

# Sexual Misconduct: Proper Adjudication Methodology

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# Overview

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- **Statistics**
- **Definitions**
- **Title IX Changes**
- **Hearing Process Changes**
- **Values Clarification Exercise**
- **Adjudicating Sexual Assault/Misconduct Cases**
- **Case Study**
- **Wrap Up/Questions**

# Title IX Committee



**André Clanton, Chair**  
**Conflict Resolution and Accountability**  
**Interim Title IX Coordinator**



**Lisa Reed,**  
**Human Resources**



**Rebecca Koch,**  
**Service Initiatives**  
**Deputy Title IX Coordinator**



**Rebekka Logan-Drayton**  
**Executive Office**



**Vincent Hinton,**  
**Counseling Services**



**Patrick Reeves,**  
**Campus Activities and Engagement**



**Jeremy Faulk,**  
**Student Affairs Auxiliary Operations**

**BRACE YOURSELF**

**STATS ARE COMING**



# Statistics

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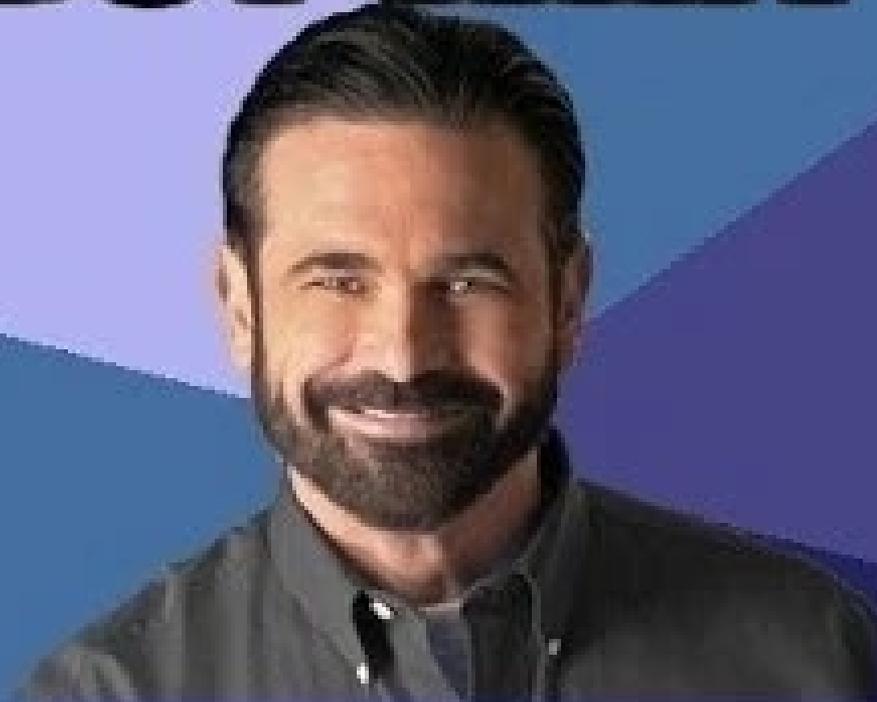
# Statistics

- 1 in 5 women are victims of completed or attempted sexual assault while in college.
- College age women (18-24) are 3 times more likely to be sexually assaulted.
- Among undergraduate students, 26.4% of females and 6.8% of males experience rape or sexual assault through physical force, violence, or incapacitation.
- Among graduate and professional students, 9.7% of females and 2.5% of males experience rape or sexual assault through physical force, violence, or incapacitation.

# Statistics

- 13% of all students experience rape or sexual assault through physical force, violence, or incapacitation (among all graduate and undergraduate students).
- 23.1% of TGQN (transgender, genderqueer, nonconforming) college students have been sexually assaulted.
- 75% of the men and 55% of the women involved in acquaintance rapes were drinking or taking drugs just before the attack.
- Only 20% of female student victims, age 18-24, report to law enforcement.

**BUT WAIT**



**THERE'S MORE...**

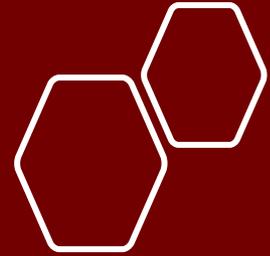
# Statistics

- More than 50% of college sexual assaults occur in either August, September, October, or November.
- 21% of college students report having experienced dating violence by a current partner.
- 5.8% of students have experienced stalking since entering college.
- 1 out of every 10 rape victims are male.

# Statistics

- 38% of victims of sexual violence experience work or school problems.
- Females ages 16-19 are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault.
- Every 68 seconds, an American is sexually assaulted.

# DEFINITIONS



# Definitions

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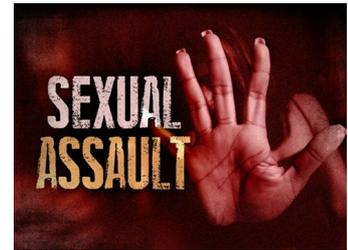


# Definitions

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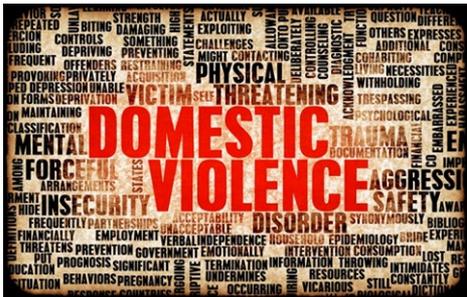
**TITLE IX** “ No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. ”

**STALKING:**  
KNOW IT. NAME IT. STOP IT.



**SEXUAL  
HARASSMENT  
IS  
VIOLENCE**

## Definitions



**SEXUAL  
HARASSMENT  
IS**

**VIOLENCE**



# SEXUAL HARASSMENT IS VIOLENCE

Unwelcome Conduct of a sexual nature including:

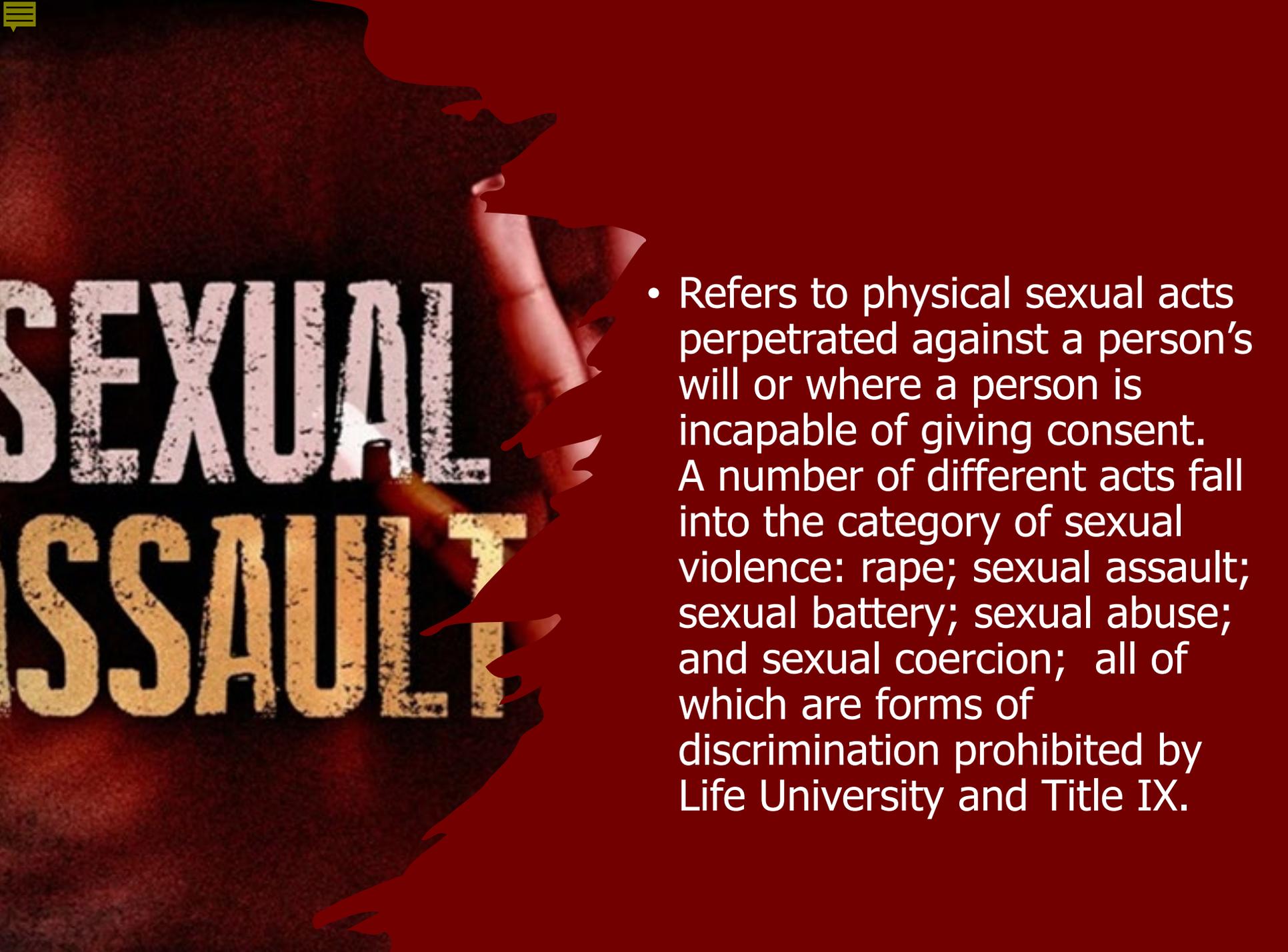
coercing a person into a sexual relationship; repeatedly subjecting to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence or sexual assault; intimate partner violence; stalking; and gender-based bullying

- Sexual Harassment includes all forms of sexual violence



**SEXUAL**

**ASSAULT**



# SEXUAL ASSAULT

- Refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence: rape; sexual assault; sexual battery; sexual abuse; and sexual coercion; all of which are forms of discrimination prohibited by Life University and Title IX.







# Dating Violence

• Dating Violence – “Violence committed by a person—

• who is or has been in a social relationship of a romantic or intimate nature with the victim; and

• where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) the length of the relationship
- (ii) the type of relationship
- (iii) the frequency of interaction between the persons involved in the relationship”





**STALKING:**

**KNOW IT. NAME IT. STOP IT.**

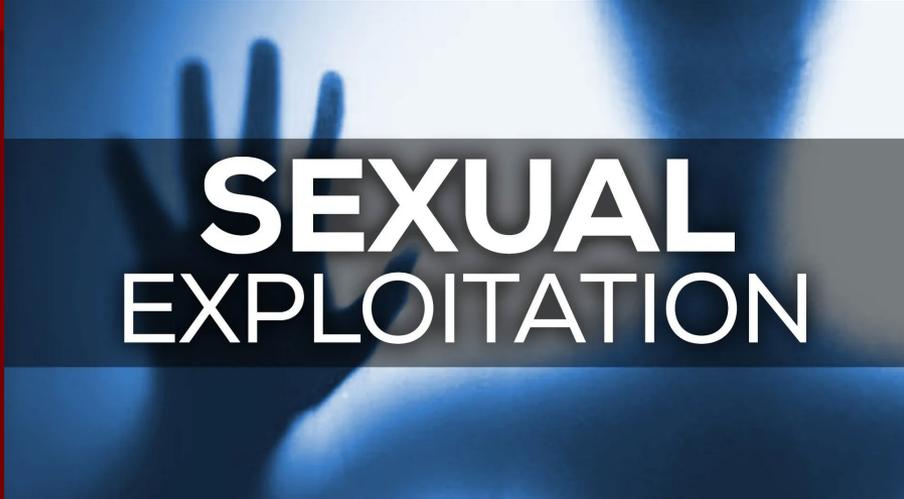


# STALKING:

KNOW IT. NAME IT. STOP IT.

- Stalking – behavior where a person follows, places under surveillance, or contacts another person without the consent of that person for the purpose of harassing and/or intimidating him or her.

Other forms of  
Sexual Harassment  
include:



## **Sexual Exploitation**

Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Eg: Invasion of sexual privacy; prostituting another student; non-consensual video or audio-taping of sexual activity; engaging in voyeurism; and, allowing others to do so, (i.e. letting your friends hide in the closet to watch you have consensual sex).

# SEXTORTION

Is Your Family Next?



- Refers to a form of blackmail in which sexual information or images are used to extort sexual favors from the victim. Social media and text messages are often the source of the sexual material and the threatened means of sharing it with others.



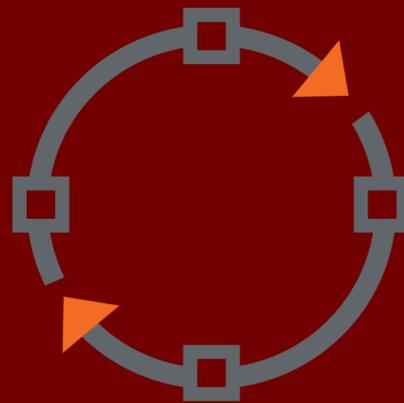
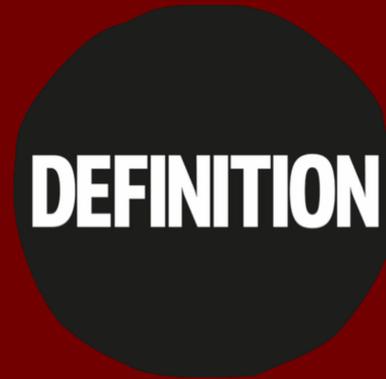
# STEALTHING

- Non-consensual condom removal, or "**stealthing**", is the practice of one sex partner covertly removing a condom, when consent has only been given by the other sex partner for condom-protected safer sex.



# Title IX: Changes

# Title IX Changes



PROCESS



# Title IX Changes



The focus of Title IX Regulations have moved from changing the culture of sexual assault on college and university campuses to addressing individual and specific allegations of sexual misconduct

No more required presentations to high risk groups like athletes, fraternities, and first-year students.

# Title IX Changes

## DEFINITION

Definition of sexual harassment has been narrowed from just unwelcome conduct of a sexual nature to include “sufficiently severe (intense), pervasive (spreading), and objectively offensive (to a reasonable person)” that it negatively impacts one’s ability to pursue their education or creates a hostile environment.

# Title IX Changes



Students cannot file an anonymous formal complaint with their Title IX Office to begin a grievance procedure against an assailant.

Investigations can only occur with a specific complainant on record which is typically the victim of the alleged violation.

# Title IX Changes



Schools are no longer required to investigate sexual harassment (including sexual violence) that occurs outside of the school's "program or activity."

Also, schools are not required to investigate conduct that occurs in study abroad programs outside the United States.

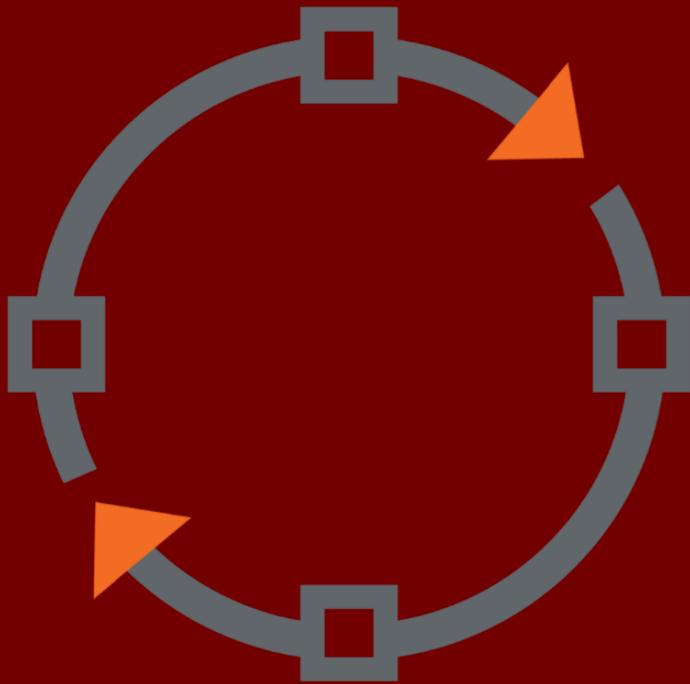
# Title IX Changes



## TIMELINE

The timeline to resolve complaints of sexual harassment has been changed from 60 days to "reasonably prompt", and can be delayed for "good cause."

# Title IX Changes



PROCESS

Schools were once allowed to develop their own Title IX Processes. However, now all schools must have and investigation and a live hearing if it is not resolved informally.

# Title IX Changes



Advisors now have a more active role in the hearing process. Advisors are responsible for cross-examination of the other party and of witnesses. In order for either party to cross-examine or ask any questions of the other party or witnesses, they **MUST** have an advisor who can still be anyone they choose.

# Title IX Changes



College and university now have the option of either using a “preponderance of the evidence” or “clear and convincing” standard in determining responsibility.



# Hearing Process Changes

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- The evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

A framed sign with a black border and a white background. The text is centered and reads "Clear and convincing evidence" in a bold, serif font. "Clear" is the largest word, "and" is smaller and centered below it, and "convincing evidence" is in a slightly larger font than "and" and spans two lines.

**Clear**  
and  
**convincing**  
**evidence**



## Hearing Process Changes

- Advisors can cross-examine the complainant/victim and witnesses.
- Questions directed to the chair and the chair directs the party or witness to answer.

# Hearing Process Changes

- Chair must rule on inappropriate questions immediately during hearing if there is an objection.
- “Rape Shield Laws” protect rape victims from being questioned about their sexual history

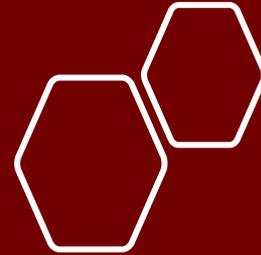


# Values Clarification Exercise

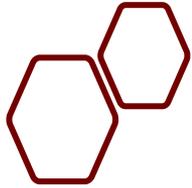
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# Values Clarification Exercise

- Finding the Truth
- Providing a just result
- Providing an educational process
- Encouraging students' maturation and development
- Making a safe community
- Upholding the college's policy
- Ensuring a fair process
- Protecting the rights of the accused student
- Protecting the college from liability
- Punishing wrongdoing



# Adjudicating Sexual Assault



# Adjudicating Sexual Assault

- Critically Read the Incident Report
  - Getting a clear picture
- Questioning
  - Using specific techniques
  - Watching our tone
  - No questions regarding sexual history
  - Be careful of “Why...?” Questions
- Evidence
  - All types of evidence admissible
  - Clear and Convincing
- Weighing the Information
  - Credibility
  - Bias

# Adjudicating Sexual Assault

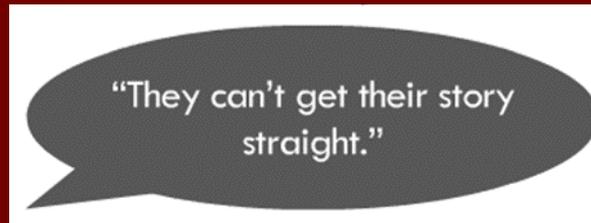
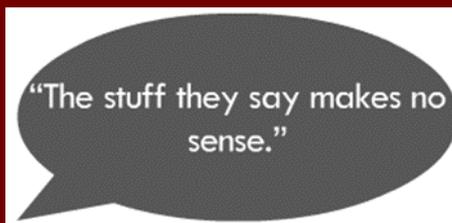
## HORMONES RELEASED DURING TRAUMA

CATECHOLAMINES	CORTISOL	OPIATES	OXYTOCIN
<ul style="list-style-type: none"><li>*adrenaline</li><li>*help with <b>FIGHT</b> so the body can fight back against the traumatic event</li><li>*can also help with <b>FLIGHT</b> to try to run from the threat</li></ul>	<ul style="list-style-type: none"><li>*affects the amount of energy the body has for its reaction</li><li>* <b>FIGHT</b> or <b>FLIGHT</b></li></ul>	<ul style="list-style-type: none"><li>*body's natural morphine</li><li>*to counteract physical pain that may accompany emotional pain</li><li>*could tie into <b>FREEZE</b></li></ul>	<ul style="list-style-type: none"><li>*increase positive feelings</li><li>*to counteract physical pain that may accompany emotional pain</li><li>*could tie into <b>FREEZE</b></li></ul>

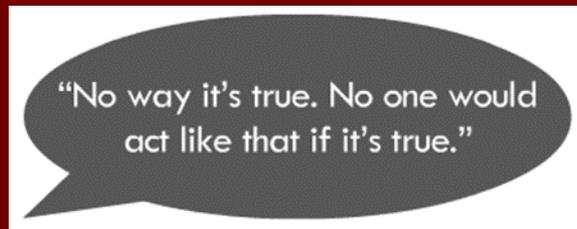
# Adjudicating Sexual Assault

## ■ Trauma

- Fragmented Memories of Incident
- Memories may be slow/difficult to recall

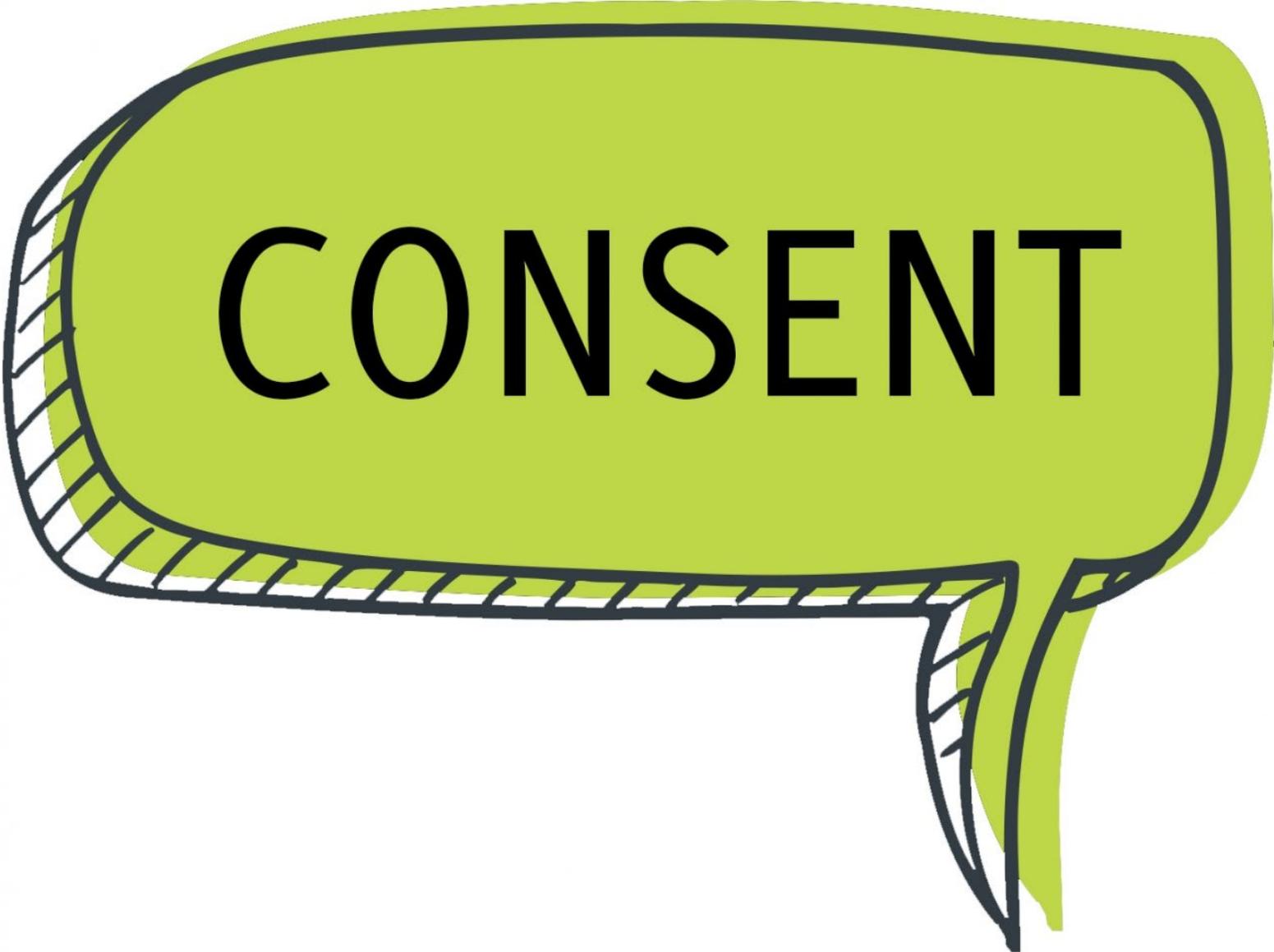


- May be no memory of incident at all
- Emotional Response may not fit incident described
- Fight-Flight-Freeze



## Adjudicating Sexual Assault

- Three (3) main factors to determine in sexual assault/misconduct violations
  - CONSENT
  - FORCE
  - CAPACITY

A hand-drawn speech bubble with a light green fill and a dark green outline. The bubble has a tail pointing downwards and to the right. The word "CONSENT" is written in bold, black, uppercase letters in the center of the bubble. The bubble has a slightly irregular, hand-drawn appearance with some hatching on the left side.

**CONSENT**

# Adjudicating Sexual Assault

- **Consent** is defined as agreement that is informed and given freely. Consent must be clearly communicated through words and/or actions, to participate in each form of sexual activity. Silence cannot be interpreted as consent, nor can passivity or lack of resistance. Previous relationships or instances of consent do not imply future consent. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Impairment due to the use of alcohol or drugs does not excuse failure to obtain consent. Likewise, any person incapacitated by alcohol or drug use, or who is unconscious, asleep or physically impaired is incapable of giving consent.

- **Elements of Consent**

- C** Comprehension that the act is taking place
- O** Optional for both parties
- N** Negotiation with partner
- S** Sobriety
- E** Engagement in the act
- N** Nonviolent
- T** Talking about it

**SEX YOU WANT**



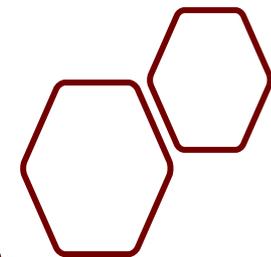
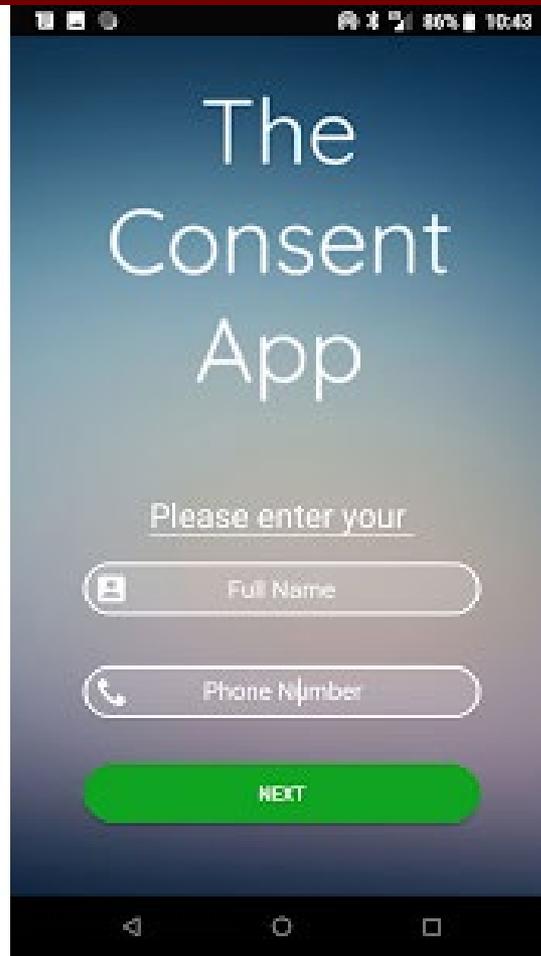
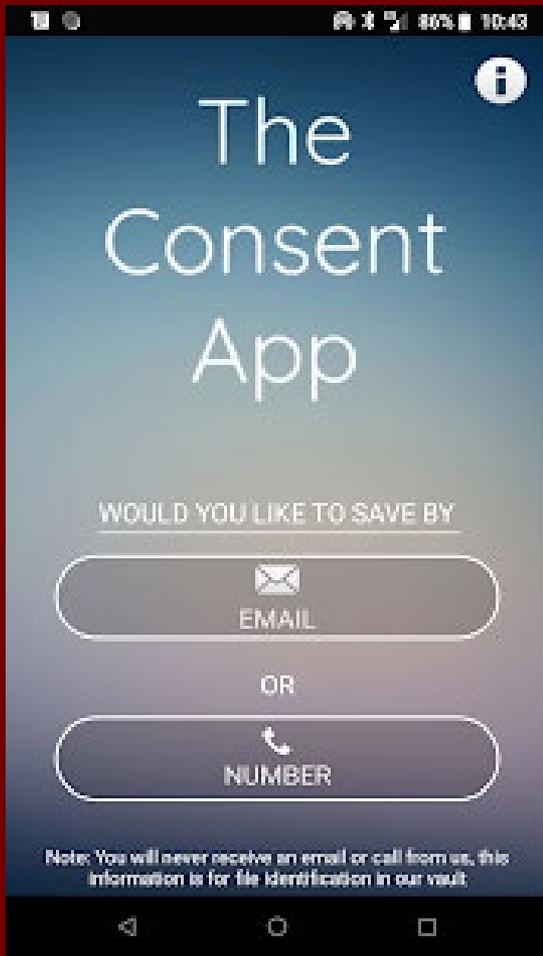
**ASK FOR CONSENT, YOU  
MUST**

[memegenerator.net](http://memegenerator.net)

**I DON'T ALWAYS HAVE SEX**



**BUT WHEN I DO,  
I HAVE CONSENT**

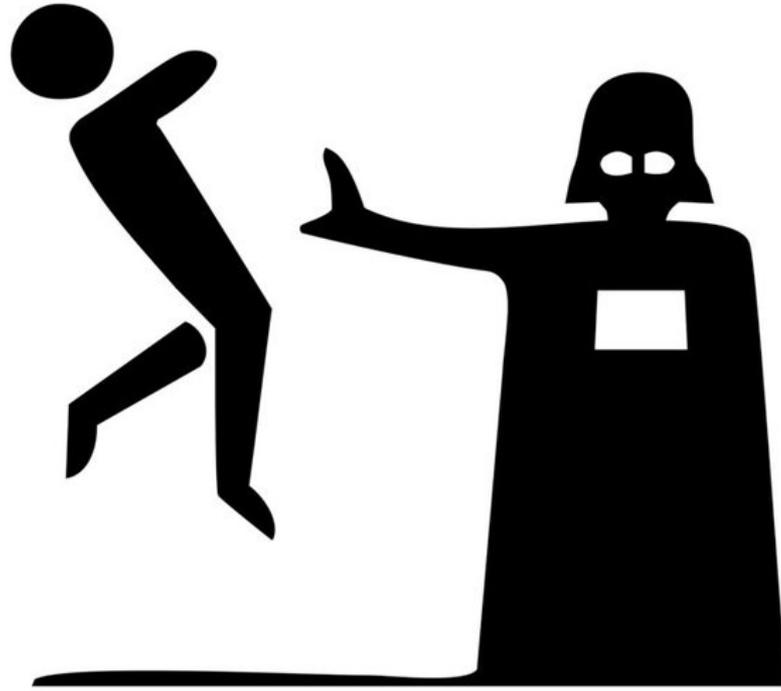


# Adjudicating Sexual Assault

- Consent
  - What words or actions gave the accused individual permission to engage in sexual activity with the victim?
  - Was there consent for every aspect of the sexual encounter?
  - Consent to one form of sexual activity doesn't mean consent to other forms.
  - Consent the last time doesn't mean consent this time.
  - Is reciprocating behavior a form of non-verbal consent?



FORCE



**PLEASE  
DON'T USE  
FORCE**



Physical Violence

Coercion

Intimidation

Threats

Blackmail

**BOYCOTT**  
FIFTY SHADES  
OF GREY

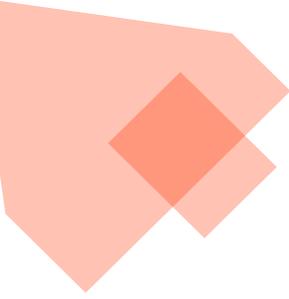
Ditch the film, and give instead  
to a domestic violence shelter.

**#50dollarsnot50shades**  
**#FiftyShadesIsAbuse**

# Adjudicating Sexual Assault

- Force
  - Did the accused gain sexual access by force?
  - Was the sexual encounter an act of free will or not?
  - Were there overt or implied threats?
  - Was there unreasonable pressure or coercion?
  - How much of a threat is a threat?
  - Was there a true threat or did s/he just feel threatened?

CAPACITY





**IT'S NOT SEX...**

**WHEN SHE'S PASSED OUT**

sex with someone unable to consent = sexual assault

BEING DRUNK  
IS NOT CONSENT

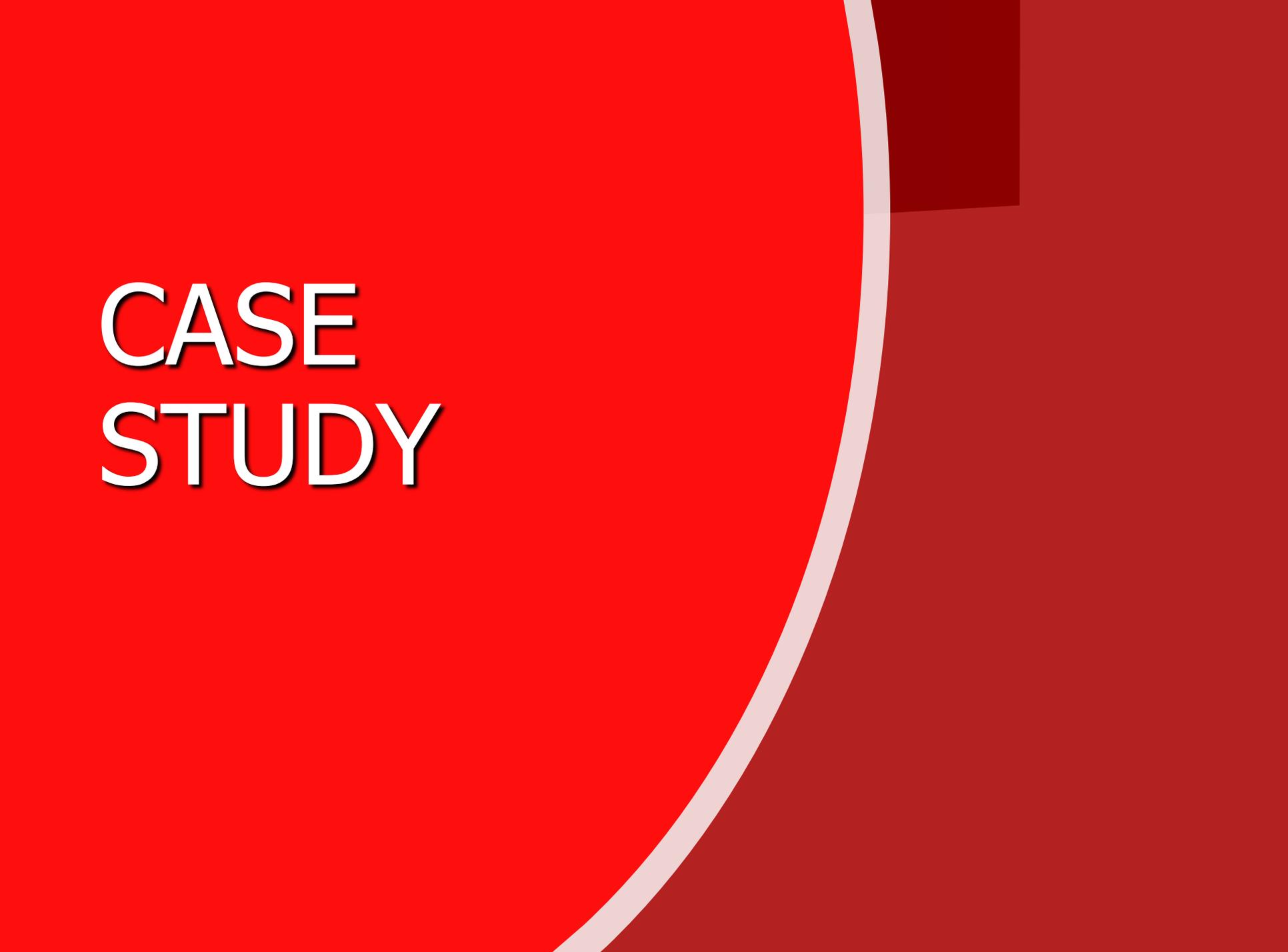


**WHEN YES  
MEANS NO**

# Adjudicating Sexual Assault

- Capacity
  - Was there alcohol or drugs involved?
  - Was the alleged victim incapacitated?
  - Should the accused have known?
  - Did the victim understand who, what, where, when, and how?
  - If the victim can't say "No." then they can't say "Yes." either.
  - Sexual encounters are considered contractual agreements in the eyes of the law.
    - Drunk or drugged individuals are incapable of entering into a contract.

# CASE STUDY



# CASE STUDY

## ■ CONSENT

- Yes/No
- Why/Why Not?

## ■ FORCE

- Yes/No
- Why/Why Not?

## ■ CAPACITY

- Yes/No
- Why/Why Not?

# QUESTIONS