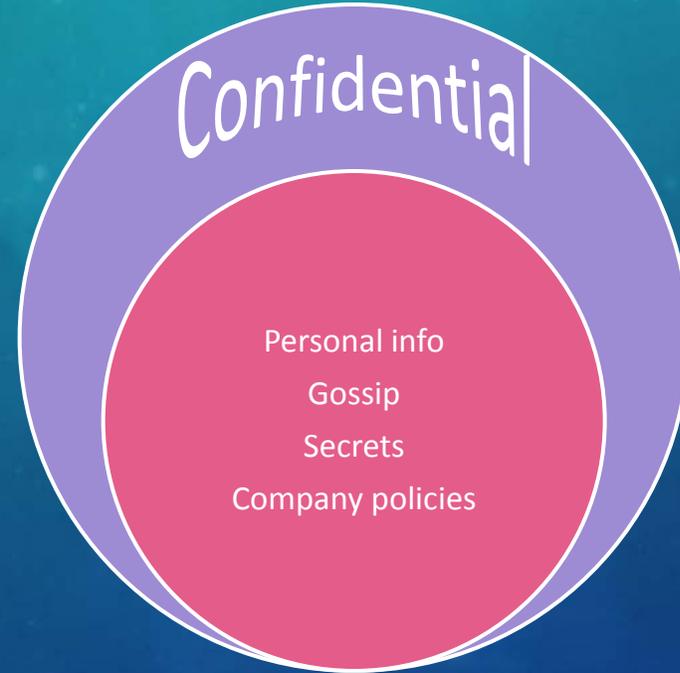
Patriotism

Honesty

Personal
Gain

Safety

Other?



EMPLOYER SECRECY: IS IT CONFIDENTIAL?

You work for the National Security Agency. The expectation of confidentiality is enormous, and you agreed to this as a condition of your employment. You gradually discover that the government is collecting data on people all over the world, without their knowledge. You become alarmed, and nauseated. But your obligation to keep this confidential means you could be charged with treason if you reveal this information.

What do you do?

If you decide to disclose, what supercedes your commitment to confidentiality?



MEDIATOR CONFIDENTIALITY

- Pre-session communications
Web-site, letters, conversations
- Retention agreement
- Mediator opening statement
- Caucus within the mediation



Mediator Confidentiality

What do you say about confidentiality
in your Mediator Opening Statement?



Mediator Confidentiality

What do you say about confidentiality
in your Mediator Opening Statement?

Mediation is totally confidential....

Nothing can be used in court

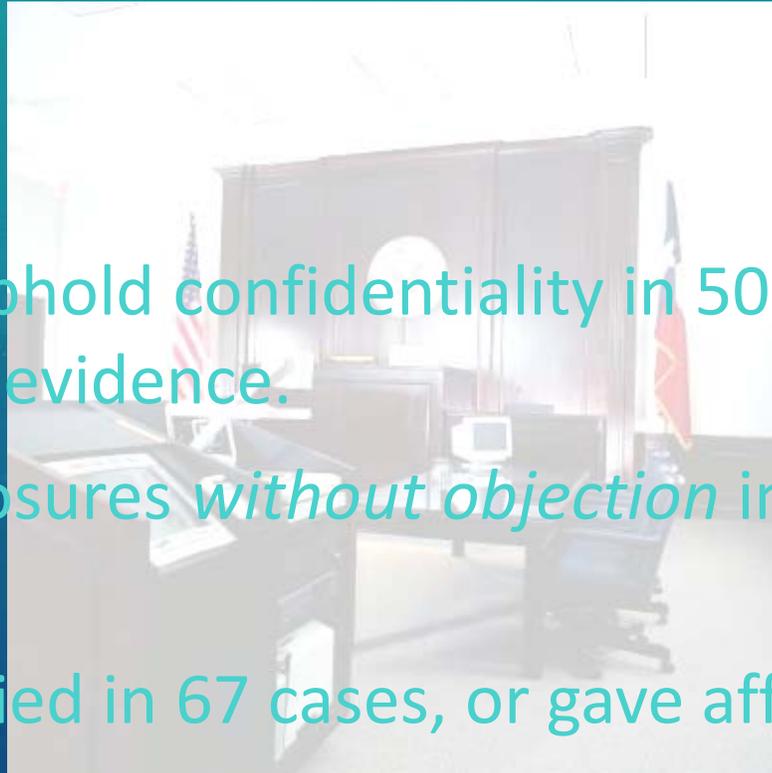


I won't testify about anything said here today

RESEARCH ON LITIGATION AFTER MEDIATION

At a minimum, “confidential” means, “not admissible in court”

... But:



- Courts do not uphold confidentiality in 50% of cases: statement is admitted into evidence.
- Mediation disclosures *without objection* in *one third* of cases researched
- *Mediators* testified in 67 cases, or gave affidavits; usually without objection.

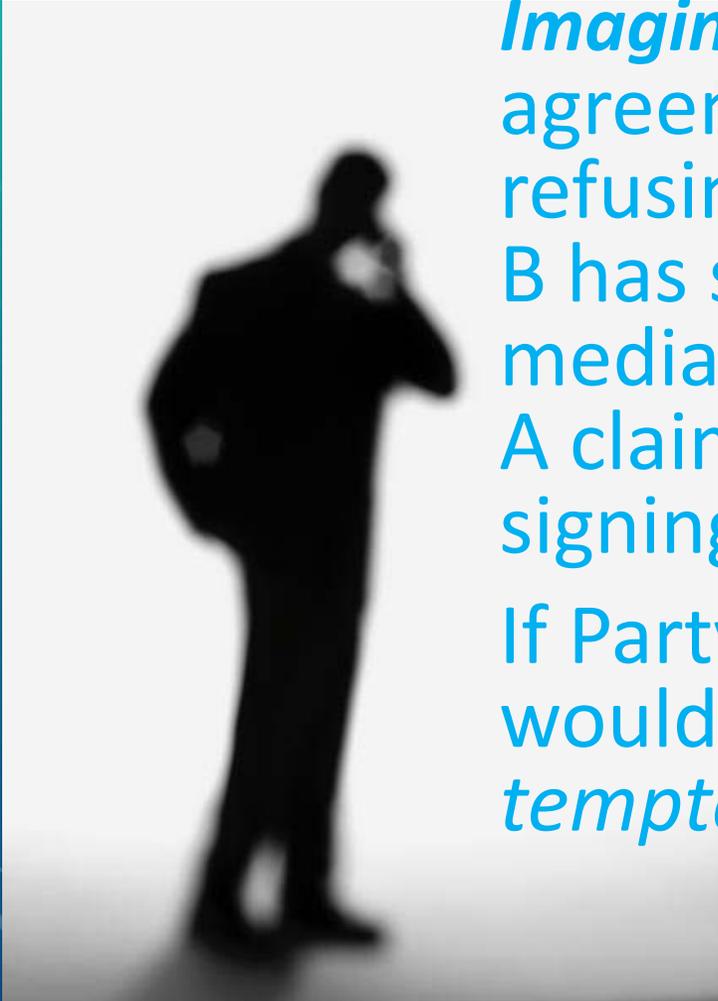
... So, what is
confidential??



Mediator Confidentiality

Imagine: You mediate a case to agreement. You later learn that Party A is refusing to honor the agreement, so Party B has sued A in court to enforce the mediated agreement. You learn that Party A claims that you coerced them into signing it. That's not true!

If Party B subpoenas you to testify, how would you respond? Are you at least *tempted* to talk about the mediation?



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- Think back to what settings, or under what circumstances, you have said, “Don’t worry, this is confidential.”
- Any further thoughts now?

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- As a supervisor of employees, what could you do to ensure that your employees keep some things confidential?





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