



*Board/Superintendent Relationship
Best Practices & Executive Sessions; Confidentiality and Punishment for
Disclosure*

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School Board Roles, Responsibilities & Best Practices

Your Speaker Today

- Fort Smith native.
- Attended Fort Smith Public Schools.
- Former Bentonville School Board Member – 2003 through 2011.
- Chaired facilities and personnel committees and served as vice president.
- Chaired successful millage campaign.
- Attorney specializing in school and special education law.

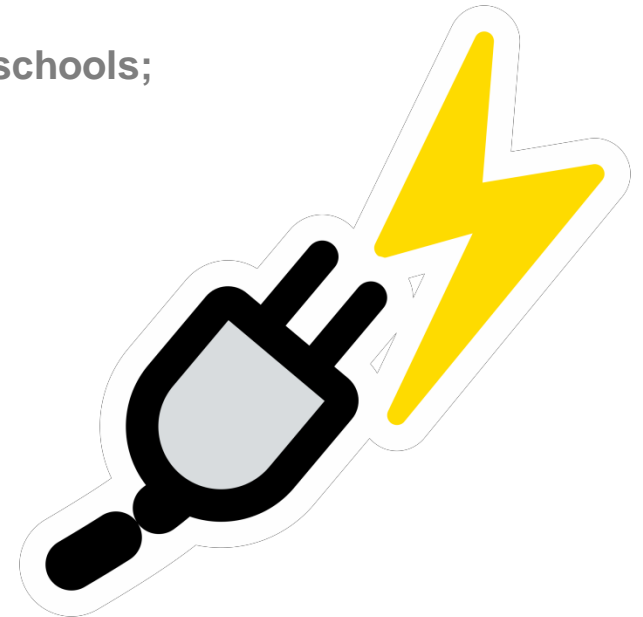
Key Messages of the Day

The Board is the **last stop** – not the first stop!!



School Board Powers

1. Attend meetings;
2. Determine the mission and direction;
3. Adhere to state and federal laws governing public schools;
4. Enact, enforce, and obey policies;
5. Employ staff;
6. Understand and oversee school district finances;
7. Ensure proper facilities;
8. Approve the selection of curriculum;
9. Visit District schools;
10. Obtain training and professional development; and
11. Do all other things necessary and lawful.



School Board Powers

As a threshold question, do you know who you represent?



Please choose below:

- (a)** It depends if we are elected to a zone or at-large.
- (b)** All District patrons – regardless of whether we are elected to a zone or at-large.

School Board Powers

“There is no clear statutory requirement that the board member ceases to be qualified if he removes his residence. . . . The position will be vacant if his residence is outside the district boundaries. [] There is no constitutional requirement that he continue to reside in the school zone.

Art. 16, sec. 3 (the "qualified elector" requirement) has been construed to require residence in the "political subdivision to be served" which in this instance is the school district. . . .” -- *Atty.Gen.Op. 96-187*

Board Meetings



- Meet at least once per month, *except – you can take off July!!*
- There are 2 types of meetings – regular and special. Special meetings are anything other than the required, monthly meeting.
- There are multiple ways to have non-regular meetings – pre-agenda, committee, etc.

Board Meetings

- The purpose of School Board meetings is for the Board to conduct its meetings in public.
- This does not mean you are having a public meeting.
- Board meetings are not public forums.

Board Meetings

- Cell phone use, such as texting, should be avoided during meetings.
- At least one state attorney general has opined that text messages during a board meeting are subject to FOIA:

*Based upon the foregoing, **it is clear in our view that public bodies must conduct meetings in a manner that guarantees the public the ability to "be fully aware of" and "listen to" the deliberative process.** Further, we believe that every statute, including the Open Meetings Law, must be implemented in a manner that gives effect to its intent. In this instance, the Board must in our view situate itself and conduct its meetings in a manner in which those in attendance can observe and hear the proceedings. This would include refraining from whispering or passing notes between or among members. **With perhaps minor exceptions involving the receipt of personal or emergency communications, this would also include refraining from transmitting and receiving electronic messages and phone calls.** If it were necessary to receive or send an electronic communication during the course of the meeting or to communicate by telephone, and if the communication is related to public business, we would recommend full disclosure to those present at the meeting. Conducting communications regarding public business privately, during a public meeting, in our opinion would be unreasonable and fail to comply with a basic requirement and intent of the Open Meetings Law. -- State of New York, Department of State, Committee on Open Government, FOIL-AO-18052, March 24, 2010.*

Board Meetings

- Except in emergency situations, regular and special meetings of the school District Board of Directors and school board committees that deal with personnel or personnel policies shall be held after 5:00 p.m.
- A meeting of the school District Board of Directors or a school board committee that does not deal with personnel or personnel policies may occur at any time and on any day, regardless of whether there is an emergency.

Board Meetings

- Legally called meetings are the one and only place you can conduct business.
- Your power comes as member of a team who will work together in the best interest of the students in the District.
- Diversity in viewpoints and fair debate are healthy.
- Once the vote is taken, the team must join together to support the majority.

Board Meetings

Understand, as an *individual*:

- You should not give orders or direct staff;
- You do not speak for the Board as a whole;
- You cannot effect change without Board action;

And

- You should observe the clear distinction between Board and Superintendent roles; and
- Understand you are each a single member of a 7-member team.
- Remember – the Board is the last stop, not the first stop.

Employment

6-13-109. School superintendent.

(a) The public school districts in the state shall each employ a superintendent of schools, whose qualifications and duties shall be prescribed by the General Assembly and the State Board of Education.

(b) "Superintendent of schools" is defined as the executive officer of a school district board of directors directing the affairs of the school district and teaching not more than one-half (1/2) of the time in the school day.

Board/Superintendent Relationship

- The Superintendent is the educational leader and chief executive officer of the school District.
- The duty of the Superintendent is to manage the day-to-day operations of the District as its administrative manager.

Board/Superintendent Relationship

2.1 Duties. The Superintendent is the chief executive officer and educational leader of the District. As set forth by State and Federal law, the State Board of Education, and the Board, the Superintendent shall have the following duties and authority:

- A. Assuming administrative responsibility and leadership for the planning, operation, supervision, and evaluation of the education programs, services, and facilities of the District and for the annual performance appraisal of the District's staff.
- B. Assuming administrative authority and responsibility for the assignment and evaluation of all personnel of the District other than the Superintendent.
- C. Making recommendations regarding the selection of personnel of the District other than the Superintendent.
- D. Initiating the termination or suspension of an employee or the nonrenewal of an employee's contract.
- E. Managing the day-to-day operations of the District as its administrative manager.
- F. Preparing or causing to be prepared and submitting to the Board a proposed budget as provided by State law.

Board/Superintendent Relationship

Cont'd

- G. Preparing recommendations for policies to be adopted by the Board and overseeing the implementation of adopted policies.
- H. Developing or causing to be developed appropriate administrative regulations to implement policies established by the Board.
- I. Providing leadership for the attainment of the student performance in the District based on the indicators adopted under State law and other indicators adopted by the State Board of Education or the Pea Ridge School Board.
- J. Organizing the District's central administration.
- K. Performing any other duties assigned by action of the Board.
- L. Submitting a summary of these activities to the Board annually.
- M. Conducting all such activities and duties in accordance with applicable federal and state laws and regulations, District Policies and the lawful directives of the Board.

Board/Superintendent Relationship

Cont'd

2.3 Criticism, Suggestions. Pursuant to the duties established herein, the Board, individually and collectively, shall promptly refer all criticism, complaints and suggestions called to the Board's attention to the Superintendent for study and appropriate action, and the Superintendent promptly shall investigate such matters and inform the Board of the results of such efforts.

Board/Superintendent Relationship

**The Superintendent
should be the
information hub for
the Board.**

Board/Superintendent Relationship



Board/Superintendent Relationship

**Why is it important to
follow the chain of
command?**

Board/Superintendent Relationship

**The Superintendent is
the only employee who
answers to the Board.**

Board/Superintendent Relationship

- The Board works as a “Body Corporate” to oversee the management of the District through the Superintendent.
- The Board sets policy and goals for the District and evaluates and directs the Superintendent to support the achievement of those goals.
- The Superintendent is responsible for the day to day operations of the District and answers to the Board regarding the success or failure of all aspects of the District’s performance.

Board/Superintendent Relationship

- Board business should be conducted at Board Meetings.
- Board members lack Individual authority.
- Information should be shared equally among the team at all times.

Board/Superintendent Relationship

Roles/Responsibilities	Board	Superintendent
General	Governs the District	Advises the Board – Manages the District
Policy	Adopts	Suggests & implements
Board Meetings	In charge of	Serves as resource
Budget	Adopts and monitors	Prepares, administers, monitors
Instruction/Curriculum	Establishes criteria, approves, monitors	Recommends, oversees staffs' efforts
Community Relations	Creates positive image	Creates positive image & directs communications
Personnel	Establishes criteria, approves or rejects	Interviews, recommends, hires, evaluates, promotes, trains

Board/Superintendent Relationship

John calls to tell you he is concerned by his evaluation and treatment by administration.

What should you do?

Board/Superintendent Relationship

- (a) Ask John for a full explanation so you can better understand his concerns?
- (b) Set up a meeting with you, John and the Superintendent to discuss?
- (c) Politely tell John you cannot discuss the matter with him?

Board/Superintendent Relationship

(c) Politely tell John you cannot discuss the matter with him.

Board/Superintendent Relationship

Your neighbor rushes to you to complain about the way her son was treated by the band teacher.

What should you do?

Board/Superintendent Relationship

- (a) Call the building principal?**
- (b) Call the band teacher?**
- (c) Encourage self-resolution?**
- (d) Call the Superintendent?**

Board/Superintendent Relationship

- (c) Encourage self-resolution,
and**
- (d) Call the Superintendent.**

Board/Superintendent Relationship

You read the Board packet and have a concern about an expense item listed in the monthly budget.

What should you do?

Board/Superintendent Relationship



- (a) Wait for the meeting and ask a surprise question of District staff?
- (b) Notify the Superintendent of your concern?
- (c) Start a group email with the Board and Superintendent on your question?
- (d) Call the administrator responsible for the expense item.

Board/Superintendent Relationship

**(b) Notify the Superintendent
of your concern.**

Board/Superintendent Relationship

**A distraught parent tells you
her child was suspended for
drinking on the team bus.**

What should you do?

Board/Superintendent Relationship

- (a) Investigate what happened?
- (b) Interview the parent to make sure you understand all of the facts?
- (c) Politely tell the parent you cannot discuss the matter with her?



Board/Superintendent Relationship



(c) Politely tell the parent you cannot discuss the matter with her.

More On Meetings

- The Board is the fact finder when employees are being recommended for termination or non-renewal; when students are recommended for expulsion; or when employees are dissatisfied with the administration's resolution of their grievance.
- To assure fairness of process and appearance, Board members must have no knowledge of the circumstances that are the basis of the recommendation that's led to the hearing.



More On Meetings

1. Display of unity.
2. Meeting management.
3. Superintendent's ability to focus on patrons and staff.
4. Leverage of Superintendent's knowledge / experience during the meeting.
5. Shift presentations to subject matter experts.

More On Employing Staff

- While Board action is necessary to ratify a contract with a staff member, the Board doesn't interview or select potential employees, except for Superintendent candidates.
- Board members rely on the Superintendent and principals to select from among applicants and recommend the employees to the Board

More On Employing Staff

The Board's role in hiring and approving reassignments of certified staff is to ratify the decision made by an administrator.

Policies

- Policies are general statements from the Board concerning conditions, directions and beliefs.
- Policies must stay current with laws and regulations.

Policies

- Policies can be organic, purchased, or purchased and adapted.
- I recommend purchased or adapted.

Policies

Board members adopt policies, while the Superintendent and his staff enforce them.

Policies

“Here’s a simple rule of thumb to remind you how to keep your duties separate from those of school district employees: If it’s anyone else’s job, it’s not yours. Making sure the buses run on time? Someone else has that job. Patrolling the high school’s halls? A resource officer does it, so it’s not your job. Sitting in the back of the science classroom to rate the teacher? That’s the principal’s job. Holding an employee grievance hearing? Yes, that’s part of your job.”

-- *ARSBA Handbook*

Visiting Schools



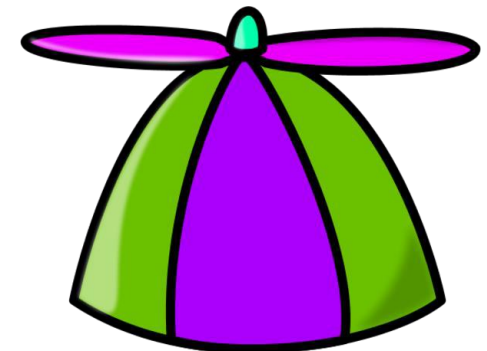
- Visits are best scheduled as a group.
- You can hold a special meeting in a building, visit an ALE, see a new gym or program, etc.

Visiting Schools

- The purpose of visiting schools is to acquaint yourself with the facility, staff and programming.
- Remember, the administration is left to the administrators.

Visiting Schools

- Going alone can be disruptive and even somewhat intimidating.
- You're never viewed without your school Board hat.



Executive Sessions, Confidentiality, and Punishment for Disclosure

What are executive sessions?

“A private meeting of a school board or other governing body that can be held only for purposes specified by law and from which the general public and press are excluded.”

- *Arkansas School Boards Association*



25-19-106. Open public meetings.

(c) (1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee. The specific purpose of the executive session shall be announced in public before going into executive session.

25-19-106. Open public meetings.

(2) (A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

25-19-106. Open public meetings.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

25-19-106. Open public meetings.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

25-19-106. Open public meetings.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

In other words...

Closed, private meetings to consider an employee's or public officer's:

- Employment
- Appointment
- Promotion
- Demotion
- Resignation

Procedure for executive sessions



- Occur during open public meetings, not on their own
- Quorum of the board **MUST** be physically present
- Notice requirements for open public meetings still apply

STEP 1: Notice the meeting

- Time and place of all meetings must be provided to anyone that requests such information
- Emergency or special meetings require notice to:
 - local news organizations (including newspapers, radio stations, and televisions stations)
 - other news organizations that have requested to be notified of such meetings
- Emergency or special meetings require at least two (2) hours' notice of the time and place so that the public can have representatives at the meeting

STEP 2: Notice the executive session

- Before beginning an executive session, you **MUST** announce at the open public meeting the purpose for the executive session



STEP 3: Conduct of the executive session



- May **ONLY** consider employment, appointment, promotion, demotion, disciplining, or resignation of an employee
- May **NOT** vote on issues
- Minutes are not taken

STEP 4: Vote on the issues considered in the executive session

- **VOTE IN PUBLIC!**
- If you vote during the private executive session, the decision you make is not legally recognized



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The “don’ts” of executive sessions

- Allow a board member to attend remotely
- Allow a remote board member to vote on an issue that is the subject of an executive session
- Vote on issues
- Call the executive session to avoid FOIA



What purposes do Executive Sessions serve?

To *protect* the employee from unwarranted adverse publicity and reputational damage

- *When dealing with the hiring, firing, promotion, demotion, appointment, or resignation of an employee, sensitive factual matters should be discussed in executive sessions instead of open public meetings*



So, are the contents of executive sessions contents subject to FOIA?

No!

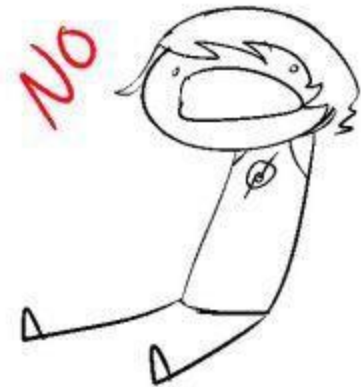
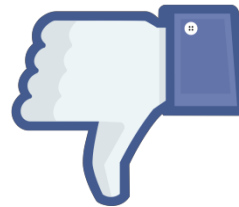
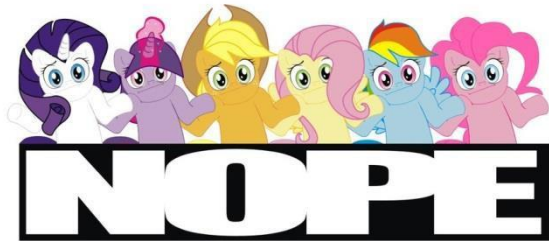
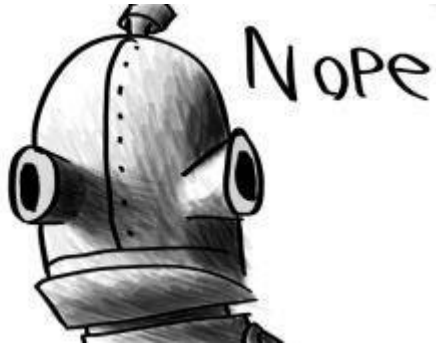
So, can a board member repeat information learned or discussed in an executive session?



just
say no.

NO

So, can a board member use information learned or discussed in an executive session?



What does it mean to “use” information learned in executive session?

EXAMPLE:

- Superintendent explains to the board in executive session that several employees believe Jon uses profanity when speaking.
- Board Member A investigates, asking several people – have you heard Jon using profanity?
- Board Member A asks Jon the same question. . .

What are the implications
of the questions?

The Words of one superintendent (not yours! 😊)

“I’ve also been faced with legitimate executive session details becoming public knowledge by the time I arrive at school the morning after a board meeting. I’d like to think this information is not intentionally leaked, but that’s difficult when an individual quotes a board member. We all must remember that the tiniest slip by a board member or his or her spouse can lead to destructive rumors.”

The Words of one superintendent (not yours! 😊)

“Confidentiality means nothing to some individuals. The only scruples they possess are in ensuring they are the ones holding the real information.”

The Words of one superintendent (not yours! 😊)

“Too often, nothing happens from a breach of confidentiality. Most board members are disturbed by such behavior. Others will never know about a violation. Even if there is suspicion, validation of a breach of confidentiality can be difficult to prove and uncomfortable to confront.”

Breach of Confidentiality

So, what happens if I breach confidentiality?



Breach of Confidentiality

“What’s discussed in executive session **stays** in executive session. No exceptions. If you were to repeat the confidences of executive session, you’d quickly lose standing, respect, and trust. **Violating the privacy of executive session is a serious breach of the law – and personal ethics.**”

- *Arkansas School Boards Association*

What does the law say?

“No board member, administrator, or employee shall knowingly disclose **any confidential information** gained by reason of his or her position, nor shall the member knowingly otherwise use such information for his or her personal gain or benefit.”

- Ark. Code Ann. Section 16-24-104(c)

What happens if I disclose executive session information?

- Violation of Ark. Code Ann. § 6-24-104 is a FELONY punishable by up to a \$10,000 fine and five (5) years in state prison
- Immediate loss of board position
- Restitution to the District for any monetary loss caused by the disclosure



What happens if I disclose executive session information?

Ark. Code Ann. § 6-24-104. General prohibition.

(c) No board member, administrator, or employee shall knowingly disclose any confidential information gained by reason of his or her position, nor shall the member knowingly otherwise use such information for his or her personal gain or benefit.

What happens if I disclose executive session information?

Ark. Code Ann. § 6-24-115. Criminal penalties.

(a) Any board member, administrator, employee, or nonemployee who shall knowingly violate the provisions of this chapter shall be guilty of a felony.

(b)(1) Upon pleading guilty or nolo contendere to or being found guilty of violating this chapter, the court shall order restitution to the public educational entity.

(2) In addition, the court may fine the violator in any sum not to exceed the greater of ten thousand dollars (\$10,000) or double the dollar amounts involved in the transactions, sentence the violator to prison for not more than five (5) years, or impose both a fine and imprisonment.

What happens if I disclose executive session information?

Ark. Code Ann. § 6-24-117. Board position vacant upon conviction.

If a board member is found guilty of violating the provisions of this chapter, the board member shall immediately cease to be a board member, the position is declared vacant, and a replacement shall be named as provided by law.

What happens if I disclose executive session information?

AMI 601

**Violation of Statute, Ordinance,
or Regulation as Evidence of
Negligence**

What happens if I disclose executive session information?

The **qualified immunity** doctrine protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

What do the rules of ethics say?

“I will keep confidential all school information that would needlessly injure individuals and schools as well as all information privileged under the law.”

-- *ASBA's School Board Member's Code of Ethics*



Example 1: Kenny Bruce – Albany, NY

- Bruce allegedly disclosed the names on the board's list of potential hires for the vacant superintendent position
- Bruce's colleagues obtained a gag order in state court preventing him from further discussing the matter
- Bruce then was forced to resign at the next meeting, during which his colleagues were voting whether to seek criminal charges against him



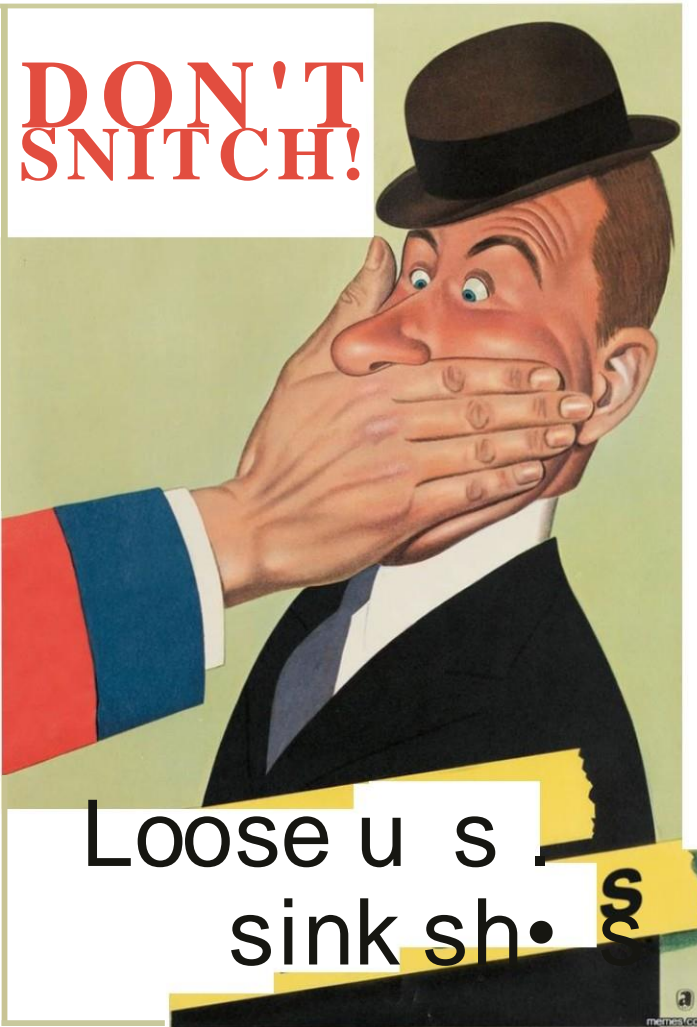
Other Consequences of Leaks

- Breaches trust;
- Undermines board member relationships;
- Undermines board / administrator relationships;
- Causes undue pressure on the District;
- Creates cliques and adversaries;
- Chills open and frank discussion;
- Creates potential liability;
- Harms the District's reputation and standing;
- Harms the subject of the leak;
- Causes sensational and harmful publicity

Other Consequences of Leaks

Do you need
more
examples?





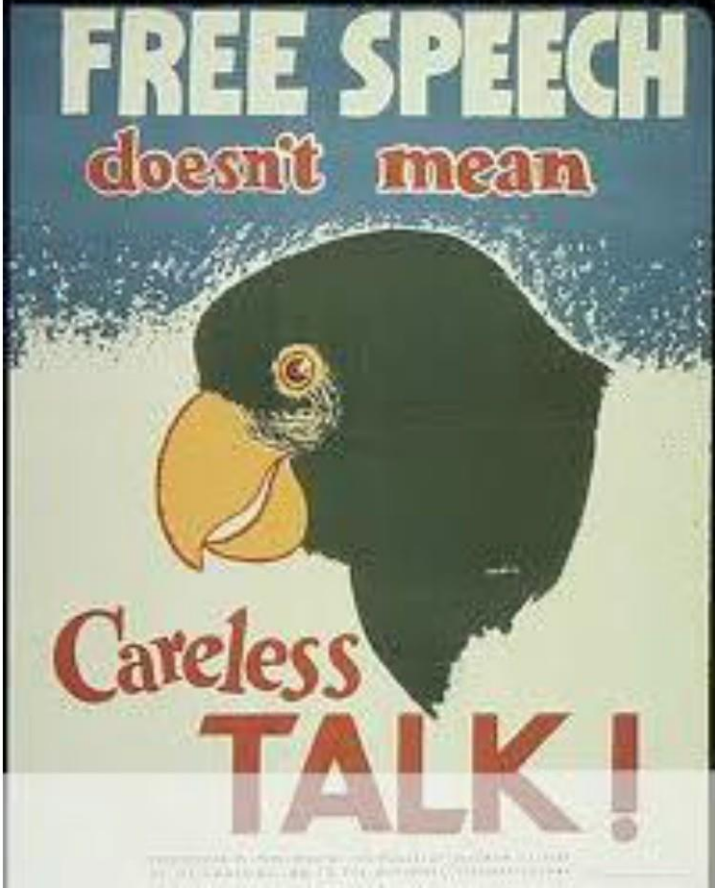
SOMEONE



TALKED!

FRIDA^V

**ELDREDGE
& CLARK** LLP



Everyone has that ONE PERSON they confide in.



*Everyone has that ONE PERSON they
confide in.*

The only way to
maintain confidentiality
is to keep the secret –
even from that ONE
PERSON.

QUESTIONS?

THANK YOU!