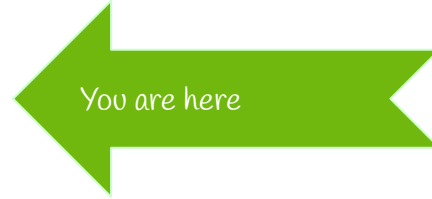


# Day 2 Agenda

- 8:30 Loose Ends
- 8:35 Understanding your own cultural biases
- 9:45 The Consent Construct
  - Types of Evidence
  - Assessing Credibility
- 10:50 Break
- 11:00 Case Study/Tabletop
- Noon Lunch break
- 1:15 Case Study (con't)
- 3:00 Break
- 3:15 Documentation and case organization
- 4:30 Debrief/Download



# Ground Rules:

Extend grace and latitude.

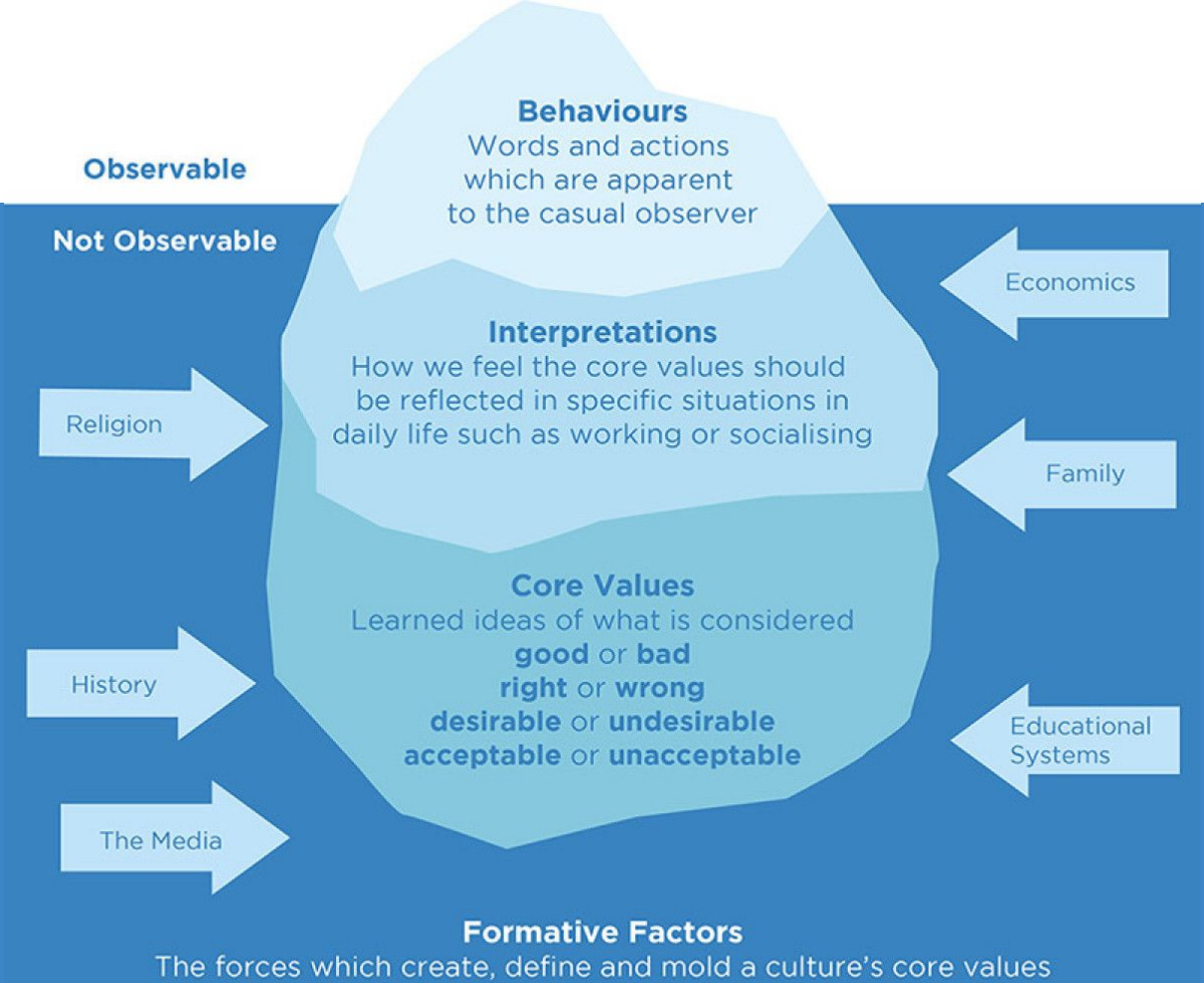
Ask questions.

Challenge your assumptions & biases.

Engage in this training.

Practice self-care.

Recognize there are likely persons who have experienced these incidents within in our number.



# Ground Rules:

Extend grace and latitude.

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Challenge your assumptions & biases.

Engage in this training.

Practice self-care.

Recognize there are likely persons who have experienced these incidents within in our number.

***Sexual assault*** shall include, but is not limited to a ***sexual act*** directed against another person when that person is ***not capable of giving consent***, which shall mean the voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make a deliberate choice to do something proposed by another.

Would a reasonable person believe there was force present?

# Force can be:

- Physical – violence, abuse, compulsion
- Threats – Harassment
- Intimidation – implied threats
- Coercion-pressure, duress, cajoling



Pair work



On February 14, 2018, CLAIMANT went to a party at Epsilon Gamma Kappa. As a first-year student, CLAIMANT admitted that they were fairly shy and a bit unsure of themselves, but really wanted to go out because they missed their significant other from home. Because it was a school night, CLAIMANT couldn't find any other friends from the section to go with them. When they got to the party, a student from the CLAIMANT' Calculus class came up to them and handed them a red solo cup. CLAIMANT reports that the RESPONDING PARTY told the CLAIMANT how hot the CLAIMANT was and that the RESPONDING PARTY was really attracted to the CLAIMANT in class so was so happy to see the CLAIMANT at the party at the house. At some point a fight broke out at the party and the RESPONDING PARTY stood in front of the CLAIMANT when a group of other students started shoving each other near the CLAIMANT. The CLAIMANT remembers thanking the RESPONDING PARTY for "protecting" them. The CLAIMANT remembers the RESPONDING PARTY saying "I would never hurt you."

For the rest of the evening (~2 hours), the CLAIMANT and RESPONDING PARTY hung out at the party together. At one point the RESPONDING PARTY draped their arm around the CLAIMANT. The CLAIMANT remembers feeling safe. The RESPONDING PARTY reported trying to make the CLAIMANT feel comfortable by refilling the CLAIMANT's drinks, introducing the CLAIMANT to other members of Epsilon Gamma Kappa, and running their fingers through the CLAIMANT's hair. As the night was rolling to a close, the CLAIMANT told the RESPONDING PARTY they needed to go. The RESPONDING PARTY asked if the CLAIMANT first wanted to see the RESPONDING PARTY's room. The CLAIMANT hadn't ever seen a room in Epsilon Gamma Kappa, so they said "sure." The RESPONDING PARTY took the CLAIMANT by the hand and walked up the stairs. The CLAIMANT remembers the stairs were barely lit and the music was still pretty loud. They then walked to the end of the hallway and down two flights of stairs to what the CLAIMANT thinks was a basement. The RESPONDING PARTY opened the first door on the left and ROOMMATE stood up from the couch. The RESPONDING PARTY told ROOMMATE that RESPONDING PARTY and CLAIMANT were going to watch a movie. ROOMMATE said they were going to WITNESS 2's room for the night.

After ROOMMATE left, CLAIMANT told RESPONDING PARTY that they needed to leave. CLAIMANT remembers RESPONDING PARTY asking CLAIMANT if they would stay for just a little bit, because they didn't have much time to talk. CLAIMANT agreed to stay for a half hour. RESPONDING PARTY asked CLAIMANT if they had ever seen the movie "The CoyWolf." CLAIMANT had not. RESPONDING PARTY got up and pulled a DVD off the shelf, turned on the tv, and locked the door before returning to the couch where the RESPONDING PARTY then sat down. The CLAIMANT remembers the RESPONDING PARTY reaching up to CLAIMANT with an outstretched hand. When the CLAIMANT took the RESPONDING PARTY's hand, the RESPONDING PARTY then pulled the CLAIMANT down to the couch. The RESPONDING PARTY cleared the CLAIMANT's hair behind their ear and told them "Seriously, you are the hottest person in Calc, I can barely pay attention when you are sitting near me." CLAIMANT remembers being both flattered and embarrassed at the same time. "You are the reason I go to Calc every day." CLAIMANT then remembers someone knocking on the door. "Go away -- we are watching "the CoyWolf." CLAIMANT remembers that the video is a strange documentary about the mating habits of the CoyWolf -- a hybrid of coyote and wolf.

When the CLAIMANT turned back toward the RESPONDING PARTY, they had locked eyes and the RESPONDING PARTY leaned in to kiss the CLAIMANT. “We should definitely mark tonight, its Valentines Day!” The CLAIMANT said they had someone at home that they had been dating since high school. “They don’t need to know,” the RESPONDING PARTY said, “This can just be our little secret.” The CLAIMANT remembers the RESPONDING PARTY tracing the CLAIMANT’s body with their hands. “You are so so hot, I can barely hold myself back.” The CLAIMANT remembers saying “I really need to go,” to which the RESPONDING PARTY said “What a frickin’ tease, just like everyone said.” The RESPONDING PARTY went on to say “I told everyone you weren’t like that, that while you were so gorgeous, you were also smart as hell and so real. I’ve been dreaming about this moment and what I would do to make you cum.” The CLAIMANT said, “I need to go.” The RESPONDING PARTY said, “I’m sorry, I just cannot believe you are in my room, I didn’t mean to scare you. Please stay for just a little bit longer, I promise I will be on my best behavior.” The CLAIMANT shared that they wanted to leave, but the RESPONDING PARTY did seem genuinely sorry. There was a second knock on the door, “CoyWolf asshole -- leave us the f\$#% alone!”

Would a reasonable person believe there was force present?

YES

Policy has been violated.

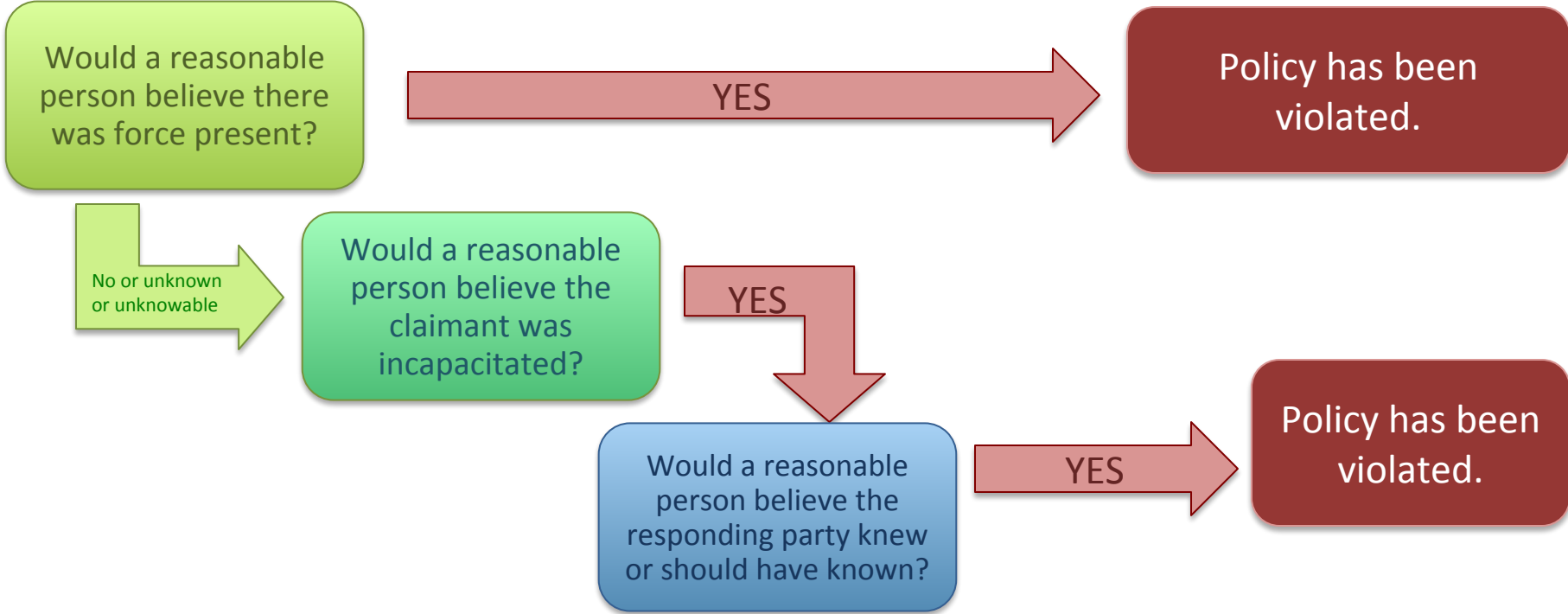
No or unknown or unknowable

Would a reasonable person believe the claimant was incapacitated?

*Incapacitated refers to one who is rendered physically helpless as a result of alcohol or other drug consumption (voluntary or involuntary), or who is unconscious, unaware, or otherwise incapable of giving consent.*

*(Sokolow, 2005, p.10; [www.nchem.org](http://www.nchem.org))*

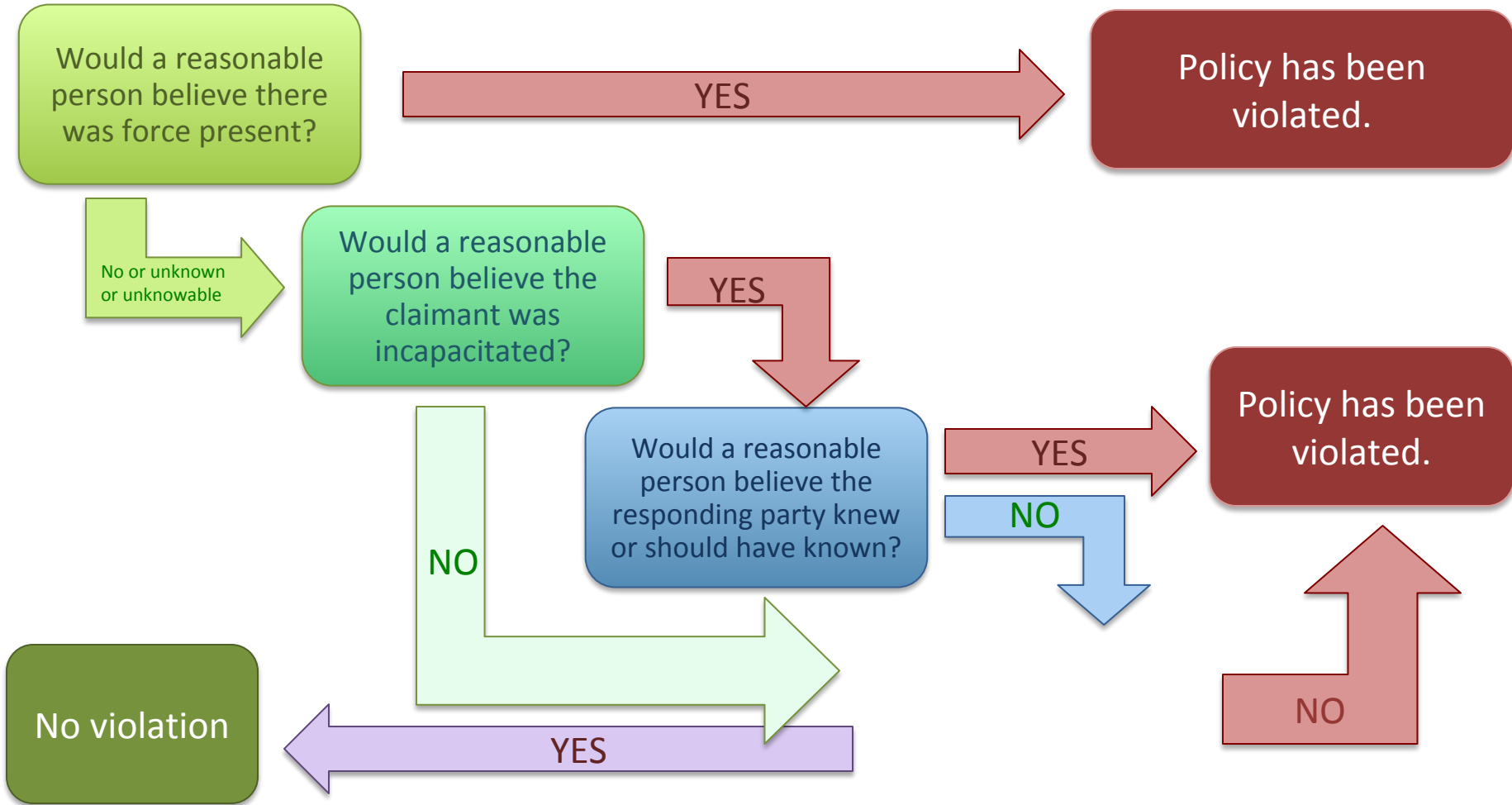




Pair work



CLAIMANT stated that she woke the first time to the RESPONDING PARTY “spooning” her, groping her buttocks and thighs, and noticing that her underwear had been slid down. CLAIMANT said that she froze and did not know what to do and thought if she pretended to be asleep it might stop. CLAIMANT thought “this is so strange because he has a girlfriend” and “he would never do this to me.” CLAIMANT stated that she then shifted position slightly in the hope that if the RESPONDING PARTY thought she was waking up he would stop. CLAIMANT stated that the RESPONDING PARTY did stop when she shifted, so CLAIMANT moved away from the RESPONDING PARTY in the bed and fell back asleep. CLAIMANT remembered waking up again and stated that “he was on me again,” and indicated that the RESPONDING PARTY “fingered” her and had his hands on her breasts. CLAIMANT then distinctly remembered moving again and she stated that the RESPONDING PARTY “froze and carefully, gingerly pulled my underwear back up”. CLAIMANT then said she moved away from the Responding Party in the bed but pretended to still be asleep, with her head facing the opposite direction from the RESPONDING PARTY. CLAIMANT said she did not know what to do throughout the duration of the incident, and that she was not thinking clearly and was still fuzzy due to alcohol consumption. She also stated that she remembers feeling very afraid throughout. She asserted that each time that the RESPONDING PARTY touched her, she tried to move away and that the RESPONDING PARTY froze.



**CONSENT IS:**

**CLEAR COHERENT**  
**WILLING ONGOING**

## **CLEAR**

**Consent is active.**

It's expressed through words or actions that create mutually understandable permission.

Consent is never implied, and the absence of a no is not a yes.

Silence is NOT consent.

"I'm not sure," "I don't know," "Maybe" and similar phrases are NOT consent.

## **COHERENT**

**People incapacitated by drugs or alcohol cannot consent.**

Someone who cannot make rational, reasonable decisions because she or he lacks the capacity to understand the "who, what, when, where, why or how" of the situation cannot consent.

People who are asleep or in another vulnerable position cannot consent.

## **WILLING**

**Consent is never given under pressure.**

Consent is not obtained through psychological or emotional manipulation.

Consent cannot be obtained through physical violence or threat.

Someone in an unbalanced power situation (i.e. someone under your authority) cannot consent.

## **ONGOING**

**Consent must be granted every time.**

Consent must be obtained at each step of physical intimacy. If someone consents to one sexual activity, she or he may or may not be willing to go further.

Pair work

aw dude I'm sorry

It's ok man

question is

Should I get it now or tomorrow?

do I hook up w [redacted] RP or  
[redacted] Witness 12 rn

Hmmm

tomorrow morn I'm sure will b  
fine

[redacted] RP is a douche

But he's hot

yeah we've already fucked

and he paid for my plan b

so like bae lol

Gentleman

Ikr

Was he good?

pretty good cause he's so hot  
but we were both pretty turnt

Hmmm good enough to repeat?

[redacted] 12 and I have fucked like 10  
times and it was mediocre so  
like I'm thinkin [redacted] RP would be  
better

my situation is

Yeah do [redacted] RP

[redacted] 7 and i are in a break til wed  
literally so I can figure out if it's  
worth fucking other ppl or nah  
and we are gonna talk on wed

so I feel like I gotta fuck other  
ppl

to figure that out

V true

How do you feel about it so far?

haven't fucked anyone so far

highlight of the night was having  
5 [redacted]; I've hooked up w stand in  
a circle and talk about which  
one was allowed to hook up w  
me tonight



That sounds awful!

I survived. I tried to laugh.

That's so fucked up tho

Ew boys suck

it's true

Id go with [redacted] RP



Honesty ~~=~~ Cr

S + Co + P = Cr



A close-up photograph of a person's hand holding a small, white rectangular card. The card has the words "TRUST me." written on it in a dark, handwritten-style font. The background is blurred, showing what appears to be a person in a dark suit and tie. The lighting is bright, highlighting the texture of the hand and the card.

TRUST me.

### **Direct Evidence**

Comes from individuals who either witnessed the events or who were nearby or who interacted with the parties immediately before, during or immediately after.

### **Gain / Loss Equation**

What is loss by telling the truth and what is gained by lying?

### **Indirect Evidence**

Second hand information or circumstantial

### **Bias**

Relationship to the claimant or the responding party.

Pair work

Regarding the credibility of the Responding Party, investigators noted that his account remained consistent throughout the duration of the investigation. The level of detail of the Responding Party's account of the events in question was low, and the reason given by the Responding Party for the lack of specificity was his alleged high level of alcohol consumption. Investigators did not receive statements from witnesses that firmly corroborated or refuted this account of heavy drinking. While some witnesses were able to confirm that the Responding Party did drink on the night of October 30th, no specific quantity of how much he drank was provided by any witness. Some witnesses also stated that his behavior late in the evening (after midnight) indicated a low level of intoxication, while others stated that they were not able to make conclusive statements about his level of intoxication. Investigators also noted that the level of specificity of the Responding Party's account of the early evening was abnormally low, at a time when he had not yet consumed a significant quantity of alcohol and could be presumed to have more substantial recollections of the events in question.

The Responding Party alleges that he has no memory on the night of October 30th from approximately 10 p.m. or 11 p.m. until the next morning at 10 a.m. Information provided by witnesses and Claimant TWO suggest that no alcohol consumption occurred after approximately 10:45 p.m. when the fraternity house ran out of alcohol. The Responding Party stated that he drank more than his “normal” amount of 5 or 6 drinks on this evening between 9 and 11 p.m., though he was unable to provide a specific quantity of alcohol consumed. Investigators concluded that in order for the Responding Party to remain blacked out for 10-12 hours after his final drink, he would have had to consume an extreme and unlikely amount of alcohol.

Additionally, the Responding Party by his own admission and by the statements of witnesses had a habit of not drinking to the point of blackout, and in fact had stated that he actively avoided such occurrences. He named only two nights on which he allegedly reached a state of blacked out intoxication: this night and the night that Claimant ONE alleged the Responding Party had assaulted them. This suggested to investigators that the Responding Party’s account was not logical and may have been fabricated in some part.

**For these reasons, investigators concluded that the Responding Party was not credible in all elements of his account of the events in question, in particular the assertion that he has no memory whatsoever of the events occurring between 10 p.m. and 10 a.m. on the night of October 30-31, including the behaviors alleged by Claimant TWO.**

S + Co + P = Cr

Direct evidence

Real and demonstrative

Documentary evidence

Circumstantial evidence

Hearsay

Character reference

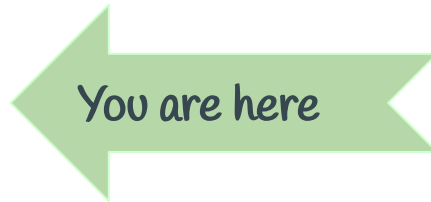
S + Co + P = Cr





# Day 2 Agenda

- |       |   |
|-------|---|
| 8:30  | Loose Ends  |
| 8:35  | The Consent Construct<br>Types of Evidence<br>Assessing Credibility |
| 10:00 | Break   |
| 10:15 | Case Study/Tabletop   |
| Noon  | Lunch break   |
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| 3:15  | Documentation and case organization                                 |
| 4:30  | Debrief/Download  |



# CASE STUDY



You need to create a report that will be understood by someone who has never spoken with the parties or who has never read your policy.

Your report will need to stand on its own in the event of an internal or external review.


If it is not in the report will you remember it?

don't

~~assume~~

1. Background
2. Procedural issues (if any)
3. Statements (Claimant, Responding Party, Witnesses, Outside Experts)
4. Description of Other Evidence (student conduct records, medical records, photographs, surveillance videos, swipe card records, texts, etc.)
5. Analysis and Finding
6. Recommendations





Orient the reader.

How did the case arrive?

Investigation timeline

What policy and procedures apply?

Introduce parties and association

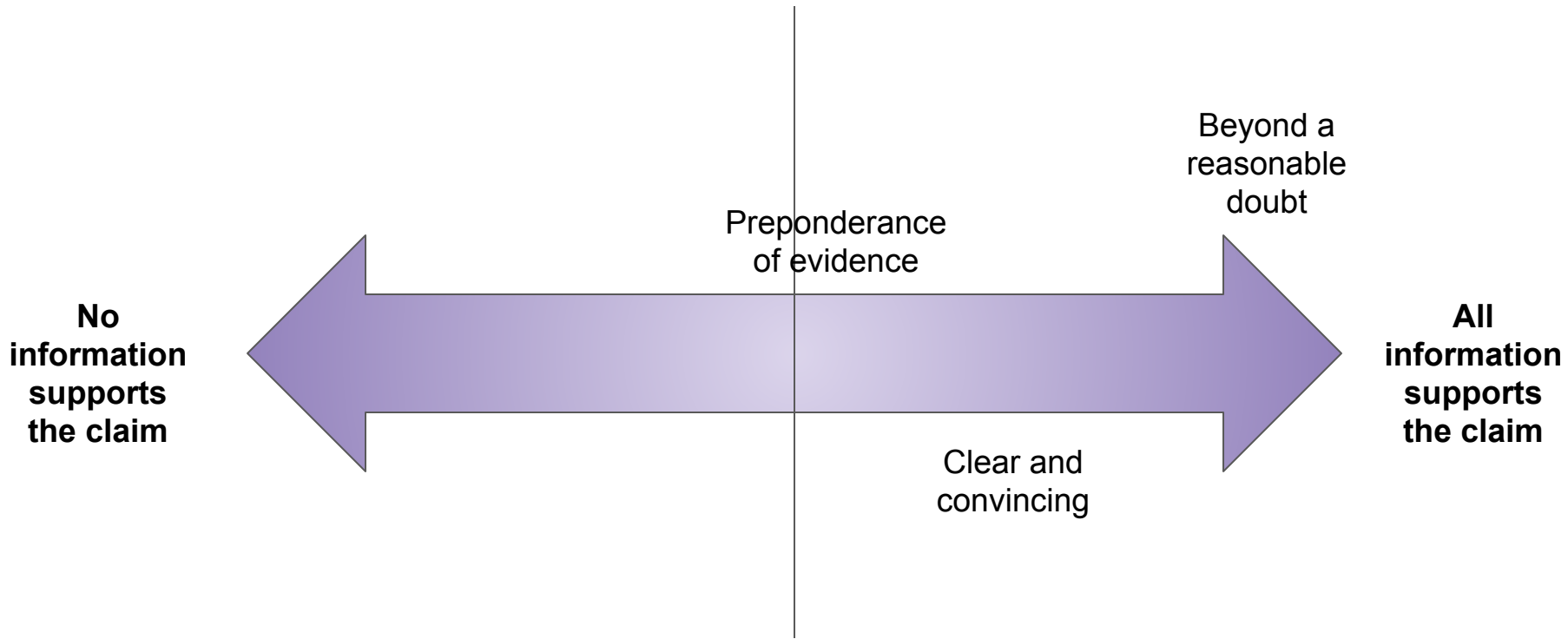
Key dates

Standard that will be used



Claimant stated that Responding Party subsequently texted her about what had happened. Claimant provided the texts, which read as follows:

- Claimant: I don't care what u say. U know I didn't want it and you did it anyway.
- Responding Party: I'm sorry I hurt u. You know I don't hit. I was so drunk. IDK what to say to bake it better. Can I see u?
- Claimant: What could you say? U raped me, Asshole.
- Responding: I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did.





<b>Thorough</b>	<b>Reliable</b>	<b>Impartial</b>
<b>Prompt</b>	<b>Effective</b>	<b>Equitable</b>
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community



Thank you for your time,  
energy, and attention.

# **Julia Dunn**

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Title IX Administrator**

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***Whitman College***