

[DRAFT]

**LOOSE LIPS BRING PINK SLIPS:
FIRED FOR GOSSIP AT THE OFFICE**

by

Rosemary Hartigan * and Paula O'Callaghan **

Copyright© 2009

Introduction

This paper applies an interdisciplinary analysis to the accompanying discussion case¹ by examining the legal, ethical and policy implications of gossip in the workplace.

Two actual events inform the fact pattern of the fictitious discussion case. In 2007 several individuals employed by two different entities, a municipality in New Hampshire and a small private firm in Chicago, reportedly were terminated for engaging in office gossip. Both incidents were widely discussed in the national media. Although neither incident resulted in a published legal opinion, both generated considerable public interest and raised interesting questions about workplace gossip.

In the New Hampshire case, four municipal employees of the town of Hooksett were fired for gossiping about a suspect romantic liaison between their boss, the Hookset Town Administrator, and a recently promoted town employee; the dismissed employees

* Collegiate Professor and Director, Business and Executive Programs, Graduate School of Management and Technology, University of Maryland University College.

** Assistant Professor, Business and Executive Programs, Graduate School of Management and Technology, University of Maryland University College.

¹ Rosemary Hartigan and Paula O'Callaghan, Loose Lips Bring Pink Slips: Fired for Gossip at the Office, A Case Study (2009)(unpublished case, appendix A).

became known as the “Hooksett Four.”² All of the four dismissed employees are females.³ Two of the four sued the town in federal court; the other two sued in state court.⁴ The Hooksett Four identified themselves publicly and gave numerous interviews in the local and national media. The Town of Hooksett responded by issuing a public statement explaining and defending the town’s actions in firing the four.⁵ *The Associated Press* reported that the town subsequently settled with the two plaintiffs who filed in federal court.⁶

The Chicago incident allegedly occurred at a PR firm known as *Empower*, where it was reported that one person was fired because of gossip and sharing trade secrets outside the office; two others at the firm were fired for spreading gossip.⁷ The gender of the fired employees has not been identified. For purposes of this paper these former employees will be called the “Chicago Three.” According to published interviews Sam Chapman, the CEO of the Empower firm, who claims to have fired the three for gossiping, subsequently imposed a workplace policy of zero tolerance for office gossip.⁸

² Erika Hayasaki, *4 go through the mill over a rumor - Gossip about their boss cost women their town hall jobs. Now everybody's talking*, LOS ANGELES TIMES, July 24, 2007, <http://articles.latimes.com/2007/jul/24/nation/na-rumor24> (last visited June 26, 2009).

³ *Id.*

⁴ *Fired for gossiping, 2 N.H. women sue in federal court*, sunjournal.com, September 23, 2007, http://www.sunjournal.com/story/230655-3/NewEnglandNews/Fired_for_gossiping_2_NH_women_sue_in_federal_court/ (last visited June 26, 2009) *See also*, *Bonsteel v. Hooksett*, No. 1:2007cv00298 (filed September 21, 2007), http://dockets.justia.com/docket/court-nhdce/case_no-1:2007cv00298/case_id-31456/ (last visited June 26, 2009).

⁵ *Town issues statement on 'Hooksett Four,'* UnionLeader.com, June 5, 2007, <http://www.unionleader.com/article.aspx?articleId=d3d21fdd-e95c-4580-959a-f2406d1514fb&headline=Town+issues+statement+on+'Hooksett+Four'> (last visited June 26, 2009).

⁶ *2 fired Hooksett workers settle federal lawsuit*, THE ASSOCIATED PRESS STATE AND LOCAL WIRE, November 1, 2008 (in return for which “the women agreed to waive any age discrimination claims.”).

⁷ Marilyn Gardner, *Some employers get tough on workplace gossip*, CHRISTIAN SCIENCE MONITOR, June 2, 2008, Money & Values, at 13.

⁸ *Id.* Chapman has written a book: SAM CHAPMAN, THE NO-GOSSIP ZONE: A NO-NONSENSE GUIDE TO A HEALTHY, HIGH-PERFORMING WORK ENVIRONMENT (forthcoming August 2009).

To date there have been no reports of litigation arising from the discharge of the Chicago Three. Unlike the Hooksett Four, the identities of the Chicago Three remain unknown.

What is *gossip*?

A review of social science and management literature and numerous court cases indicates that there is much variation in the definition of "gossip." However, paraphrasing Justice Stewart Potter's famous comment -- about another much maligned and discredited form of communication, -- pornography -- despite the difficulty of defining it, most of us know it when we see or *hear* it;⁹ or, at least, we think we do.

Hearsay, rumor, and gossip are related concepts. Often in common usage, the three terms are equated. All involve communication of derivative information (to a second party or parties) originally obtained from a third party. The third party, whether known or unknown, is not present to verify or discredit the information. The information is not only unverified, but, as in the case of some dying declarations, could be unverifiable. Rumor is usually thought of as being synonymous with hearsay, and is commonly understood to be "talk that is unsubstantiated by authority or evidence as to its authenticity or truth."¹⁰ However, Rosnow and Fine¹¹ argue that rumor and gossip are not always synonymous: "Rumor is information, neither substantiated nor refuted; *gossip is small talk with or without a known basis in fact*" [emphasis added]. In addition, gossip and rumor have been distinguished on the basis of subject matter. "Rumor's foundation is lack of evidence -- without regard for topic; gossip specifies the topic -- the moral doings

⁹ Concurring, in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), Justice Stewart noted the difficulty of defining pornography, but commented that he, nonetheless, knew it when he saw it.

¹⁰ Grant Michaelson & Suchitra Mouly, *Rumour and Gossip in Organizations: A Conceptual Study*, 38 *MANAGEMENT DECISION* 5 (2000), at 339.

¹¹ RALPH L. ROSNOW/GARY ALAN FINE, *RUMOR AND GOSSIP: THE SOCIAL PSYCHOLOGY OF HEARSAY* 4 (1976).

of humans -- but ignores its factuality."¹² Thus, although gossip usually involves an arguably inappropriate disclosure of information, the information it conveys may be factual.¹³

The subject of this paper is, specifically, workplace gossip, which Kurland and Pelled define as "informal and evaluative talk in an organization, usually among no more than a few individuals, about another member of the organization who is not present."¹⁴ They note that The American Management Association distinguished "the grapevine" from gossip, asserting that the former may involve a wide range of topics, but gossip is specifically focused on information about people.¹⁵

For more than 100 years courts have taken notice of "gossip" in their opinions, but mostly in a dismissive manner, frequently using the phrase "mere gossip" in reference to hearsay statements that are not admissible for evidentiary purposes.¹⁶ In the cases we examined where gossip (or rumor) was at the heart of an issue in an employment action, most of the courts did not attempt to define gossip. Rather, they examined the operative definitions of prohibited behavior specified in the employers' written policies.¹⁷ However, in a few cases, the courts did rely on the same dictionary definition. In *Dillon v. Twin Peaks Charter Academy* the court found it necessary to define "gossip" in an

¹² Gary A. Fine, *Rumors and Gossiping* in HANDBOOK OF DISCOURSE ANALYSIS, 3 at 223-237.

¹³ See, for example, Margaret Holland, *What's Wrong With Telling the Truth? An Analysis of Gossip*, AMERICAN PHILOSOPHICAL QUARTERLY (April 1996) and Maryann Ayim, *Knowledge Through the Grapevine: Gossip as Inquiry* in GOOD GOSSIP at 85-99 (1994).

¹⁴ Nancy B. Kurland & Lisa Hope Pelled, *Passing the Word: Toward a Model of Gossip and Power in the Workplace*. 25 THE ACADEMY OF MANAGEMENT REVIEW 2 (April, 2000) at 429.

¹⁵ *Id.* at 430.

¹⁶ *Isley v. Sentinel Company*, 133 Wis. 20 (1907) (first noted case where the term "mere gossip" was used). Earlier cases such as *Smith v. Tennessee*, 9 Tenn. 228 (1829) have taken notice of gossip in some way in the court's analysis.

¹⁷ See, for example, *Jackson v. Ritter and Wal-Mart, Inc. d/b/a Sam's Wholesale Club*, 1992 U.S. Dist. LEXIS 12114 (1992); *Brinson v. Barden Mississippi Gaming, LLC*, 2007 U.S. Dist. LEXIS 21965 (2007); *State ex rel. Wal-Mart v. Riley*, 159 Ohio App. 3d 598 (2005); *Letner v. Wal-Mart Discount Department Store*, 199 U.S. App. LEXIS 843 (1999); *Cruces v. Utah State Veterans Nursing Home*, 2007 U.S. App. LEXIS 7230 (2007).

employment action suit where the academy's code of conduct prohibited "malicious gossip and similar activities" but gave no definition in the code.¹⁸

The judge in *Dillon*, after consulting several dictionaries, provided this definition:

"Gossip" is defined consistently...as "idle talk" or "rumor," "especially about the affairs of others."¹⁹

The Court in *Fitzgerald v. Stanley Roberts, Inc. and Pomeranz* relied on this same definition in a case involving the admissibility of gossip (as hearsay).²⁰

As in *Dillon* and *Fitzgerald*, in this paper we limit our discussion of gossip to talk (which includes all forms of communication) about the affairs of individuals. We will not apply the dictionary definition, because, as discussed later in the paper, the term "idle" makes general, commonly held, assumptions about the purpose and intent of gossip that are not supported in fact. Rather, we will apply Kurland and Pelled's value-neutral definition: "informal and evaluative talk in an organization, usually among no more than a few individuals, about another member of the organization who is not present."²¹ Our discussion case involves gossip about an alleged romantic relationship. Therefore, we do not address talk about mergers, takeovers or other business affairs, which, we consider to be rumor, rather than gossip.

Discussion case

In our discussion case Alex Sharkey is the name given to an ambitious young public relations executive whose employment is terminated when Alex instigates and

¹⁸ *Dillon v. Twin Peaks Charter Academy*, 2008 U.S. Dist. LEXIS 45615 (2008).

¹⁹ *Id.* at *7.

²⁰ *Fitzgerald v. Stanley Roberts, Inc.*, 186 N.J. 286 (2006) at 316. (Thus, if an employee heard gossip that people who complained about work conditions were fired, the evidence might be admissible not to prove that people were in fact fired, but to explain her delay in reporting a problem.) ("...gossip is idle talk or rumor, especially about the personal or private affairs of others.") *Id.* at 315.

²¹ Kurland & Pelled, *supra*, note 14 at 429.

spreads office gossip. The subject of the gossip was a suspected affair between Alex's boss and another employee at the public relations firm who was unexpectedly, and in Alex's mind, "suspiciously," promoted. Alex gossiped in the typical "water cooler" type situation within the firm and to others outside the firm.

Alex was terminated in a face-to-face session where the HR representative told Alex that the firm did not have to give a reason because of Alex's status as an at will employee. However, in an emotionally charged exchange, Alex's boss contradicts that reasoning saying,

You have ruined my life with your gossip! You poisoned the entire office against me and you had the nerve to spread your lies and gossip outside our firm.²²

Following Alex's termination, two other employees of the firm were terminated; the case implies the two additional terminations were based on gossip as well. At the time the firm had no policy banning gossip – although the firm adopted one following the terminations.

The fact pattern of the discussion case raises legal and ethical issues about office gossip, and policy issues such as the desirability of anti-gossip policies in the workplace. In our discussion case the gender of Alex Sharkey is not specified intentionally to encourage students to identify and reflect on assumptions they might make regarding gender.

Issues Presented

The following questions will form the basis of our inquiry.

Legal Issues

- Wrongful termination

²² Rosemary Hartigan and Paula O'Callaghan, Loose Lips Bring Pink Slips: Fired for Gossip at the Office, A Case Study (2009) (unpublished case, appendix A).

- Does Alex Sharkey have an action for wrongful termination where the employee was fired for engaging in office gossip?
- Restraint of workplace speech
 - Are workplace policies that prohibit gossip with penalty of termination legally enforceable?

Organization Policy Issues

- Restraint of workplace speech
 - Why do employees gossip?
 - Is it desirable for employers to promulgate an office policy prohibiting gossip?
 - Is it possible for an employer to enforce such a policy?

Ethical Issues

- Is gossiping immoral?
- What are the ethical implications of restraining gossip in the workplace?

Legal Issues

Wrongful termination

Does Alex Sharkey have an action for wrongful termination where the employee was fired for engaging in office gossip?

An employee discharged on the basis of gossip may be incredulous that such a seemingly minor offense can be legally sanctioned grounds for termination. Research shows that “[e]mployees erroneously believe that the law prevents employers from discharging them in a wide variety of situations where the law does not protect them.”²³ Further, a potential plaintiff such as Sharkey may believe he cannot be fired for gossip simply because everyone does it. As one reviewer put it, “[G]ossip... appears to be a

²³ Jesse Rudy, *What They Don't Know Won't Hurt Them: Defending Employment-At-Will in Light of Findings that Employees Believe They Possess Just Cause Protection*, 23 BERKELEY J. EMP. & LAB. L. 307, 330 (2002).

normal and necessary part of life for all but the rare hermit among us.”²⁴ Although there are not many judicial opinions concerning employees who have been terminated purely on the basis of office gossip, gossip has been cited as one of the grounds for termination in at least ten fully litigated cases in the past twelve years.²⁵ These are cases where published opinions are available. We acknowledge that there probably are many more instances such as the Hooksett Four where the parties settle outside of court before trial, and cases, such as the Chicago Three, where the terminated employees do not sue. Indeed, as we will discuss later in the paper, gossip can be form of informal resistance for employees in lieu of, or prior to, pursuing formal grievance or legal redress.

At-will employment and common law exceptions

Since the 1800’s there has been a strong presumption in American jurisprudence that absent a contract, employment is "at-will." That presumption means that employers may discharge an employee at any time for any reason, or for no reason.²⁶ A legal analysis of the discussion case would surely begin with a discussion of the employment at-will doctrine.

²⁴ Diane L. Zimmerman, *Requiem for a heavyweight: A farewell to Warren and Brandeis’s privacy tort*, 68 CORNELL L. REV. 291, 334 (1983).

²⁵ *Dillon v. Twin Peaks Charter Academy*, 2008 U.S. Dist. LEXIS 45615 (Colo. 2008); *Pelletier v. City of Warwick*, 2008 R.I. Super. LEXIS 4 (2008); *Cruces v. Utah State Veterans Nursing Home*, 222 Fed. Appx. 776 (10th Cir. 2007); *Brinson v. Barden Mississippi Gaming*, 2007 U.S. Dist. LEXIS 21965 (Miss. 2007); *State ex rel. Wal-Mart v. Riley*, 159 Ohio App. 3d 598 (2005); *Delon v. McLaurin Parking*, 367 F. Supp. 2d 893 (N.C. 2005); *Bisbee v. Cuyahoga Board of Elections*, 2001 Ohio App. LEXIS 759 (2001); *Bick v. Harrah’s*, 2001 U.S. App. LEXIS 455 (7th Cir. 2001); *Letner v. Wal-Mart*, 1999 U.S. App. LEXIS 843 (6th Cir. 1999); *Jackson v. Ritter*, 1992 U.S. Dist. LEXIS 12114 (Ala. 1992) (listed by publication date, most recent first).

²⁶ *Payne v. The Western and Atlantic Railroad Company*, 81 Tenn. 507, 518 (1884) (“Obviously the law can adopt and maintain no such standards for judging human conduct; and men must be left, without interference... to discharge or retain employes [sic] at will for good cause or for no cause, or even for bad cause without thereby being guilty of an unlawful act per se. It is a right which an employe [sic] may exercise in the same way, to the same extent, for the same cause or want of cause as the employer.”).

However, the current state of the employment at-will doctrine is somewhat confused. As one reviewer put it, the doctrine of employment at will has become “incoherent,” noting,

Interestingly, there is little consistency in the case law limiting employment at will. States haphazardly adopt some proposed exceptions while rejecting others that similarly limit employers' at-will discretion.²⁷

For example, some states recognize a “public policy” exception at common law – this exception “... is recognized when an employee is discharged or disciplined for a reason that is prohibited by statute or when some other equally important public policy is violated.”²⁸ Another common law exception recognized in some jurisdictions is the “implied contract” theory.²⁹

In New York, the Court of Appeals has “exhibited a strong disinclination to alter the traditional rule of at-will employment” with common law exceptions.³⁰ Since the facts in our discussion case do not include “implied contract” language, the employer is a private one, and the speech concerns a private matter, we will not dwell on exceptions at common law.

Legislative exceptions to at-will employment

²⁷Scott A. Moss, *Where there's at-will, there are many ways: redressing the increasing incoherence of employment at will*, 67 U. PITT. L. REV. 295, 362 (2005)

²⁸ *Bisbee v. Cuyahoga County Board of Elections*, 2001 Ohio App. LEXIS 759 (2001) at *11. (Required elements of public policy exception are: clarity, jeopardy, causation and lack of overriding business justification.)

²⁹ Moss, *supra*, note 18, at 299.

³⁰ *Horn v. New York Times*, 100 N.Y.2d 85, 90 (2003) (“The traditional American common-law rule undergirding employment relationships...is the presumption that... employment for an indefinite or unspecified term is at will and may be freely terminated by either party at any time without cause or notice. While the twentieth century featured significant statutory inroads into the presumption of at-will employment, most notably with passage of the National Labor Relations Act in 1935 and title VII of the Civil Rights Act of 1964, American courts have proved chary of creating common-law exceptions to the rule and reluctant to expand any exceptions once fashioned...Our own jurisprudence reflects this pattern, as a brief examination of our major cases over the last 20 years illustrates.”)[citations omitted]

Like most bright-line rules, pure at-will employment doctrine has the capacity to produce harsh results. In response, legislatures have created statutory exceptions (both state and federal) that give rise to an action for wrongful termination, even for an employee at-will. Perhaps the best known of these is “Title VII,” part of the federal *Civil Rights Act of 1964* which prohibited discrimination in employment on the basis of race, color, religion, sex and national origin³¹

As amended, Title VII currently reads:

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin. [emphasis added]³²

Thus, although employers still may terminate an at-will employee without a reason or even for a frivolous or wrong reason, they cannot terminate for a discriminatory reason under Title VII and its state equivalents. Other statutes such as the *Americans with Disabilities Act* and the *Age Discrimination in Employment Act* have expanded the realm of prohibited employment actions. Discriminatory practices now include adverse job actions based on race, gender, age, religion, and national origin, or military, pregnancy or disability status.³³

³¹ 42 U.S.C. § 2000e-2.

³² 42 U.S.C. § 2000e-2(a).

³³ The U.S. Equal Employment Opportunity Commission Discriminatory Practices http://www.eeoc.gov/abouteeo/overview_practices.html (last visited June 20, 2009)

Sex discrimination

As previously noted, in our discussion case the gender of the potential plaintiff Alex Sharkey is not specified. Under Title VII, males and females are equally protected against sex discrimination. The Supreme Court has made it clear that both men and women can be considered to be members of a “protected class” for purposes of pursuing allegations of sex discrimination.³⁴

Under Title VII there are two broad categories of sex discrimination claims: disparate treatment and disparate impact.³⁵

Disparate treatment claims are more common and require a plaintiff to show that, because of his or her sex, he or she suffered unfavorable employment terms or conditions or was subjected to discriminatory acts. Disparate impact claims must allege that employment practices have discriminatory effects on a protected class.³⁶

In order to prevail on a disparate treatment of sex claim under Title VII, a plaintiff must establish that, but for his or her sex, he or she would have been treated differently.³⁷

Discussion case analysis

The Title VII disparate treatment case most closely analogous to Sharkey’s situation is the 1999 decision *Letner v. Wal-Mart*³⁸ where a female employee was discharged for “gossip-mongering” after several coworkers reported to management that she had spread rumors regarding *her* alleged romantic relationship with an Assistant Manager. At the time Wal-Mart had a statement in the employee handbook that advised

³⁴ *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 682 (1983) (“Male as well as female employees are protected against discrimination.”).

³⁵ Jessica M. Lee, *Ninth Annual Review of Gender and Sexuality Law: Employment Law Chapter*, : *Title VII of the Civil Rights Act of 1964*, 9 GEO. J. GENDER & L. 895, 895 (2008).

³⁶ *Id.*, at 896.

³⁷ *Jespersen v. Harrah's*, 392 F.3d 1076, 1079 (2004)

³⁸ *Letner v. Wal-Mart*, 1999 U.S. App. LEXIS 843 (6th Cir. 1999)

associates to “avoid idle gossip.”³⁹ Two other policies in the Handbook were relevant in this case: the "open door" policy, which encouraged employees to discuss matters with their immediate supervisors "freely, openly, in confidence, and without fear of recrimination or retaliation whatsoever" and the anti-fraternization policy that prohibited managers from becoming romantically involved with employees.⁴⁰ Letner averred that her discharge from Wal-Mart amounted to sex discrimination under Title VII, because Wal-Mart applied different standards to similarly situated male employees.⁴¹ On appeal from a district court’s summary judgment in favor of Wal-Mart, the 6th Circuit Court of Appeals noted that Letner needed to show the following factors to establish a prima facie case of sex discrimination under Title VII:

- (1) she was a member of a protected class,
- (2) she suffered an adverse employment action,
- (3) she was qualified for the position she lost, and
- (4) she was replaced by someone outside the protected class.⁴²

Wal-Mart stipulated that Letner met the first three elements of the test.⁴³ As for the fourth element, Letner could not show that her position was filled by a man and the court noted that the position probably was not filled, at least for some time after Letner was fired.⁴⁴ The Court noted that Letner could satisfy the fourth element by demonstrating that "for the same or similar conduct she was treated differently than similarly-situated [male] employees."⁴⁵ The 6th Circuit Court of Appeals affirmed the district court's ruling of summary judgment for the employer, finding that Letner failed to show that the male employees were "similarly-situated." The court noted that

³⁹ *Id.* at *2

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*, at *11.

⁴³ *Id.*, at *13.

⁴⁴ *Id.*, at *6.

⁴⁵ *Id.*, at *12.

“discriminatory treatment, not arbitrary treatment” is required in order to make a prima facie case of discrimination.⁴⁶ Because she could only cite examples of differently situated employees (those who reported to different supervisors and actually were having relationships allegedly in violation of company policy) who were not fired, she failed to prove discriminatory treatment.⁴⁷ The Court further noted that the employer “has the discretion to assign different punishments to violation of different company policies, and it could reasonably find that lying about a supervisor's [anti-fraternization] policy violations is worse than an actual violation of the policy.”⁴⁸

In our discussion case, would Alex Sharkey be able to prove disparate treatment sex discrimination under Title VII? In terms of the four required elements, and assuming that Alex is female like the plaintiff in *Letner*: (1) she is a member of a protected class (also true if Alex is male); (2) she suffered an adverse employment action (both the failure to promote and the termination would qualify); (3) on the basis of her evaluations her performance was satisfactory (there are facts in the discussion case to support this assumption). The final element remains to be proven: Did the action occur in circumstances giving rise to an inference of discrimination?⁴⁹ Circuits have varied regarding this element.

At the more permissive end of the spectrum, the Tenth Circuit allows a finding of improper discharge even if the plaintiff does not show that her successor was not a member of her protected class. At the more restrictive end of the spectrum, the Sixth and Ninth Circuits allow a finding of improper discharge only when the plaintiff was replaced with an individual who did not share the plaintiff's protected trait. Most courts, however, consider the characteristics of the

⁴⁶ *Id.*, at *11.

⁴⁷ *Id.*, at *17.

⁴⁸ *Id.*, at *16

⁴⁹ *Morriseau v. DLA PIPER*, 532 F. Supp. 2d 595, 611 (2008).

plaintiff's replacement important, but not dispositive of, individual disparate treatment.⁵⁰

We limit our discussion of the Sharkey case to Alex's termination for gossiping. If, after Alex's termination, a member of the opposite sex was hired or appointed to fill Alex's position, this fact could help to prove the fourth element of the prima facie case. Alternatively, could Alex satisfy the fourth element by demonstrating different treatment for the same or similar conduct for similarly situated employees? This theory goes directly to the behavior for which Alex was terminated. We know that two other employees of the firm also were fired for gossip following Alex's termination. If we assume that Alex is female; the other two employees fired for gossiping were female; and similarly situated men who spread gossip were not terminated, it's possible that the fourth element could be met.

Although none of the cases we examined considered disparate impact, this might be another avenue to pursue with the facts in Alex Sharkey's situation. To show disparate impact a plaintiff must allege that an employment practice, even if it is gender neutral on its face, has discriminatory effects on a protected class.⁵¹ Assuming Sharkey's employer has a facially neutral employment practice of firing people who gossip; Sharkey is female; and the other two people also terminated for gossip were female, this might be an interesting avenue to pursue.

A plaintiff alleging that an employer's policies disparately impact his or her protected class must only show that a "significantly discriminatory pattern"

⁵⁰ Lee, *supra* note 26 at 904.

⁵¹ Lee, *supra*, note 26 at 920.

results from the employer's facially neutral policies.⁵²

Statistics are not necessarily required to demonstrate impact in a disparate impact case.

“A claim of systemic disparate treatment can be supported by a facially discriminatory policy, statistics on disproportionate outcomes, anecdotal evidence, or a combination of these factors.”⁵³

In our discussion case, Sharkey might be able to support a disparate impact claim by providing evidence that gossip is more prevalent among women, in general, or under the particular circumstances of the case and/or that gossip serves a particular purpose for women because of their status in the workplace outside formal lines of communication.

Burden shifting frameworks

If Alex Sharkey could establish a prima facie case of disparate treatment the burden of proof would then shift to the employer to show a legitimate, non-discriminatory reason for the termination.⁵⁴ In disparate treatment cases, the employer typically asserts a reason that appears on its face to be non-discriminatory. In our discussion case, the reason for discharge is not officially stated, but the statement of Alex's boss indicates that the reason is related to Alex's gossip.⁵⁵

⁵² *Supra*.

⁵³ Lee, *supra*, note 26 at 908 citing *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977); *Alexander v. Louisiana*, 405 U.S. 625, 632 (1972); see also, *Lynch v. Freeman*, 817 F.2d 380, 387 (6th Cir. Tenn. 1987).

⁵⁴ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

⁵⁵ Rosemary Hartigan and Paula O'Callaghan, *Loose Lips Bring Pink Slips: Fired for Gossip at the Office, A Case Study* (2009) (unpublished case, appendix A). "You have ruined my life with your gossip! You poisoned the entire office against me and you had the nerve to spread your lies and gossip outside our firm."

Once the firm provides a non-discriminatory reason the burden then shifts to plaintiff Alex to prove that the proffered reason is a merely a “pretext” masking a discriminatory reason.⁵⁶

To establish pretext and discredit the employer’s reason, the plaintiff,

...cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. . . . Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them "unworthy of credence," . . . and hence infer "that the employer did not act for (the asserted) non-discriminatory reasons."⁵⁷

In the case of disparate impact, the employer’s burden is to demonstrate business necessity for the policy and that the policy has "a manifest relationship to the employment in question."⁵⁸

If the employer demonstrates that its business necessitates the policy, then a court may uphold the policy; in making such demonstration, the employer assumes the burden of production and persuasion. If the employer makes such a showing, then to prevail, the plaintiff must demonstrate that "the employer's legitimate interest in 'efficient and trustworthy workmanship'" could have been satisfied with alternative policies that would not have adversely affected the plaintiff.⁵⁹

In our discussion case the employer probably would assert that gossip has negative business effects such as being a drain on productivity or exposing the employer to potential liability for harassment or hostile environment. Sharkey then would have the burden of demonstrating that another policy could be employed to prevent the negative effects of gossip without discriminating against women.⁶⁰

⁵⁶ *Id.*, at 805.

⁵⁷ *Franks v. Lehigh*, 2005 U.S. App. LEXIS 16000 at *1 (3d Cir. 2005) (quoting *Fuentes v. Perskie*, 32 F.3d 759, 765 (3d Cir. 1994)) (citations omitted).

⁵⁸ *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

⁵⁹ *Lee*, *supra* note 26 at 920.

⁶⁰ *Lee*, *supra* note 26 at 920-21.

There may be other approaches open to Sharkey in addition to sex discrimination. To determine if Sharkey has any avenues to pursue relief under Title VII (or the state's equivalent) we need to know more. Specifically, we would need to know something about Alex Sharkey's personal characteristics such as race and age.

Our discussion case indicates that Alex Sharkey is a recent college graduate and a junior executive. However, if Alex was over 40 years old when terminated, he or she might make an age discrimination claim under the Age Discrimination in Employment Act (ADEA).⁶¹ But note that in a recent case, the Supreme Court held in *Gross v. FBL Financial Services* that “[t]o establish a disparate-treatment claim under [the ADEA], a plaintiff must prove that age was the "but-for" cause of the employer's adverse decision.”⁶² In other words, proof of a mixed-motive would be insufficient to prevail on an age discrimination claim under ADEA. In our discussion case we have no evidence that age was an issue, so it was not likely to be the sole reason that Sharkey was terminated. It is worth noting that two of the plaintiffs in the Hooksett Four cases were able to obtain settlements from the town based on age discrimination claims, even though they were fired on the basis of gossip.⁶³

Alex Sharkey also might consider making a claim of “hostile work environment” against the firm. However, the standard of proof in such actions can be quite high.

⁶¹ The U.S. Equal Employment Opportunity Commission Age Discrimination <http://www.eeoc.gov/types/age.html> (last visited June 20, 2009).

⁶² *Gross v. FBL Financial Services*, 2009 U.S. LEXIS 4535 at *24 (2009).

⁶³ 2 *fired Hooksett workers settle federal lawsuit*, THE ASSOCIATED PRESS STATE AND LOCAL WIRE, November 1, 2008 (in return for which “the women agreed to waive any age discrimination claims.”) This provides a useful reminder that a litigant does not necessarily need to prevail in court in order to obtain some relief.

In order to establish a claim of hostile work environment, a plaintiff must produce evidence that "the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." The environment must be both subjectively and objectively hostile and abusive. [citations omitted]⁶⁴

Nothing in our case indicates that Sharkey was subjected to any intimidation, ridicule or insult in the working conditions at the PR firm, so of the available exceptions this one seems weakest. We will examine the issue of gossip constituting a hostile work environment in the next section of this paper with respect to anti-gossip policies.

Restraint of workplace speech

Are workplace policies that prohibit gossip with penalty of termination legally enforceable?

In 1994, in *Spain v. Gallegos*, the 3rd Circuit Court of Appeals held that gossip could constitute, or contribute to, a hostile work environment.⁶⁵ Although this decision has been challenged and distinguished in many subsequent cases, the prospect of employer liability remains. It is evident that in the wake of *Spain*, employers have tried to limit gossip through provisions in employee handbooks and codes of conduct.⁶⁶ One example of such a policy follows as Appendix B.⁶⁷

A restraint of speech often requires a balancing act with freedom of speech issues. Public employers need to have greater concerns with speech issues; for example, terminating an employee for gossip might trigger the "public policy" exception to the at-

⁶⁴ *Martinez v. New York City Department of Education*, 2008 U.S. Dist. LEXIS 41454 at *22-23 (2008).

⁶⁵ *Spain v. Gallegos*, 26 F.3d 439, 449 (1994) ("the situation here was 'not merely one of idle gossip about an alleged office romance.'") Distinguished in *Jansen v. Packaging Corporation of America*, 123 F.3d 490 at *214 (1997) and *Derringer v. Old National Bank*, 2006 U.S. Dist. LEXIS 78669 at *15 (2006).

⁶⁶ *Bisbee v. Cuyahoga County Board of Elections*, 2001 Ohio App. LEXIS 759 at *11 (2001) ("the elections board adopted a policy to protect employees from such behavior in response to *Spain v. Gallegos* ... a federal court decision which determined that workplace gossip can constitute sexual harassment.")

⁶⁷ No Gossip Policy, <http://911trainer.com/docs/NO%20GOSSIP%20POLICY.pdf> (last visited June 26, 2009), see appendix B.

will employment doctrine.⁶⁸ Another possible area of liability for public employers is restraint of speech on First Amendment grounds. However, in *Dillon v. Twin Peaks Academy*, where a public school employee was fired for gossip, the court found as a matter of law that, "...a prohibition against 'gossip' cannot support a First Amendment prior restraint claim..."⁶⁹

Private employers shouldn't have much concern about First Amendment liability for restraints on workplace speech. As the court said in *Grinzi v. San Diego Hospice Corporation*, "the First Amendment does not sufficiently describe the type of conduct alleged here, a private employer terminating an employee for the exercise of free speech..."⁷⁰ Since our discussion case involves a private employer and personal gossip, we will presume there are no free speech issues in restraint of workplace gossip in the discussion case.

Courts have been quite receptive to workplace restrictions on employee gossip, including those leading to termination. In the past dozen years, there have been at least ten cases where courts have upheld terminations based on a formal or implied policies prohibiting gossip.⁷¹ In the ten cases, six of the employers were private entities; the other four were public. Half of the plaintiffs who were fired (at least in part) for gossip sued under Title VII for sex or race discrimination, but others invoked the *Equal Pay Act*, the *Fair Labor Standards Act* and Due Process.

⁶⁸ *Bisbee*, 2001 Ohio App. LEXIS at *11 (held that public policy exception did not apply to sex-based gossip.)

⁶⁹ *Dillon*, 2008 U.S. Dist. LEXIS at *6. The Court "decline[d] the invitation to declare speech defined specifically in terms of its personal, unsubstantive nature as falling within that sphere of speech that an employer cannot constitutionally restrain, even if Dillon had been able to establish that she was, in fact, so restrained."

⁷⁰ *Grinzi v. San Diego Hospice Corporation*, 120 Cal. App. 4th 72, 81 (2004) ("We find the First Amendment free speech provision fails to establish public policy against terminations by private employers for speech-related activities because this provision applies only to government actions and expresses no public policy regarding terminations by private employers.").

⁷¹ See, note 16 giving full listing of cases.

Although the facts of each case are unique, a pattern emerges in favor of the employer's right to regulate workplace speech, at least in terms of gossip.

Some anti-gossip policy provisions that courts have considered favorably are:⁷²

- "The spreading of rumors and/or gossip shall be prohibited. The spreading of rumors, falsehoods, gossip, etc., by personnel among employees, residents, and/or visitors is strictly prohibited." (*Cruces v. Utah State Veterans Nursing Home*)
- "Avoid idle gossip." (*Letner v. Wal-Mart*)
- [prohibited activities include] "exhibiting a bad attitude toward work, the spreading of rumors or malicious gossip, or making any negative disparaging or unflattering statements to anyone." (*Delon v. McLaurin Parking Company*)
- Unspecified "policy against sex-related gossip" (*Bisbee v. Cuyahoga County Board of Elections*)
- "An officer or non-sworn employee will not criticize any other officer or employee, except in the line of duty as a superior to the subordinate, nor will any officer or employee maliciously gossip about any superior, order, policy, procedure, case, or event that should remain police information, nor will an officer or employee cause to discredit, lower, or injure the morale of the personnel of the department or that of any individual of the department." (*Pelletier v. City of Warwick*)
- "that employees "refrain from actions or behavior harmful/hurtful to others at this school, including malicious gossip and similar activities." (*Dillon v. Twin Peaks Charter Academy*)

In other cases the employers relied on more general policies which courts found could imply a prohibition on gossip.⁷³ Examples of such provisions are:

- "...policy against 'breaches of confidentiality and/or spreading rumors.' The memo specifically states that violations of the policy 'will result in disciplinary action up to and including termination.'" (*Brinson v. Barden Mississippi Gaming*)
- "[plaintiff received a warning for] failing to maintain friendliness and a professional tone with coworkers, for coercion and threats towards coworkers, and for disobeying the company confidentiality policy...[plaintiff] was warned that 'continued involvement in other people's business will result in immediate termination.'" (*Bick v. Harrah's*)
- "policy defines 'misconduct' as follows: Misconduct includes behavior other than job performance, which falls below stated expectations, violates Company policy, does or may interfere with safe, orderly, or efficient operations or which creates a hostile or offensive environment for Associates, Customers/Members, and/or Suppliers, including compliance with Health Privacy Standards. Examples of misconduct include, but are not limited to: ... Harassment/Inappropriate Conduct." (*State ex rel. Wal-Mart Stores, Inc., v. Riley*)
- "...the company policy of not doing things that make the workplace unpleasant for fellow workers." (*Jackson v. Ritter and Wal-Mart*)

⁷² *Cruces v. Utah State Veterans Nursing Home*, 222 Fed. Appx. 776 (10th Cir. 2007); *Letner v. Wal-Mart*, 1999 U.S. App. LEXIS 843 (6th Cir. 1999); *Delon v. McLaurin Parking*, 367 F. Supp. 2d 893 (N.C. 2005); *Bisbee v. Cuyahoga Board of Elections*, 2001 Ohio App. LEXIS 759 (2001); *Pelletier v. City of Warwick*, 2008 R.I. Super. LEXIS 4 (2008); and *Dillon v. Twin Peaks Charter Academy*, 2008 U.S. Dist. LEXIS 45615 (Colo. 2008).

⁷³ *Brinson v. Barden Mississippi Gaming*, 2007 U.S. Dist. LEXIS 21965 (Miss. 2007); *Bick v. Harrah's*, 2001 U.S. App. LEXIS 455 (7th Cir. 2001); *State ex rel. Wal-Mart v. Riley*, 159 Ohio App. 3d 598 (2005); and *Jackson v. Ritter*, 1992 U.S. Dist. LEXIS 12114 (Ala. 1992).

In most cases, the employers prevailed. Whether the anti-gossip policy was formal and narrowly tailored, or informal and broadly worded, the employer won. There seemed to be little difference between a policy that attempted to define the prohibited behaviors and those that didn't. The courts did examine the motivation for the terminations using a pretext analysis, but they did not challenge the employer's right to regulate gossip in the workplace.

However, in [*State ex rel.*] *Wal-Mart Stores, Inc. v. Riley*,⁷⁴ the Ohio Court of Appeals affirmed an award of temporary total disability compensation to an employee, rejecting the employer's contention that she had been fired for misconduct, namely for "talking about people in the break room," and "spreading rumors." The Court found that "the terms used in the employee handbook are so vague that literally any behavior could arguably provide grounds for termination."⁷⁵

Organization Policy Issues - What is the purpose of gossip?

To understand gossip and the implications of regulating it, we need to explore its roots and purposes for individuals and groups. Contrary to the definition of gossip as "idle talk," gossip in organizations serves a number of purposes, both positive and negative, for the individual and the organization.

Why do individuals gossip?

In an early study, Rosnow developed a theory of gossip as a form of "instrumental self-interest[ed]" social exchange where news is traded for some desired resource and

⁷⁴ [*State ex rel.*] *Wal-Mart Stores, Inc., v. Riley*, 159 Ohio App. 3d 598.

⁷⁵ *Id.* at *603

benefits participants by providing information, influence and entertainment.⁷⁶ This notion seems to be supported by recent studies in the evolution of language which suggest that language actually evolved from primate grooming behavior "to allow us to gossip" as primate group size increased, making it necessary to communicate and form bonds more efficiently.⁷⁷ Gossip developed so individuals could survive by gaining information they needed and finding allies they could trust. Ben-Ze'ev notes that "gossip satisfies the tribal need, namely, the need to belong to and be accepted by a unique group."⁷⁸

Some definitions of gossip embody its purpose of helping individuals to understand their social environment by "informally communicating value-laden information about members in a social setting."⁷⁹ Gossip enables individuals to acquire and disseminate information necessary for survival in groups where access to knowledge often may be limited by formal structures. Gossip assists in gathering and distributing information to satisfy individual needs for essential knowledge particularly concerning social comparison with peers and superiors.⁸⁰ Refuting the common belief that gossip is idle and leads to unreliable information, Ayim defends gossip as a mode of inquiry with

⁷⁶ Mike Noon & Rick Delbridge, *News From Behind My Hand: Gossip in Organizations*, 23 ORGANIZATION STUDIES 14 (Winter, 1993).

⁷⁷ ROBIN DUNBAR, GROOMING, GOSSIP, AND THE EVOLUTION OF LANGUAGE (1996, 2002) at 79. Dunbar notes, "If the main function of grooming in monkeys and apes is to build up trust and personal knowledge of allies, then language has an added advantage. It allows you to say a great deal about yourself, your likes and dislikes, the kind of person you are; it also allows you to convey in numerous subtle ways something about your reliability as an ally or friend." at 78.

⁷⁸ Aaron Ben-Ze'ev, *The Vindication of Gossip* in GOOD GOSSIP at 15 (1994), further noting that one meaning of gossip is "being a friend of").

⁷⁹ Noon & Delbridge, *supra*, note 76.

⁸⁰ *Id.*

similar standards of fact-finding as those applied in science,⁸¹ and Ben-Ze'ev points out that gossip is often "more accurate and more complete than 'official' information."⁸²

Rosnow identified "influence" as the second function served by gossip and suggested that individuals would use the information they obtain from gossip for their own gain.⁸³ Supporting this idea, a study by social psychologist Nicholas Emler concludes that gossip is "all about the management of reputation."⁸⁴ For individuals, gossip can be a means to acquire power in a competitive environment by passing judgment on individuals and denigrating enemies⁸⁵ and by maneuvering to empower oneself and disempower others.⁸⁶ Applying a postmodern view, Hafen finds that "to gossip is to both contest and wield power, authority, and discipline."⁸⁷ Indeed, gossip may be the only means for some individuals who have little power in the formal organization structure to obtain and assert influence.⁸⁸

The third function of gossip identified by Rosnow -- entertainment -- is the easiest to understand. Gossiping is story-telling, and who doesn't enjoy a good story? Much like reality television, gossip satisfies curiosity and provides interesting information, usually about intriguing topics, such as sex, and other peoples' vices and eccentricities.

Function of Gossip in Organizations

Formal and information communication networks exist in all organizations.

Formal communication networks are created to manage the content, flow and frequency

⁸¹ Ayim, *supra*, note 13. See also Noon & Delbridge, *supra*, note 75 for a discussion of the "quality check" gossipers undertake prior to passing on information.

⁸² Ben-Ze'ev, *supra*, note 78 at 23.

⁸³ Noon & Delbridge, *supra*, note 76.

⁸⁴ Dunbar, *supra*, note 77 at 123.

⁸⁵ Noon & Delbridge, *supra*, note 76.

⁸⁶ Susan Hafen, *Organizational Gossip: A Revolving Door of Regulation and Resistance*, 69 SOUTHERN COMMUNICATION JOURNAL 3 (Spring, 2004) at 233.

⁸⁷ *Id.* at 226.

⁸⁸ Noon & Delbridge, *supra*, note 76.

of information throughout the organization.⁸⁹ Methods of formal communication may include meetings; newsletters; and, as evidenced in the cases discussed in this paper, employee handbooks and official company policies, such as "open-door," anti-fraternization and "anti-gossip." Existing in parallel to and supplementing the formal communication network, informal communication networks, commonly referred to as "the grapevine," spring up in all organizations. These informal networks are unplanned, not sanctioned by management, and depending on circumstances, may support or conflict with the employers' formal networks.⁹⁰ Gossip is widely recognized as a pillar of informal communication networks in organizations, but it has received surprisingly scant attention in management or organizational literature.⁹¹

Employers, such as those in the cases discussed above, generally view gossip as eroding employee cohesion and discipline, stealing time and creating a work environment replete with unreliable information, innuendo, backstabbing, and distrust. Commentators⁹² have noted that "popular" business literature tends to ascribe to an overly simplistic and negative view of gossip that ignores its potential benefits in organizations.⁹³

The literature we examined presents a more balanced view, recognizing the positive and negative potential of gossip in organizations. Several authors noted that gossip serves a valuable role in communicating and sustaining community/organizational

⁸⁹ Grant Michaelson & V. Suchitra Mouly, *Do Loose Lips Sink Ships? The Meaning, Antecedents and Consequences of Rumour and Gossip in Organizations*, 9 CORPORATE COMMUNICATIONS 3 (2004) at 189.

⁹⁰ *Id.*

⁹¹ *Id.* See also, Kurland and Pelled, *supra*, note 14 at 428; Hafen, *supra*, note 87 at 223; and Noon & Delbridge, *supra*, note 76.

⁹² Noon & Delbridge, *supra*, note 76 and Michaelson & Mouly, *supra*, note 10.

⁹³ As an example of this view, Chapman, the CEO of Empower Public Relations, discussed earlier in this paper defines gossip as "negative communications outside the presence of the subject of the communication" and a "productivity killer." Gardner, *supra*, note 7.

norms, values, and morals, which are not always conveyed adequately through formal communication.⁹⁴

Gossip is often highly moralistic and functions as a social control system. The first thing that happens when there's a social transgression is gossip. Often it's the only thing that needs to happen. We can use it to punish transgressions by social exclusion and shunning.⁹⁵

For example, Kniffin and Wilson studied the role of gossip in dealing with slacker behavior on a rowing team and found that as a social control, gossip can have the effect of rejecting or reforming the nonconforming individual's behavior.⁹⁶ Often small groups are more effective at regulating this type of behavior before it comes to the attention of the formal hierarchy and has a larger impact on the organization.

In a study of four organizations, Hafen contends that that gossip may promote positive "organizational citizenship behaviors" that benefit the organization or "workplace deviance behaviors" that undermine organizational efforts.⁹⁷ Gossip can have positive effects on an organization by communicating rules, values, morals, and organization tradition and history, thus facilitating group cohesion. Hafen discusses how management can benefit from some gossip which can be transformed into useful information for organizational regulation when it is relayed to someone in authority in the organization. She gives an example of one manager's workplace affair being ignored while another's is reported to Human Resources. In the second instance, the content of

⁹⁴ See, for example, Noon & Delbridge, *supra*, note 76 and Ben-Ze'ev, *supra*, note 78 at 23.

⁹⁵ David Sloan Wilson, quoted in Gardner, *supra*, note 7.

⁹⁶ Kevin M. Kniffin & David Sloan Wilson, *Utilities of Gossip Across Organizational Levels: Multilevel Selection, Free-Riders, and Teams* 16 HUMAN NATURE 3.

⁹⁷ Hafen, *supra*, note 87 at 223-224, defines organizational citizenship as "exhibiting behavior that is beyond one's job description ("extra role"), discretionary, not explicitly rewarded by the organization, and important to the organization's success."

the gossip would be investigated and appropriate action could be taken.⁹⁸ Moreover, Hafen illustrates that gossip about company "heroes" and "anti-heroes" serves as a "kind of social control."⁹⁹ And although many organizations institute anti-gossip policies to protect themselves from potential hostile environment claims, Hafen sees a positive effect in gossip "as organizational memory [that] can sensitize members to past discrimination as well as harassment."¹⁰⁰

Of course, gossip is also used in organizations to resist and undermine authority. Hafen¹⁰¹ found that gossip used to resist regulation manifested in organizations as "humor, debunking implicitly the organizational creed of placing efficiency and productivity over human relations." She also found that organizational change efforts were undermined by gossip about how much better the organization was in the past.¹⁰²

Is it Morally Wrong to Gossip in the Workplace?

The play "Doubt" can be viewed a play about workplace gossip. In the play, a veteran nun, Sister Aloysius, suspects a priest, Father Flynn of sexual misconduct with young boys in the parish. Aware of these suspicions, Father Flynn delivers a parable to the congregation concerning a woman who gossips about her neighbor and then consults her priest as to whether gossiping is a sin. The priest tells her in no uncertain terms that it is. She has "borne false witness against [her] neighbor" and "played fast and loose with his reputation." The woman says she is sorry and asks for forgiveness, but the priest won't

⁹⁸ *Id.* at 229. An example of such gossip-to-information process occurred in *Letner v. Wal-Mart*, *supra*, note 38, where an assistant manager reported to the store manager that employees had told him that the plaintiff was spreading rumors about an affair she was having with another assistant manager. The manager then conducted an investigation which included sitting outside the assistant manager's apartment until 1 a.m. to see if the plaintiff was there.

⁹⁹ *Id.* at 231.

¹⁰⁰ *Id.* at 232.

¹⁰¹ *Id.*

¹⁰² *Id.* at 234

let her off so easily. He tells her to go home and take a pillow up to the roof and cut it open with knife and then return to see him. The old woman does as the priest instructs. Upon her return the priest asks her what happened after she cut the pillow. The woman replies, "Feathers, everywhere." The priest then tells her to go back and gather up every feather. The woman protests that it would be impossible to gather up all the feathers that flew into the wind. The priest replies, "And that is gossip!"¹⁰³

After Sister Aloysius starts the feathers flying by revealing her suspicions to a younger nun and to the suspected victim's mother, Father Flynn has no choice but to leave the parish and move on to another. The end of the play leaves us in "doubt" as to whether Father Flynn was actually guilty of the transgressions Sister Aloysius accused him of committing. If Sister Aloysius was right, she may have been a hero by courageously preventing sexual abuse of children in her parish. However, if she was mistaken about Father Flynn, she has recklessly transgressed his right to remain in the parish and contributed to the wrongful destruction of his reputation.

Father Flynn's declaration, "And that is gossip" illustrates Nicholas Emler's point that the term "gossip," in and of itself, is "often used in common parlance not as a neutral description of a phenomenon that has objective features but as a moral judgment."¹⁰⁴ Including derogatory terms in definitions and illustrations of what it means to gossip or be "a gossip" begs the question as to whether or not it is a moral activity.

To address the question of the ethical implications of gossip in the workplace, we will start with the morally neutral definition proposed by Kurland and Pelled: "*informal*

¹⁰³ JOHN PATRICK SHANLEY, *DOUBT, A PARABLE* at 37 (Theatre Communications Group 2005).

¹⁰⁴ Nicholas Emler, *Gossip, Reputation, Adaptation* in *GOOD GOSSIP* at 117-138 (1994) at 120.

and evaluative talk in an organization, usually among no more than a few individuals, *about another member of the organization who is not present*"¹⁰⁵ [emphasis added].

Note that in this definition, there are no blanket assumptions made about gossip being "idle talk," because, as discussed above, gossip often serves many purposes for individuals and organizations. Indeed, purpose is inherent in the term "evaluative." The definition specifies that the subject of the gossip is "another person," but it does not specify, as do some definitions of gossip,¹⁰⁶ that the topic of the gossip is necessarily "private" or "intimate" affairs. Moreover, this definition makes no assumptions about the intention of the gossiper beyond evaluation or about the truth of the statements asserted. However, we retain the assumptions of furtiveness and hearsay inherent in the definition of gossip as being "*about another member of the organization who is not present.*" Evaluative talk may consist of praise or scorn,¹⁰⁷ but, as illustrated by Father Flynn's sermon, moral objections to gossip are largely based upon its potential to harm others. For example, Holland notes that gossip can damage relationships, affect job security, and result in isolation of individuals.¹⁰⁸

A commonly held moral objection to gossip is that it spreads lies about others. If one repeats known false information, then one has committed the moral transgression of lying. However, gossip that constitutes lying is morally unacceptable because it is lying, not because it is gossip. Spreading false gossip is not the same as lying unless the gossiper knows the information is false. The gossiper has some responsibility to evaluate

¹⁰⁵ Kurland & Pelled, *supra*, note 14 at 429.

¹⁰⁶ For example, Ben-Ze'ev notes a "common dictionary definition of 'to gossip' is 'to talk (or write) idly about other people, mostly about their personal or intimate affairs.'" *supra*, note 78 at 13.

¹⁰⁷ Noon & Delbridge, *supra*, note 76 note that scholars have distinguished between "praise" or "blame" gossip and "positive" or "negative" gossip.

¹⁰⁸ Margaret G. Holland, *What's Wrong With Telling the Truth? An Analysis of Gossip*, 197 AMERICAN PHILOSOPHICAL QUARTERLY (1996).

the veracity of statements before repeating them, and her degree of fault may be based upon how reasonable it is for her to believe the information. One may argue that the degree of care taken to verify the information before passing it on should be commensurate with the potential for the information to cause damage.¹⁰⁹ An individual who repeats unreliable reports may be guilty of irresponsibility, but not of lying. In addition, much gossip is either reporting what another person has said¹¹⁰ or opinion, which can't be true or false. For example, in our case study, Sharkey repeats a conversation he had with his boss's secretary. If he says, "Cypher's secretary told me that the boss is living at the Residence Inn," he is merely giving an accurate report of the conversation. He is not lying. Thus, gossip should not be conflated with lying.

However, Cuonzo argues that while gossip is not necessarily intended to deceive the receiver of the gossip, it is inherently deceptive because it occurs behind the back of the individual who is the subject of the gossip.¹¹¹

To gossip, one must be disinclined to make the statement in the presence of the subject of the gossip. It is this disinclination, a furtiveness on the part of the speaker, that makes gossip a subtle form of deception of the subject of the gossip.¹¹²

In a similar vein, Holland¹¹³ compares the gossip to a peeping Tom, noting that gossiping and peeping share the following characteristics:

They take as their objects persons rather than things, they occur behind the subject's back, they are not guided by concern for the subject, they would cease if the subject entered, they focus on personal features of the subject, and they are

¹⁰⁹ Emrys Westacott, *The Ethics of Gossiping*, 14 JOURNAL OF APPLIED PHILOSOPHY 1 (2000) at 67.

¹¹⁰ *Id.*

¹¹¹ Margaret A. Cuonzo, *Gossip: An Intention-Based Account*, 39 JOURNAL OF SOCIAL PHILOSOPHY 1 (Spring, 2008).

¹¹² *Id.* at 131.

¹¹³ Holland, *supra*, note 109.

pleasurable for the agent.... The person who is the subject of the activity is used to entertain or amuse the agent(s), and is not in a position to decline such use.

Holland argues that arguments against lying may be applied to gossip because it has many of the same effects, including undermining trust, damaging community, and failure to respect others. In addition, she finds that, regardless of truthfulness, gossip may have morally suspect motives, such as anger, maliciousness, jealousy or anger.¹¹⁴ In the case of Sharkey, although Alex is partly motivated by a desire to find out the truth about a coworker's promotion, it is clear that his primary motives are jealousy and anger.

Based on these arguments, gossip, as *evaluative talk about another member of the organization who is not present* is inherently immoral, because it is a form of deception that is disrespectful of the subject of the gossip and uses that person as a means to accomplish the gossiper's own ends without due regard to the effect the gossip may have on the subject. Applying the Golden Rule, one could argue that since we would not like to be evaluated in a negative manner behind our backs, we should not gossip about others. Rather, we should apply the old adage, "If you don't have something nice to say about someone, don't say anything." Applying another Kantian principle -- universalizability -- we can ask whether we would want everyone in the workplace to evaluate others behind their backs (a condition that might well be reality in many organizations), or, if in an ideal workplace, no one would ever engage in this activity. This raises an interesting issue regarding another form of behind-the-back evaluation: the anonymous feedback survey.

Many organizations utilize anonymous surveys to evaluate employee performance. Student-faculty evaluations and peer evaluations widely used in many

¹¹⁴ *Id.*

organizations are examples of this practice, which is justified as a way to obtain candid opinions by freeing respondents from fear of recrimination. In this regard, lack of accountability for opinions and comments is viewed as desirable in serving the greater goal of obtaining candid and reliable information, even though the information obtained from this employer-sanctioned method may consist of lies and opinions that are ill-informed and/or generated by malice, anger, or jealousy.

In situations where the topic of gossip about an individual concerns matters that arguably relate to workplace norms and performance, such as slacking, promotions, terminations, or inappropriate behavior in the workplace (such as romantic affairs), it would seem that the purpose of the behind-the-back communication is the same as in anonymous feedback surveys: obtaining information by eliciting opinions in a manner that minimizes risk for the evaluator. Gossip, like anonymous surveys, affords the gossiper the opportunity to spread his opinion about X to others without X knowing what he said. Similar to anonymous surveys, gossip provides a means of indirectly criticizing or attacking an individual without incurring the risk of confronting the individual directly.¹¹⁵

Gossip and anonymous feedback differ in two important respects. First, unlike gossip, anonymous feedback surveys are sanctioned and administered by the organization and are thus part of the formal communication network. Second, anonymous feedback surveys provide more protection for the evaluator who is less likely to be identified as the source of the opinion than the gossiper. Gossip, though delivered behind-the-back of the gossipee, is not anonymous, and it is subject to the regulation of the norms of the gossip circle. The gossiper runs the risk of being exposed to the gossipee or reported to

¹¹⁵ Noon & Delbridge, *supra*, note 76.

management. As Emler notes, gossip is "a two-edged weapon [that] offers scope to manipulate the reputations of others but with risks to the self when that manipulation is too transparently self-serving or clumsy."¹¹⁶ In this regard, gossiping is less furtive and more risky for the evaluator than expressing opinions in anonymous surveys.

Like gossip, information obtained from anonymous surveys can harm reputations and result in adverse employment actions such as a bad performance evaluation, denial of promotion or tenure, or termination. They can also erode employee trust and discourage open and candid interaction. However, employers sanction and promote anonymous feedback surveys, and employees participate in and accept the practice of being evaluated behind their backs under these circumstances. The anonymous survey is not criticized as being immoral even though negative comments about employees on feedback surveys are more likely than gossip to have harmful effects, because they are completely anonymous and have more credence as being officially sanctioned by the organization. While gossip may be feathers flying everywhere, comments on anonymous surveys are arrows that go straight to the target of official employee evaluations. Thus, if making behind-the-back evaluative statements is inherently immoral for the reasons outlined above, it is also immoral to make negative statements motivated by malice, anger, or jealousy on employee feedback surveys, and employers should not use any negative statements on the surveys unless they can independently corroborate their truthfulness.

An alternative view is that is that formal or informal *evaluative* talk in an organization *about another member of the organization who is not present* is not inherently immoral whether it is formal -- anonymous survey -- or informal -- gossip.

¹¹⁶ Emler, *supra*, note 105 at 135.

Westacott¹¹⁷ asserts that while it would be immoral to violate an individual's legal rights or to breach generally accepted legal or moral claims on confidentiality,¹¹⁸ It is not inherently immoral to "talk merely contrary to the hopes of the person talked about."¹¹⁹ We may hope not to be evaluated in a negative matter in the workplace behind our backs, but unless the evaluations contain lies, violate rights, or disregard legitimate claims, they are not inherently immoral.

Much of what we are calling gossip [falls] under the rubric of being merely contrary to the 'hopes' of the person being talked about. . . . although contrary to the person's wishes, the action would be acknowledged by them to be justifiable according to generally accepted conventions. . . . Few of us want to be gossiped about. But we accept that this is going to happen, and this knowledge influences our conduct and our willingness to gossip about others.¹²⁰

In so concluding, Westacott¹²¹ points out difficulties in applying the Golden Rule to all gossip. Although we may be able to make an argument that no one likes negative information about himself to be disseminated behind his back, this fails to take into account the wishes of the receiver of the information. For example, in Sharkey's situation, if the secretary does unto her boss as she would have him do unto her, she should refrain from gossiping about his alleged affair with a co-worker. However, if the secretary does unto Sharkey as he would have her do unto him, she would reveal the information to satisfy his desire for knowledge about a possible injustice in the workplace.

¹¹⁷ Westacott, *supra*, note 110.

¹¹⁸ Westacott, *id.* at 68. defines a "claim" as "an exception that is generally acknowledged to be normatively warranted but which lacks the institutionalized weight of a right." To illustrate he provides an example of A who mistakenly receives confidential information about B's medical condition. Passing on the information would not be a violation of a right, as such, the A would have a claim on B not to pass on the information. Indeed, this would be recognized in law as a duty of care in a defamation action.

¹¹⁹ *Id.* at 71

¹²⁰ *Id.* at 76, noting that some gossip-like forms of communication, such as student and peer evaluations, and discussions with others to evaluate performance enjoy "semi-institutionalized" status.

¹²¹ *Id.* at 74-76.

Westacott dismisses the argument that all gossip is morally objectionable because it uses another person purely as a means for our own ends, arguing that by gossiping contrary to a person's wishes does not ignore their concerns nor undermine their autonomy. Rather, their concerns are "overridden by other considerations."¹²² For example, she may not ignore her boss's wish not to have his affair discussed with Sharkey, but these concerns could be overridden by her desire to assist Sharkey or her view that the boss's actions are improper.

We agree with Westacott's conclusion that "some gossip is morally objectionable and some is morally acceptable, but ... most gossip should be considered unobjectionable."¹²³ Westcott applies a largely utilitarian argument to reach this conclusion, finding that generally gossip produces more good than harm by providing pleasure¹²⁴ and contributing to our understanding of people and organizations.¹²⁵ He notes that gossip in organizations plays an important role in counteracting organizational secrecy.

Throughout the public and private sectors there is a widespread, and in many cases reprehensible, tendency for management to favour [sic] withholding information from those working under them -- a strategy that helps to exclude the latter group from participation in decision making and puts them at a disadvantage when they are allowed to participate. Insofar as gossip helps to counteract this sort of secrecy, it can be seen as a useful -- indeed, essential -- instrument to be used in resisting entrenched systems of power and domination.¹²⁶

Regarding secrecy, it is interesting to note that in *Doubt*, the Sharkey case, and in many of the cases we reviewed, the topic of the gossip is sexual indiscretion; the individual

¹²² *Id.* at 77

¹²³ *Id.* at 74.

¹²⁴ Contrary to Cuonzo's and Holland's views about the pleasure taken in gossip as being immoral, Westacott, *Id.* at 84, states, "we should be grateful for the opportunities for pleasure that life offers us, not have a bad conscience about them. Talking to people about people is one of these. To refrain from it for fear of moral corruption is a form of neurosis."

¹²⁵ *Id.* at 85

¹²⁶ *Id.*

being gossiped about (gossipee) was someone with power and prestige in the organization (priest, supervisor, CEO) and the gossip was someone with relatively less formal power in the organization (subordinate, nun). Understandably, the people in power would prefer to keep their indiscretions secret and prohibiting and punishing gossip may assist them in doing so. An analysis of the ethics of gossip in these situations involves a careful weighing of evidence and balancing of interests.

In addition, Westacott includes a benefit of gossip in organizations that we previously discussed:¹²⁷ communicating and sustaining community/organizational norms, values, and morals.¹²⁸ However, he qualifies this benefit by noting that much harm can also come from gossip if it forces people to conform to questionable norms and mores.¹²⁹

Policy Issues

Is it desirable for employers to promulgate an office policy prohibiting gossip? Is it possible for an employer to enforce such a policy?

"Firing office workers for gossiping is akin to firing kangaroos for jumping."¹³⁰

Sam Chapman, the CEO of Empower claims that his no-gossip policy has greatly improved the culture of his workplace and that his business has doubled in a year.¹³¹ Nonetheless, based on our survey of the literature regarding the purposes gossip serves for the individual and the organization and our conclusion that, under most circumstances, gossip in the workplace is not morally objectionable, we question the desirability of policies that constitute a blanket prohibition of workplace gossip.

¹²⁷ Supra note 94.

¹²⁸ Westacott, supra, note 110 at 86.

¹²⁹ *Id.* See also Holland, supra, note 109 for similar criticism of gossip's role in reinforcing social norms.

¹³⁰ Chris Erikson, *Firing Lines*, NEW YORK POST (October 8, 2007).

¹³¹ Gardner, supra, note 7.

Given the evolutionary roots of gossip and the critical role it plays in forming and regulating groups, it is difficult to see how an organization could prevent gossip in the workplace unless it banned all but official communication and required employees to take a vow of silence. Noon and Delbridge state:

Managers might consider the 'control of gossip' to be a desirable objective in the pursuit of effective management, but if can never be enacted -- unless one manages a fully automated plant.¹³²

A disruptive level of negative gossiping in the workplace is often the result of some other problem. To deter gossip, employers should seek to discover the underlying source of discontent. David Sloan Wilson notes:

If employees are happy, they will tend to use gossip for benign purposes But if they perceive management as the enemy, they will gossip for their own interests.... The solution is not to end gossip but to make the company more equitable.¹³³

For example, in several of the cases we studied, although the employees were terminated for gossiping, gossiping appeared to be a symptom of deeper underlying workplace problems, such as improper fraternization, sexual misconduct, or poor management, in general. In its public statement on the Hookset Four,¹³⁴ the Town Council noted that the town "suffered from a lack of management continuity for at least four years" with six different individuals in the Town Administrator's office over a four-year period. It further noted that some of these administrators cited "serious personnel problems." In addition, the statement noted that the incidents of gossip were sparked when the woman who was one of the subjects of the gossiping worked additional hours to fill in for short-staffing in the Finance Department. This is not to say that poor

¹³² Noon & Delbridge, *supra*, note 76.

¹³³ Gardner, *supra*, note 7.

¹³⁴ *Town issues statement on 'Hooksett Four'*, *supra*, note 5.

management is an excuse for gossip that is intentionally untruthful, malicious and results in more harm than good, but management should be alert to problems that create employee discontent and distrust.

An employer who promulgates an anti-gossip policy to prevent discord in the workplace may find that the policy will backfire when employees attempt to air grievances in more open and destructive ways. Noon and Delbridge contend that gossip may protect an organization by providing some informal influence for individuals who lack formal power, thus acting as a type of outlet or safety valve for these individuals who might otherwise directly oppose the power structure.¹³⁵ In a study of temporary employees, Tucker found that temporary employees generally respond to adverse employer behavior that could result in lawsuits in nonaggressive ways, such as gossip, rather than pursuing formal grievance procedures.¹³⁶ He notes that "gossip functions as a type of settlement behavior; participants pass judgment on the case, determining fault and assigning blame."¹³⁷

Another alternative to prohibiting gossip in the workplace, is for organizations to accept it as a natural, and often desirable, behavior that can be manipulated for their own benefit.¹³⁸

¹³⁵ Noon & Delbridge, *supra*, note 76.

¹³⁶ James Tucker, *Everyday Forms of Employee Resistance*, 8 *SOCIOLOGICAL FORUM* 1 (1993).

¹³⁷ *Id.* at 31.

¹³⁸ Noon & Delbridge, *supra*, note 76.

LOOSE LIPS BRING PINK SLIPS: FIRED FOR GOSSIP AT THE OFFICE¹³⁹

A CASE STUDY

by

Rosemary Hartigan and Paula O'Callaghan*

Just four years out of college, Alex Sharkey was a fast rising junior account executive at JPW, a full service advertising and public relations agency, working in the firm's main office on Madison Avenue in New York.

Through family connections Sharkey obtained a position with JPW and went to work following graduation. As a graduation gift from Dad Sharkey received a copy of *Never Eat Alone*, the popular relationship building self-help book by Keith Ferrazzi (2005). Sharkey deeply absorbed and applied the advice in this bestseller and over four years took the time to get to know everyone in the office, every competitor and every media contact. That investment of time seemed to pay off. Alex's boss, Sam Cypher, the Vice President of the PR division gave Sharkey especially positive feedback on people skills on each performance review.

Over time Sharkey found that information gleaned from socializing with one person could be useful. So, Alex shared. It was easy; people would offer things – and Alex would pass along that information to those who could gain the most benefit from it. Alex experienced new-found popularity in the office as someone who was always “in the know.” Sharkey began to take a more active approach, taking the initiative to ask questions, encouraging lunch mates to share ever more specific details about the accounts they were working on, or intimate details about people with whom they worked.

One Monday, during lunch with an associate from a competitor firm, Sharkey learned that a female account executive at JPW, junior to Alex in tenure, was about to be promoted to senior account executive in the PR area. Sharkey was shocked and finished lunch with temper barely under control. Alex remarked to a companion, “I can't understand why all his networking hasn't paid off? I didn't even know we had a senior exec position open. Why Sheila Sharpe, and not me?” The lunch mate told Alex to “Get over it” adding, “she's probably sleeping with Cypher; isn't that how these things usually happen?”

Sharkey was deeply distressed about being “passed over” for the promotion and couldn't let it go. Sharkey began to analyze -- why would Sheila Sharpe be worthy of promotion? She'd been with the firm only one

¹³⁹ This case is based on two actual events, both of which took place in 2007, and were widely reported in the media. In the first instance the town of Hooksett, New Hampshire fired four municipal employees for gossiping about a possible relationship between their boss and another employee who was promoted; the dismissed employees became known as the “Hooksett Four.” The second incident occurred at a Chicago PR firm, known as Empower, where one person was fired because of gossip and sharing trade secrets outside the office; two others there were fired for spreading gossip. The CEO of Empower subsequently imposed a zero tolerance policy for office gossip.

* Hartigan, Professor and Director; O'Callaghan, Assistant Professor, Graduate School of Management and Technology, University of Maryland University College. Copyright © 2009 by Rosemary Hartigan and Paula O'Callaghan. Both the case and the teaching note are intended for teaching purposes only and do not constitute, and shall not be relied upon, as legal advice.

APPENDIX A

year and Sharkey considered her to have inferior client development skills. Over time the informant's remark took root. Was it possible that Sharpe could be sleeping with Cypher? The more Alex thought about it, it seemed the only logical explanation for Sharpe's sudden rise.

The following weekend JPW held an off-site company retreat for the entire staff. Sharkey had the perfect opportunity to test the theory while alone at the breakfast buffet with Cypher's secretary. Alex casually asked if the boss's marital troubles had worked themselves out yet. Without missing a beat the secretary said, "Sadly, no, Sam's still living at the Residence Inn. It's his kids I worry about – did you know he has twins in the first grade? What must they think about him running around with that young woman?" Caught a bit off guard, Sharkey quickly recovered and replied casually, "I guess you mean Sheila Sharpe?" "Well, you didn't hear it from me," was the terse reply, made with a wink and a smile.

Later that day Alex tried out the theory on two peers during happy hour at the off-site. Of course Alex had to reveal Sharpe's impending promotion to gain their interest. One of the companions raised her eyebrows and said, "Why, yes, I have seen Cypher and Sharpe together in the office after hours. I thought they were working on the Westheimer account, but now that you mention it, Sheila wasn't even on that team at the time." It wasn't quite the positive confirmation Alex was seeking, but that statement did seem to add some credibility to the theory. Sharkey sent off a quick email to the competitor who had originally revealed Sharpe's promotion. Alex repeated the theory about Sharpe and Cypher and asked if the competitor had heard anything about such a relationship. The competitor replied, allowing that indeed he might have heard something about that; he would ask around his firm and see if he could learn anything more.

The Monday following the off-site weekend, a memo was circulated from Sam Cypher, announcing that Sheila Sharpe had been promoted from junior account executive to senior account executive in the PR division.

Bitter and displeased, Sharkey went to lunch that day with two peers from the PR department. It happened that they were the same two co-workers in whom Sharkey had confided at the off-site. Sharkey repeated the conversation with Cypher's secretary. All three agreed that the promotion seemed suspicious and an improper relationship seemed likely. They agreed to ask around and see if anyone in the office knew more.

One month later Alex Sharkey was summoned to the top floor at the request of Cypher. Sharkey noticed that a representative of JPW's Human Resources office stood at the side of Cypher's desk. Cypher told Sharkey, "Clean out your desk and go home. You are being let go, effective immediately."

When Sharkey asked for specifics, the HR representative said, "You are an at-will employee and in New York that means we don't have to give you a specific reason." Frustrated, Sharkey lost control and began shouting at Cypher "This isn't fair! You've never had a problem with my work, so what do you have against me?! You've always given me great reviews, so what possible reason could you have?"

Cypher also became angry and began shouting "You have ruined my life with your gossip! You poisoned the entire office against me and you had the nerve to spread your lies and gossip outside our firm."

Later that day Sharkey's two JPW confidantes were summoned to the fifth floor and fired in the same manner as Sharkey.

Following the departures of the three former employees Sam Cypher circulated a memo co-signed by the firm's Director of Human Resources. The memo explained a new policy immediately in effect at JPW; the new policy informally was called, "Zero Tolerance for Personal Gossip." All associates received the policy along with their annual appointment letters. Signing the policy was a condition of continued employment. All new hires were required to sign as well.

APPENDIX A

Six weeks have passed since the incidents at JPW. Today you have a consultation appointment with Alex Sharkey who is coming to you for representation; Alex, whom you have not yet met, wants to sue JPW for wrongful termination.

The good news is that Sharkey's father has helped Alex to obtain another position in the advertising industry, not in New York but Chicago. However, because Sharkey is now employed at another office that has a zero tolerance policy for office gossip Alex would like your opinion on the legality of such policies.

When making the appointment with you, Sharkey told the intake assistant, "I've been reading articles about how gossip serves important organizational goals and is healthy. Besides, how is it even possible to enforce a ban on gossip?"

As a systems thinker you feel that you should go beyond answering Sharkey's legal questions and give Alex some advice on the ethical implications of gossip in the workplace as well.

Summarize your advice in a memorandum to your client, Alex Sharkey.

NO GOSSIP POLICY

In the workplace, gossip is an activity that can drain, distract and downshift employee job satisfaction. We all have participated in this, yet most of us say we don't like it. In order to create a more professional workplace, we the undersigned are making a commitment to change our atmosphere to be gossip free.

gossip n. Rumor or talk of a personal, sensational, or intimate nature. A person who habitually spreads intimate or private rumors or facts. Trivial, chatty talk or writing.

You will notice that gossip is a **verb** which means it is something you DO. That also means that is something you choose to do – and you can choose NOT to do it. You enter into gossip by choice – you can opt out of the activity at work. In order to end gossip means to end a particular type of communications – and that can be talk or email communications.

- Gossip always involves a person who is not present.
- Unwelcome and negative gossip involved criticizing another person
- Gossip often is about conjecture that can injure another person's credibility, reputation.

The persons signed below agree to the following:

In order to have a more professional, gossip free workplace we will:

1. Not speak or *insinuate* another person's name when that person is not present unless it is to compliment or reference regarding work matters.
2. Refuse to participate when another mentions a person who is not present in a negative light. I will change the subject or tell them I have agreed not to talk about another.
3. Choose not to respond to negative email or use email to pass on private or derogatory information about any person in the agency.
4. While off the job, speak to another co-worker about people at work in a derogatory light. If I have feelings, I will select to talk to someone not at the workplace.
5. If another person in the department does something unethical, incorrect, against procedures, or disruptive I will use the proper channels to report this to the person in authority to take corrective action.
6. I will mind my own business, do good work, be a professional adult and expect the same from others.

Sign here and POST

www.911trainer.com

APPENDIX B