



# Sexual Misconduct Committee Training

## Office for Student Conflict Resolution

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Friday, August 21, 2020

# **TRAINING: DAY ONE**



# Day One Overview

- Introductions/ Syllabus Review
- Committees' Charge
- Sexual Misconduct Policy
- Neurobiology of Trauma
- **Lunch**
- Evidence and Credibility
- Hearing Procedures
- Deliberation and Statements of Fact
- Sanctioning
- Petitions



Rony Die  
Associate Director

# OUR CHARGE



# OSCR Mission

The Office for Student Conflict Resolution (OSCR) supports the community standards of the University of Illinois at Urbana-Champaign by promoting ethical decision making, encouraging personal and social responsibility, and facilitating the effective resolution of conflict.



# Subcommittee on Sexual Misconduct Charge

On behalf of the university and in accordance with established policies and procedures, you will

- Find facts and determine responsibility in student sexual misconduct cases;
- Hold responsible students accountable by issuing sanctions designed to encourage personal growth, prevent recurrence, repair harm, and promote campus and community safety; and
- Maintain the integrity of the student discipline system through fair and objective decision making and individual ethical conduct.



# Senate Committee Charge

On behalf of the university and in accordance with established policies and procedures, you will

- Review subcommittee decisions to determine whether any of the criteria for appeal have been met and, if so, to select necessary remedies;
- Render final and binding decisions in all appealed cases; and
- Maintain the integrity of the student discipline system through fair and objective decision making and individual ethical conduct.



# Expectations of Members

- Maintain confidentiality of records and privacy of participants
- Approach all cases with fairness and objectivity
- Respect existing standards, policies, and procedures
- Review report ahead of time, come with questions
- Arrive on time or early
- Check email daily and respond as quickly as possible



# Ethical Standards Form



Rony Die and Justin Brown

# SEXUAL MISCONDUCT POLICY



# Sexual Misconduct Policy

**Sexual Misconduct** means

- Title IX Sexual Harassment
- Sexual harassment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- **Unwelcome sexual, sex or gender-based conduct**
- **Sexual violence**
- Sexual exploitation

See §1-111 in the *Student Code*



# Sexual Harassment

**Sexual Harassment** means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational opportunities, assessment or status at the University; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working or educational environment.



# Sexual Assault

**Sexual Assault** means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. This includes: (A) Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim; (B) The touching of the private body parts of another person for the purpose of sexual gratification without the consent, as defined in this policy, of the victim; and (C) Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.



# Dating Violence

**Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of relationship, the type of the relationship, and the frequency of the interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.



# Domestic Violence

**Domestic violence:** felony or misdemeanor crimes of violence committed by:

- (A) a current or former spouse or intimate partner of the alleged victim;
- (B) a person with whom the alleged victim shares a child in common;
- (C) a person who is cohabitating with, or has cohabitated with, the alleged victim as a spouse or intimate partner;
- (D) a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of the State of Illinois; or
- (E) any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of the State of Illinois.



# Stalking

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition, (A) course of conduct means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device or means follows, monitors, observes, surveilles, threatens, or communicates to or about, a person, or interferes with a person's property; (B) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and (C) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



# Title IX Sexual Harassment

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

(A) **Quid Pro Quo Sexual Harassment:** conduct (1) by an employee of the University, which (2) conditions the provision of an aid, benefit, or service of the University, on (3) an individual's participation in unwelcome sexual conduct;

# Title IX Sexual Harassment (continued)

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- B. Hostile Environment Sexual Harassment:
  - i. unwelcome conduct that
  - ii. a reasonable person would determine to be so
  - iii. severe,
  - iv. pervasive, and
  - v. objectively offensive that
  - vi. it effectively denies a person equal access to the University's education program or activity;  
or
- C. Sexual Assault
- D. Stalking
- E. Dating Violence
- F. Domestic Violence.



# Sexual Exploitation

**Sexual exploitation:** the use of another person's nudity or sexual activity without consent for the purpose of sexual gratification, financial gain, personal benefit, personal advantage, or any other non-legitimate purpose. Sexual exploitation includes, but is not limited to:

- (A) without the knowledge and consent of all participants, observing, recording, or photographing nudity or sexual activity of one or more persons in a location where there is a reasonable expectation of privacy, allowing another to observe, record, or photograph nudity or sexual activity of one or more persons, or otherwise distributing recordings, photographs, or other images of the nudity or sexual activity of one or more persons; and
- (B) sending sexually explicit materials of another person without consent of the recipient.



# Consent

**Consent** is informed, freely and actively given, mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. A person can withdraw consent at any time. There is no consent when there is force, threats, intimidation, or duress. A person's lack of verbal or physical resistance or manner of dress does not constitute consent.

Consent to past sexual activity with another person does not constitute consent to future sexual activity with that person. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.



# Consent Continued

A person cannot consent to sexual activity if such person is unable to understand the nature, fact, or extent of the activity or give knowing consent due to circumstances including without limitation the following:

- A. the person is incapacitated due to the use or influence of alcohol or drugs;
- B. the person is asleep or unconscious;
- C. the person is under the legal age to provide consent; or
- D. the person has a disability that prevents such person from having the ability or capacity to give consent.



# Incapacitation

- Inability “to understand the nature, fact, or extent of the activity.”
- Inability “to understand the nature of the act.”
- Inability “to make rational, reasonable decisions.”\*
- Inability “to understand the ‘who, what, when, where, why, or how’ of their sexual interaction.”\*

\*2017 ATIXA Whitepaper (<https://atixa.org/wordpress/wp-content/uploads/2017/04/ATIXA-2017-Whitepaper-Final.pdf>)



# Incapacitation: 2 Types

- Mental incapacity\*
  - Results from cognitive impairment, such as a developmental disability
  - Temporary mental incapacity can result from conditions such as epilepsy and panic attacks.
- Physical incapacity\*
  - Results from a physical state or condition, such as sleep or alcohol or other drug consumption.
  - The most common form of incapacity is alcohol-induced incapacitation.
    - (under the) Influence
    - Impairment
    - Intoxication and Inebriation (drunkenness)
    - Incapacitation

\*2017 ATIXA Whitepaper (<https://atixa.org/wordpress/wp-content/uploads/2017/04/ATIXA-2017-Whitepaper-Final.pdf>)



# Signs of Incapacitation

- Heavy alcohol consumption
- Use of narcotics (especially in combination with alcohol)
- Periods of unconsciousness or stupor
- Vomiting
- Incontinence
- Disorganized thinking/speech
- Highly unusual behavior (for the subject)
- Severe motor impairment
- Blacking out (fragmentary or en bloc)



# Assessing Consent (ATIXA)

- Was force (violence, threats, intimidation, duress) used? (BDSM, kink?)
- Was the complainant incapacitated (physically or mentally)? If so, was the respondent aware of this fact (or should they have been aware of this fact)?
- Was a willingness to participate communicated through mutually understandable words or actions? (burden-shifting?)



# Retaliation

Retaliation is any action, or attempted action, directly or indirectly, against any person(s), who, in good faith, reports or discloses a violation of this policy, files a complaint, and/or otherwise participates in an investigation, proceeding, complaint, or hearing under this policy.

Retaliation includes, but is not limited to harassment, discrimination, threats, job termination, adjustment in pay or responsibilities, or negative impact on academic progress. Actions are considered retaliatory if they have a materially adverse effect on the working, academic, or living environment of a person; or if they hinder or prevent the person from effectively carrying out their University responsibilities. Any person or group within the scope of this policy who engages in retaliation is subject to a separate complaint of retaliation under this policy.



# Amnesty

- <http://conflictresolution.illinois.edu/policies/medical-amnesty-and-good-samaritan/>
- **Sexual Misconduct Complainant.** Any student who reports, in good faith, an alleged violation of the university's Sexual Misconduct Policy will not be subject to disciplinary action for a student conduct violation, such as illegal substance possession or use, that is revealed in the course such a report, unless the Office for Student Conflict Resolution determines that the violation was egregious, including without limitation an action that places the health or safety of any other person at risk.



# Scenario: Alex and Jill

Alex and Jill had been dating for two months. Alex ended the relationship suddenly via text, and Jill did not understand why. Jill called and texted Alex to try and get an explanation. Alex responded once, saying “I don’t want to talk to you ever again. Stop calling me, don’t text me, just stop.” Jill was certain there had to be some misunderstanding. She tried texting, but she soon discovered that she was blocked everywhere, so she created a new account and left a few messages for Alex on Facebook and Twitter.

Alex goes to OSCR.



# Scenario: Milo and Roxy

Milo and Roxy met on the dating app Tinder and decided to meet in person at Joe's Brewery. They had a few drinks together and then left for Milo's apartment a block away. Roxy felt a little dizzy on the walk there. After they arrived, they had another drink. Milo kissed Roxy. Roxy was okay with this at first and kissed him back. Suddenly, things intensified, and Milo touched Roxy's breast over her clothes and put his hand on her upper thigh. Roxy was scared and didn't know what to do, so she went very still. When Milo asked her to go to his room, she made up an excuse and quickly left.

Roxy decided to make a report to OSCR.



# Scenario: Doug and the Townsend Floor

Doug likes to visit his friend Maria in Townsend Hall. He's noticed that the women on her floor tend to dress up on Thursday nights, getting ready to go out. For the past few weeks, if he's there, he would stand in Maria's doorway and say, "Looking good, ladies!" as groups of women passed by, or comment on their appearance in whatever outfits they were wearing. A couple women would shake their heads or roll their eyes as they passed by; others would put their heads down and walk by quickly. Maria would laugh, say to him from her room, "You're being stupid," and tell him to shut up.

A few women on the floor mentioned their discomfort to the RA, who told Doug that he really should stop as it made some people uncomfortable. Doug laughed and mentioned he was paying everyone a compliment, but promised to cut it out. The following Thursday, Doug visited Maria again. He didn't speak, but he winked at several women and gave them one or two thumbs up. Two women decided to file a report with OSCR.



# Scenario: Gloria, Sam, & Emerson

Gloria and Sam went back to Sam's room one night and had sex. The next day, Gloria ran into her friend Jo, who looked concerned asked her if she'd been on Snapchat yet. Gloria hadn't, and Jo explained that Sam's roommate Emerson had been snapping selfies last night adding text like, "OMG, roommate brought a girl home and they started going at it. Didn't notice I'm in my bed cave. Help!" Emerson continued to snap selfie facial reactions along with comments on the entire sexual experience between Gloria and Sam. All of the snaps were uploaded to Emerson's story.

Gloria was mortified. She didn't know Emerson was in the room and never would have had sex with Sam there if she knew. She didn't know if Sam knew either. Gloria went to OSCR to file a complaint.



# Scenario: Kendall and Dylan

Kendall went out on a date with Dylan. They first went to a party, where they had a few shots. They then went to Kam's, where they split a Blue Guy. (Dylan had a few sips but determined it was "too sweet.") Kendall gave Dylan a hug and kiss on the cheek for purchasing the drink. Kendall then had a Long Island, and Dylan had a Busch Light. Kendall started falling asleep at the bar, so Dylan helped her back to her apartment a block away. She leaned on him and had trouble walking on her own, stopping once to vomit while Dylan held her hair. When they got to Kendall's, Dylan helped her undress and get into bed. Dylan decided to stay for a little bit in case she needed to vomit again. He laid down next to her. About 15 minutes later, Kendall rolled over and mumbled, "I love you, Ben," wrapped her arms around Dylan, and started kissing him. Dylan kissed her back, then positioned himself on top of Kendall while they had sex. Immediately after, Kendall fell asleep.



# Scenario: Kendall and Dylan

Kendall woke up the next morning with no memory of what happened after getting to Kam's. She saw Dylan naked in bed with her and quickly realized they had sex. Kendall woke up, quickly got dressed, and asked Dylan what happened. Surprised she didn't remember, Dylan confirmed they had sex and joked that it was a little weird when she called him "Ben." After speaking with friends, Kendall went to the Women's Resources Center and then to OSCR.



Justin M. Brown

Associate Dean of Students

# NEUROBIOLOGY OF TRAUMA



# Key Takeaways from the Article

- Among participants (recent rape victims), memory deficits were common two weeks after the assault but improved over time.
- Trauma-related memory failures were not explained by the Ordinary Forgetting Model or the Psychopathology Model.
- Information-Processing Model fared better.
- Studying the effects of trauma on humans is not easy.



# Bad Science?

## The Bad Science Behind Campus Response to Sexual Assault

Assertions about how trauma physiologically impedes the ability to resist or coherently remember assault have greatly undermined defense against assault allegations. But science offers little support for these claims.

EMILY YOFFE | SEP 8, 2017 |

EDUCATION



# Limitations

- Richard McNally (*Remembering Trauma*): Extreme stress can actually improve memory.
- Tonic immobility (playing dead): significant study in animals; difficult to study to the same degree in humans (for obvious ethical reasons)

# Application

1. Neurobiological effects *might* lead to flat affect or strange emotions or emotional swings.
2. Neurobiological effects *might* make memory recall difficult, especially in close proximity to the event.
3. Memory recall *might* improve over time.
4. Essentially, we should not jump to conclusions simply because someone has difficulty recalling information or acts in an unusual manner during an interview or a hearing. (But this should be our approach to everyone.)

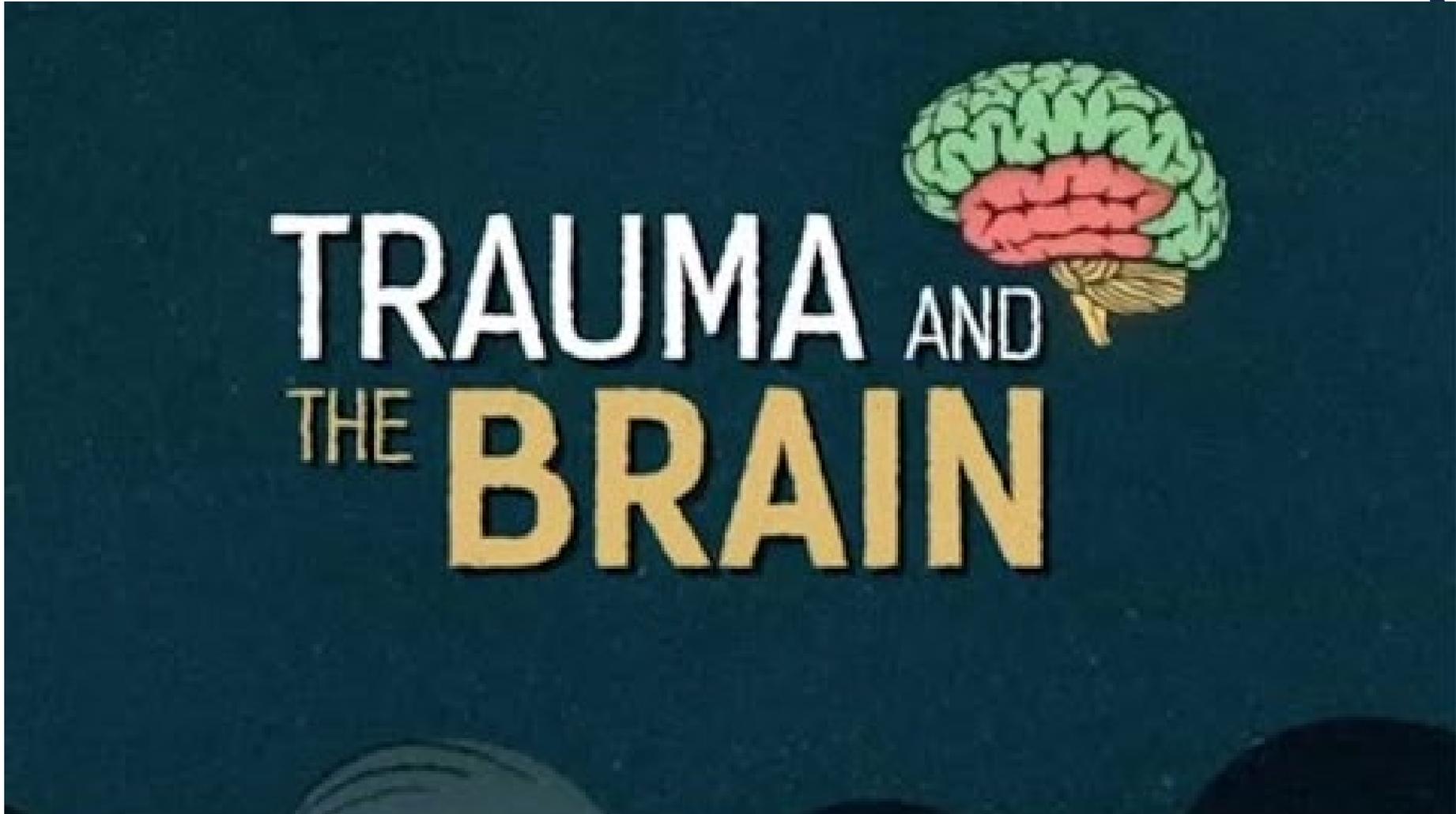


# What this does NOT mean

- That trauma *may* impact memory does not mean that someone who cannot recall critical information must have experienced trauma.
- That trauma *may* cause someone to act or react in unusual or confusing ways does not mean that someone whose described behavior does not make sense, given what else we know, must have experienced trauma.
- That someone may, or indeed has, experienced trauma does not mean that a policy violation has occurred.



# Trauma-Informed Interviewing



# Standard of Evidence

A Standard of Evidence is the “measuring stick” by which a hearing officer or student conduct body makes a decision.

**Preponderance of Evidence** - The Student Conduct Committee or Hearing Officer needs to be 51% sure that the individual violated policy in order to find them in violation.

**Beyond a Reasonable Doubt**- This is the standard used in criminal cases, and is rarely employed by a university. Using this standard, the Committee or Hearing Officer would have to have no doubt whatsoever as to the individual’s involvement in an incident to find them in violation.



# Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*

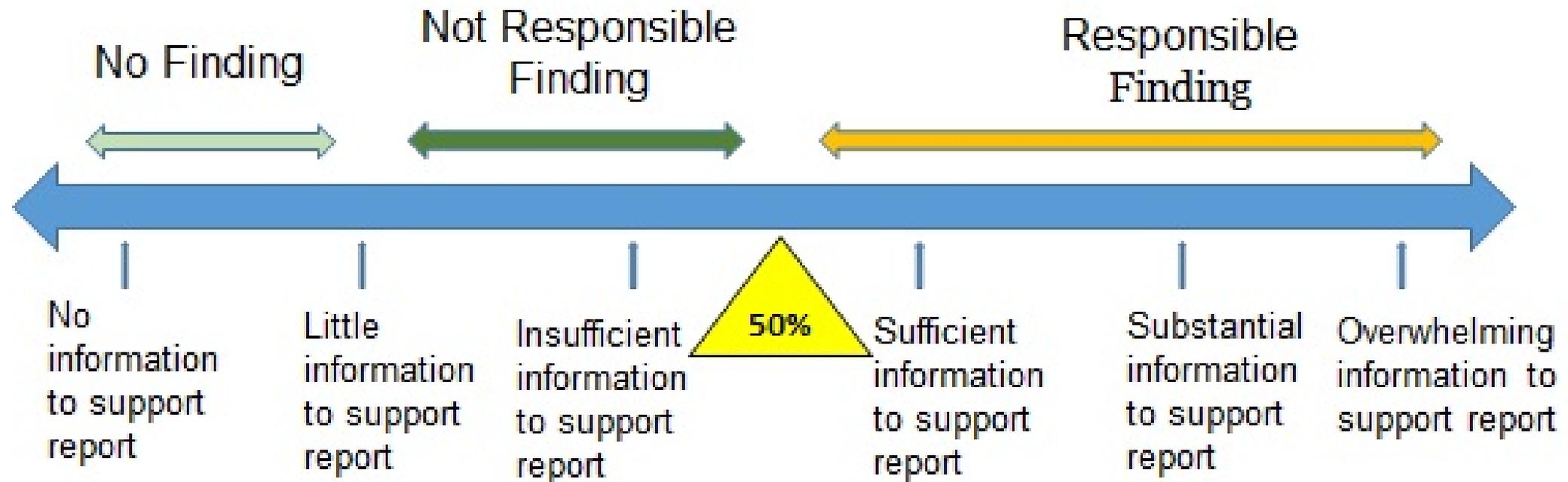


Image from Northwest College Title IX Website

# Preponderance Exercise



# EVIDENCE



# Categories of Evidence

- Testimony
  - A formal written or spoken statement
- Documentary (Paper and/or Digital)
  - Documents that establish a fact such as a contract, medical form, lease, receipt, email, text message, etc.
- Recordings (Pictures, Video, Audio)
- Physical (Rare; Mostly described in reports or depicted in photographs)
- Demonstrative (Rare; Example: hand drawing of an apartment layout)
- *Expert Witness/Statements*
  - a person who is permitted to testify at a trial because of special knowledge or proficiency in a particular field that is relevant to the case.
- *Character Statements*



# Direct vs. Circumstantial Evidence

- **Direct evidence** is based on witness's personal knowledge or observation of the event in question.
- **Circumstantial Evidence** is a collection of facts that, when considered together, can be used to infer that the event occurred. (One or more pieces might have been directly observed, though.)

Shestokas, D.J. (October 7, 2013) Direct vs. Circumstantial Evidence: Observation vs. Inference.



# Direct vs. Circumstantial Evidence

- **Direct Evidence:** Roommate A was in the kitchen when they saw the Respondent push the Complainant against the apartment wall.
- **Circumstantial Evidence:** Roommate B was outside in the hallway when they heard screaming followed by a loud bang inside their apartment.



# Firsthand vs. Secondhand Evidence

- **Firsthand evidence** is information known to an individual as a result of direct participation or observation.

- Definition of FIRST HAND EVIDENCE • Law Dictionary • TheLaw.com. (2014, July 12). Retrieved August 8, 2018, from <https://dictionary.thelaw.com/hearsay-evidence/>

- **Secondhand evidence** (also referred to as hearsay) is information that is known to an individual as a result of what they have heard from others.

- Definition of HEARSAY EVIDENCE • Law Dictionary • TheLaw.com. (2014, July 12). Retrieved August 8, 2018, from <https://dictionary.thelaw.com/hearsay-evidence/>



# Firsthand vs. Secondhand Evidence

- **Firsthand Evidence:** The complainant tells you that they were pushed against the door by the respondent.
- **Secondhand Evidence:** Roommate C tells you the following: When they got back to the apartment, they noticed a hole in the wall. Roommate C asked their other three roommates what happened. The complainant told Roommate C that the respondent pushed them against the door and that is what caused the hole.



# Evaluating Evidence

For information (including testimony) to be of use in determining facts, it must be relevant and credible.

Relevant information relates either

- 1) To the truth of the allegation(s) under consideration directly, or
- 2) To the truth of an important issue in the case (e.g., alcohol/drug consumption).

Complainants, respondents, and witnesses will provide a ton of information, much of which will not be relevant. We must avoid getting distracted by the interesting but irrelevant.



The information in the following slides is adapted from the following materials:  
Henry, Lewis, Morris, Schuster, Sokolow, Swinton, Van Brunt, *The Seven Deadly Sins of Title IX Investigations* (ATIXA)  
ATIXA, “Don’t Lie to Me” - *Common Errors in Assessing Credibility Effectively*  
Boyd, Holmes, McCarter, et al., *Core Content Modules: Best Practices in Student Conduct Hearing Board Training Series* (ASCA)

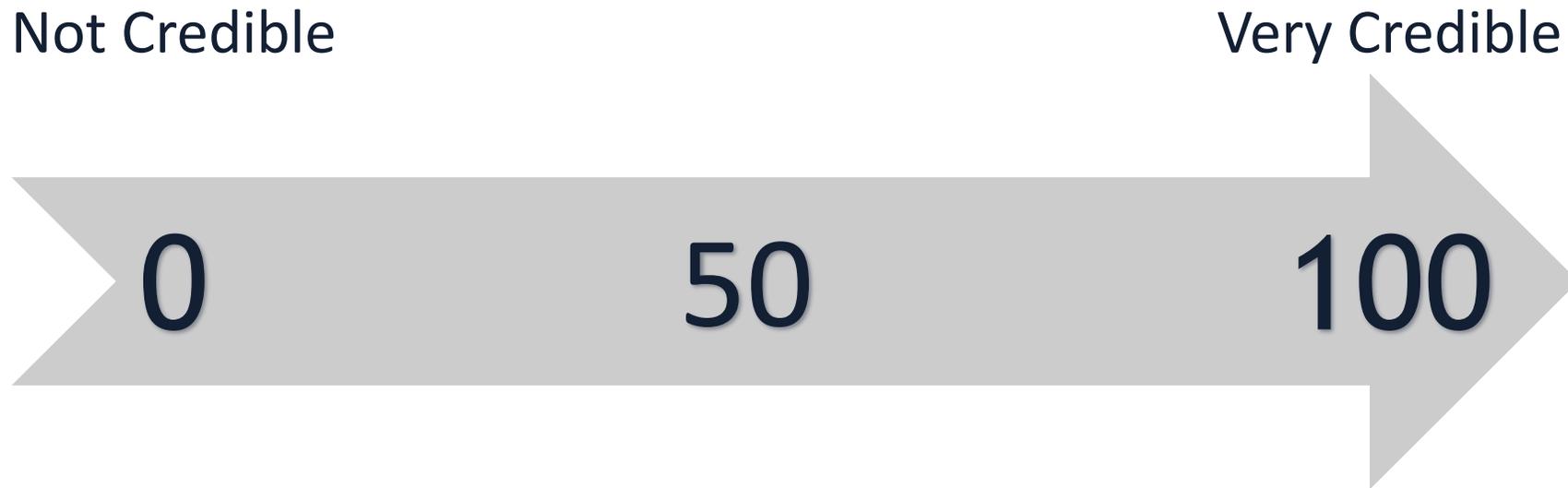
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# CREDIBILITY



# Credibility

Assessing “credibility is the process of weighing the accuracy and veracity of the evidence.”



Evidence whose credibility is assessed at less than 50 should not be considered when determining whether the preponderance standard has been met.

# Assessing Credibility

To assess the credibility of a piece of evidence, we must evaluate its:



# Assessing the Source

Let's say we are assessing a statement. What do we know about the person offering that statement?

- Were they in a position to hear what they said they heard, or were they in a position to know what they say they know?
- Are they reporting a firsthand observation or *hearsay*?
- What is their relationship with the involved parties (clear bias toward one party or another)?
- Do they have any motives to provide false information?
- If they have made multiple statements over time, are those statements reasonably consistent?
- Do they have the relevant expertise required to make the statement (cannot be assumed)?
- *Do we know that they have lied about other information?*



# How do we handle lies?

Lying does not automatically undermine the credibility of any other statement the person makes, but it does require careful consideration.

- Was the lie significant (perhaps about facts central to the allegations) or minor?
- Why might the source have lied (to avoid embarrassment, to avoid getting in trouble, etc.)?

For discussion: Police respond to a 911 call from an individual who reports that his neighbors are fighting and who thinks that one has struck the other. Upon arrival at the apartment in question, the police are greeted by the occupants, one of whom has two small cuts on their right cheek. Both individuals claim the caller misunderstood the situation. Six months later, however, the individual that had the visible injuries reports to OSCR that the other party, a student, has been violent with them on numerous occasions, including on the night the police were called.



# Assessing the Content

In assessing the content of a piece of evidence, we evaluate the item itself and/or the information offered.

- Is the information internally consistent, or does it conflict with itself?
- Are the inconsistencies major or minor (and explicable)?
- Do we have any reason to doubt that the document is authentic?
- Is the information appropriately detailed?
- Does the provided statement survive challenge (during an interview or a hearing)?
- Is the information corroborated by other (credible) sources?



# Corroboration

- Roommate A: I was in the kitchen when I saw the Respondent push the Complainant against the apartment wall.
  - Roommate A has a video of the argument
- Witness B: I was at my friend's (Roommate B) apartment when I saw what occurred. I don't really know the respondent or complainant that well. They were arguing and they started getting in each other's face. I went on my phone to order an Uber because I wanted to leave when I heard a bang. I looked up and the complainant was on the ground.
  - Witness B provides Uber Receipt from that day.



# Assessing Plausibility

We assess plausibility through abductive reasoning, or inference to the best explanation.

- How does this piece of evidence fit with everything else we know about the case?
- How does it fit with what we know about the world in general?
- Does it provide the best, or at least a good, explanation for some other set of facts?



# Plausibility: An Example

Jeremy reports that a video of him showering has appeared on a revenge porn website shortly after he broke up with his dating partner of six months, Shana. He believes the uploader is Shana, though the uploader's username is not obviously connected to Shana or any of her social media accounts.

During the investigation, Cara, a mutual friend of both Jeremy and Shana, shares a text message she received in which Shana states that Jeremy will regret leaving her and that he should watch out for what might show up on the internet. This message was dated three days prior to the post date of the video.

According to Shana, she neither created nor uploaded the video of Jeremy. When you question her about the text message, she claims that she was just angry at the time. She figured that the friend would tell Jeremy what she said, and she wanted him to worry for a while.



# Credibility Exercises

- Witness A: The respondent is my best friend and I heard they were accused of pushing someone. They told me that the complainant lunged at them and they shoved them away in self-defense. The complainant would have probably injured the respondent if they didn't push them away.
- Witness B: I was at my friend's apartment when I saw what occurred. I don't really know the respondent or complainant that well. They were arguing and they started getting in each other's face. I went on my phone to order an uber (because I wanted to leave) when I heard a bang. I looked up and the complainant was on the ground.



# A Note About Bias

In addition to evaluating the biases of those involved in the case, we must also recognize that we have our own.

Our biases may be **conscious** or **unconscious**. They may also be directed at the **parties** (likability, prejudice, etc.) or to the **subject matter** (drug use, sexual mores, etc.).

We must work to derail their effects on our decision-making, both through introspection and (appropriate) checks on each other.



# The Two Processes

The Subcommittee on Sexual Misconduct is actually responsible for deciding cases through two distinct processes:

Article II/III (often called the *normal process* by us)

Appendix D (often called the *Title IX process* by us)



# Title IX Sexual Harassment

**Title IX Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

- A. Quid Pro Quo Sexual Harassment; or
- B. Hostile Environment Sexual Harassment; or
- C. Sexual Assault; or
- D. Stalking; or
- E. Dating Violence; or
- F. Domestic Violence



# Title IX Scope

For Title IX Sexual Harassment to fall under the scope of Title IX, it must occur:

- In an education program or activity of the university; and
- Against a person in the United States.

In addition, the complainant must be participating or attempting to participate in the education program or activity of the university at the time they file a formal complaint.



# Student Disciplinary Procedures

Title IX cases are addressed through the process in Appendix D.

All other sexual misconduct cases are addressed through the process in Articles II and III.

Title IX cases must begin in the Appendix D process. If, at some point, a case is determined to fall outside of the scope of Title IX, it can be transitioned to the Article II/III process.

# Appendix D



# Highlights

1. Evidence: all information that is directly related
  - Directly related but irrelevant information is included in the evidence packet.
  - Rape shield provisions are included (with exceptions).
  - Expert witness testimony must be accepted (if relevant).
2. Time Frames
  - From formal complaint to panel decision: 60 business days
  - From panel decision to appeal decision: 25 business days
  - Extensions in 10-day increments with written notification
3. Evidence Packet: electronic access
4. Investigative Report: electronic copy



# Highlights (continued)

## 4. Advisors at Hearings

- Complainants and respondents must have an advisor at the hearing.
- A party can send an advisor in their place.
- A party without an advisor of their choosing will be assigned a University-Provided Hearing Advisor.
- Advisors can only directly participate in hearing when conducting cross-examination.

## 5. Cross-Examination

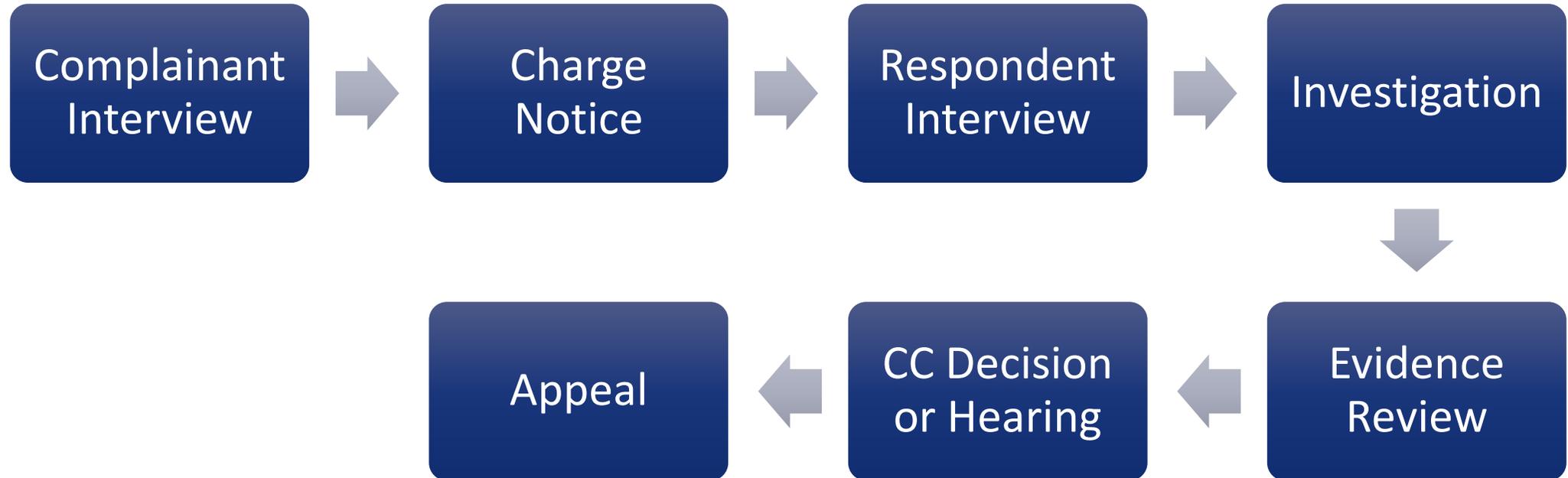
- Advisors directly question the investigator, the other party, and witnesses.
- All questions must be relevant and not worded in a manner intended to disparage, intimidate, or otherwise harass.
- Chair can intervene during cross-examination but must explain their decision.



If a respondent, complainant, or witness does not submit to cross-examination during the hearing, the Panel will not rely on any statement in reaching a determination regarding responsibility. The Panel may not, however, draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.



# Article II/III



# Highlights

1. Evidence: all and only information that is relevant
  - Rape shield provisions are included (with exceptions).
  - Expert witness testimony may be accepted on a case-by-case basis.
  - Character references/witnesses are irrelevant to responsibility determinations.
2. Time Frames
  - Anticipated duration of investigation: 40 business days from charge notice
  - Substantial delay requires written explanation
3. Investigative Materials: electronic access



# Highlights (continued)

## 4. Advisors at Hearings

- Complainants and respondents may have an advisor at the hearing.
- Advisors cannot directly participate in hearing (with some reasonable exceptions).

## 5. Cross-Examination

- Questions are suggested by the parties to the Chair.
- All questions must be relevant and not worded in a manner intended to disparage, intimidate, or otherwise harass.



If a respondent, complainant, or witness does not submit to cross-examination during the hearing, the Panel may still rely on other statements provided by that individual in reaching a determination regarding responsibility.

You should still not draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions. *But it may affect your credibility assessments and/or the weight you assign a given piece of evidence.*



# INVESTIGATIONS



# Investigative Steps



# FORMAL HEARINGS



# The Panel

Three SSM members: at least one staff/faculty member and at least one student

Scheduled by Tracey Berman: *ALWAYS RESPOND*

Advised by OSCR or OSCR-affiliated staff (Justin, Rony, etc.)



# Panel Review of Materials

The Panel will typically receive the materials a week or more in advance.

Always look over the materials immediately to see if you might have a conflict of interest or bias with respect to the case. We need time to find a replacement!



# Panel Review of Materials

You should read the materials multiple times. Ensure that you are familiar with the information provided by the parties and that you understand the allegations and charges.

Identify inconsistencies and gaps in information.

Take detailed notes. Try your best to summarize the information in your own words.

Generate a list of questions you have for the investigator, each party, and each witness.

Keep all information and materials confidential. If you must download something to your computer, you must delete it at the conclusion of the hearing.



# Overview of Major Hearing Rules

- The hearing is closed to the public and is audio recorded.
- Hearings may be entirely or partially virtual.
- Disruptive individuals may be removed by the Chair.
- Late evidence submissions are allowed only under limited circumstances.
- All questions, including cross-examination questions, must be relevant.
- Breaks are required every two hours; additional breaks are at the Chair's discretion.
- The Chair rules!



# Hearing Procedures: Phase One

- Introductions
- Chair describes order
- Investigator statement, then questions
- Complainant opening, then questions
- Respondent opening, then questions
- Witness statements, one at a time
- Final Questions
- Complainant closing
- Respondent closing
- First Deliberation (to find facts and determine responsibility)

# Hearing Procedures: Phase Two

- Only if respondent is found responsible
- Relevant complainant impact statements, then questions
- Complainant excused
- Respondent disciplinary history
- Respondent can share any additional information
- Panel members may question the respondent
- Final deliberation (to determine sanctions)

# Hearing Decorum

- There is no dress code, but you should use good judgment.
- Look for any words/phrases/logos on your clothing, your computer, or in your background (for virtual hearings) that might cause a participant to doubt your objectivity.
- Always be understanding and kind, even with difficult participants.
- Be conscious of your facial expressions and body language.



# Life Outside of the Committee: An Aside

- What does your online presence say about you?
- Are your extracurricular activities compatible with service on this committee?
- Are your academic pursuits compatible with service on this committee?



Debra Imel

Assistant Dean of Students

# Statements of Fact



# Determining Facts

## Deliberation

- Conversation about the case/information
  - Closed Deliberation
    - Only panel members (and advisor to the panel) participate in this conversation
- Discussion focused on the facts of what occurred
  - Based on the preponderance standard



# Determining Facts

## Deliberation Decorum

- Practice active listening skills and engage in the conversation
- Ensure all opinions are expressed and heard
  - Give everyone equal time to ask questions and express thoughts
- Focus on the relevant facts
  - Start with undisputed information and work your way through disputed
    - When addressing disputed information
      - Look for support/evidence/corroboration beyond statements and use credibility assessments



# Determining Facts

## Deliberation Decorum

- Consider and vet alternative explanations
- Consensus is the goal
  - Majority vote is needed
- Challenge yourself and others appropriately
  - Bias/Implicit Bias
  - Stereotypes
  - Opinions



# The Statement of Fact

- A written statement of your conclusions/facts
  - What you determined occurred (based on preponderance standard)
  - Should be clear and concise
  - Based on relevant available information (that was subject to cross examination)
- Needs to be specific enough that the student understands what they did that violated the student code [if they did]
  - Explicitly state the behavior(s)/what they did
- Should speak to the alleged violation(s)/charge(s)
  - Minimize inclusion of any unrelated/irrelevant information



# The Statement of Fact

## Crafting your statement

- Start with the date
  - On...
  - On multiple occasions throughout the Spring 2020 semester...
- Include general identifying information, but not names
  - On...you... to the complainant/another student/an individual



# The Statement of Fact

## Crafting your statement

- Include facts that speak to the alleged violation(s)/charge(s)
  - On... you shoved the complainant into a wall within the Illini Union. During this altercation you were engaged in a dating relationship with the complainant.
- Include facts that may support deviations from sanctioning guidance [aggravating and/or migrating factors]
  - On... you shoved the complainant into a wall within the Illini Union multiple times. The complainant suffered a head injury and was transported to the local hospital for further evaluation and treatment. During this altercation you were engaged in a dating relationship with the complainant.



# The Statement of Fact

## Example #1

- On August 10, 2020, you engaged in a verbal and physical altercation with the complainant

## Debrief Questions

- Does this statement give enough detail?
- Does this statement inform the student [or next disciplinary body] of what they did that violated the student code?



# The Statement of Fact

## Example #2

- On August 10, 2020, while at the Illini Union, you engaged in a verbal altercation with the complainant. At the time of this interaction, you and the complainant were in a dating relationship. During the altercation, you began to push the complainant in the chest and shoulder area. You then pushed the complainant to the ground, got on top of them, and punched them in the face. After being separated, you kicked the complainant in the stomach. The complainant was evaluated by emergency personnel and later transported to the local hospital for further assessment.

## Debrief Questions

- Does this statement give enough detail?
- Does this statement inform the student [or next disciplinary body] of what they did that violated the student code?



# Determining if a Violation Occurred

- You will use the statement of fact to evaluate alleged violation(s)/charge(s)
  - Apply your statement of fact to each alleged violation/charge individually
- Always reread the applicable student code section(s) and thoroughly evaluate each when making a determination
- If your statement of fact is descriptive and clear, it will make your deliberation easier



# Determining if a Violation Occurred

- Challenge yourself and others appropriately
  - Bias/Implicit Bias
  - Stereotypes
- Consensus is the goal
  - Majority vote is needed



# Determining if a Violation Occurred

## Options

- Finding of No Violation/Not in Violation
- Finding of Violation/In Violation
- Charge(s) Dropped
- Continuance
  - In consultation with the Director/Executive Director or designee



# Determining if a Violation Occurred

## Practice

### Statement of fact

- On August 10, 2020, while at the Illini Union, you engaged in a verbal altercation with the complainant. At the time of this interaction, you and the complainant were in a dating relationship. During the altercation, you began to push the complainant in the chest and shoulder area. You then pushed the complainant to the ground, got on top of them, and punched them in the face. After being separated, you kicked the complainant in the stomach. The complainant was evaluated by emergency personnel and later transported to the local hospital for further assessment.

### Alleged Violation(s)/Charge(s)

1-302.a.1      1-302.b.4 [as defined in 1-111(f)(7)]

1-302.a.2      1-302.e.1



# Questions?



Debra Imel

Assistant Dean of Students

# Sanctioning



# Sanctioning

## The Why

### Obligation to respond to sexual harassment

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. A recipient’s response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.
  - Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school



# Sanctioning

## The Why

Obligation to respond to sexual misconduct

- Illinois Sexual Misconduct Policy
  - The purpose of this policy is to ensure that all persons who experience sexual misconduct described in this policy have full access to the rights and resources they are entitled to, and that every complaint is handled fairly and equitably, in a manner consistent with applicable law, and with the ultimate aim of maintaining an institutional climate of safety and accountability



# Sanctioning

## The Why

### OSCR's Mission Statement

- The Office for Student Conflict Resolution (OSCR) supports the community standards of the University of Illinois at Urbana-Champaign by promoting ethical decision making, encouraging personal and social responsibility, and facilitating the effective resolution of conflict.



# Sanctioning

## If Violation(s)/In Violation

Second Deliberation to Determine:

- Formal Sanction
  - A disciplinary status imposed by the university in response to a policy violation
- Educational Sanction(s)
  - An assignment, requirement, or task imposed by the university that is educationally related to a policy violation



# Sanctioning

## Formal Sanction Options

- University Reprimand
  - No transcript notation or notification/1 year [or graduation]
- University Censure
  - No transcript notation or notification/to graduation
- Conduct Probation
  - Notification to student's college
  - 1 year or to graduation/reportable for seven years



# Sanctioning

## Formal Sanction Options

- Dismissal/Withholding Degree
  - Transcript notation & notification to student's college
  - Maintained/Reported indefinitely
    - Transcript notation removed upon successful petition
  - Upon return, placed on Conduct Probation until graduation [typically]
    - May also have additional educational sanctions/restrictions



# Sanctioning

## Formal Sanction Options

- Suspension
  - Transcript notation & notification to student's college
  - Maintained/Reported indefinitely
    - Transcript notation removed after the period of suspension has expired
  - Similar to Dismissal, but no petition process
  - At end of suspension period, placed on Conduct Probation until graduation [typically]
    - May also have additional educational sanctions/restrictions



# Sanctioning

## Formal Sanction Options

- Dismissal Held in Abeyance
  - Two ways this can be used
    - Dismissal Held in Abeyance
    - Dismissal Held in Abeyance to Dismissal
  - Allows the student to continue enrollment/attend courses/be awarded degree
  - Notification to student's college/active to graduation/reportable for seven years
  - Conditional
    - If case coordinator determines sanction/restriction non-compliance, immediate dismissal (semester)
    - If subcommittee determines additional violation of *student code*, one-year dismissal



# Sanctioning

## Formal Sanctions - What to consider

- The Why [OSCR's Mission]
- The nature and impact of the violation(s)
- Phase II Information
  - Disciplinary History
  - Character Related Statements
  - Impact + Desired Outcome Statements
- Sanctioning Guidance
- Aggravating & Mitigating Factors



# Sanctioning

## Formal Sanctions – Sanctioning Guidance

- Document created/updated by the SCSD
- Helps establish and maintain consistency across disciplinary bodies
- Balances educational approach with the community's interests
  - Upholding standards/accountability
- Consider it a starting point/context/precedence



# Sanctioning

## Formal Sanctions – Sanctioning Guidance

- Assumptions within Guidance
  - Honest & Compliant
  - No disciplinary history
  - Minimal severity of the violation
  - No aggravating factors
- Using Guidance
  - Find the type of violation/behavior
  - Find the specific violation(s)/charge(s)
  - Review what is listed
  - Evaluate other applicable information (phase II statements/disciplinary history/factors)



# Sanctioning

## Challenge yourself & others

- Bias/Implicit Bias
- Stereotypes



# Sanctioning

## Formal Sanctions – Sanctioning Guidance

### Practice/Walkthrough

- Dating/Domestic Violence
  - Range from Conduct Probation to Dismissal
- Retaliation Against Individuals Participating in the Sexual Misconduct Process
  - Range from Conduct Probation to Dismissal
- Sexual Touching/Fondling/Non-Penetration
  - Range from Conduct Probation to Dismissal, 1 year before petition
- Sexual Penetration
  - Dismissal, 2 years before petition



# Sanctioning

## Formal Sanctions – Sanctioning Guidance

### Practice/Walkthrough

- Sexual Harassment
  - Range from University Censure to Dismissal, 1 year before petition
- Stalking
  - Range from Conduct Probation to Dismissal
- Sexual Exploitation
  - i: Conduct Probation
  - ii: Range from Conduct Probation to Dismissal
  - iii: Conduct Probation until Graduation
  - iv: Dismissal, 1 year before petition
  - v: Dismissal, 2 years before petition
  - vi: Dismissal, 5 years before petition



# Sanctioning

## Formal Sanctions

### Practice

- Statement of Fact
  - On August 15, 2020, you and the complainant, whom you were dating at the time, participated in a bar crawl event and consumed alcohol at several local bars. Following this event, you and the complainant went to the McDonalds on Green Street to grab food. While at McDonalds, you and the complainant engaged in a verbal altercation that escalated to physical violence. During this interaction, you grabbed at the complainant's wrists and as they turned to avoid that contact, you grabbed them by their hair and drug them out of the establishment. While outside the establishment, the verbal altercation continued. The complainant sat on the ground as a way to end the altercation and you kicked them in the leg and walked away.
- Alleged Violation(s)/Charge(s)
  - 1-302.a.1                      - 1-302.a.4
  - 1-302.a.2                      - 1-302.b.4 [as defined in 1-111(f)(7)]
- What would your formal sanction be & why?



# Sanctioning

## Formal Sanctions

### Practice

- Phase II Information
  - No prior disciplinary history
  - Seven character statements that describe the respondent as a wonderful/mature/responsible/caring person
  - One character statement that alludes to the fact that the respondent only “acts that way” when they have been drinking
  - Desired outcome statement from the complainant outlines they want the respondent dismissed and “appropriately held accountable for their actions”
- What would your formal sanction be & why?
  - With this information did your formal sanction change or stay the same?



# Sanctioning

## Formal Sanctions

### Practice

- Statement of Fact
  - On August 15, 2020, you and the complainant, whom you were dating at the time, participated in a bar crawl event and consumed alcohol at several local bars. Following this event, you and the complainant went to the McDonalds on Green Street to grab food. While at McDonalds, you and the complainant engaged in a verbal altercation that escalated to physical violence. During this interaction, you grabbed at the complainant's wrists and as they turned to avoid that contact, you grabbed them by their hair and drug them out of the establishment. While outside the establishment, the verbal altercation continued. The complainant sat on the ground as a way to end the altercation and you kicked them in the leg and walked away.
- Alleged Violation(s)/Charge(s)
  - 1-302.a.1                      - 1-302.a.4
  - 1-302.a.2                      - 1-302.b.4 [as defined in 1-111(f)(7)]



# Sanctioning

## Formal Sanctions

### Practice

- Phase II Information
  - Disciplinary history
    - Placed on University Censure for a second alcohol related incident [Fall 2019]
    - Placed on Conduct Probation until Graduation for a third alcohol and violence related incident [Spring 2020]
      - Punched a bouncer in the face while being escorted out of a local bar
  - No character statements submitted
  - Desired outcome statement from the complainant outlines they do not want the respondent dismissed
- What would your formal sanction be & why?
  - With this information did your formal sanction change or stay the same?



# Sanctioning

## Educational Sanction Options

- Substance Based
  - AODP: Assessments, Workshops [CAAP/MIC], Individual & Group Counseling
  - Substance Abuse Evaluation & Follow Up Programs
  - Drug Testing
- Counseling Based
  - Recommendations/Referrals to Counseling Center & McKinley
  - Meeting with a Licensed Professional Counselor [Topic Based Discussion]
- Violence Based
  - Alternatives [Cognition Works]
  - Anger Management Program



# Sanctioning

## Educational Sanction Options

- Reflection Based
  - Petition Letter
  - Reflective/Research Based Essays [Topic(s) Based]
  - Educational Interview & Reflective Essay
- Restriction Based
  - No Contact Directives [NCD]
  - Trespass Notification [Campus or Specified Location]
- Other
  - Mandated Service
  - Probationary Review/SMART Goals Project
  - Academic/Work History
  - Create Your Own!



# Sanctioning

## Educational Sanctions - What to consider

- The Why [OSCR's Mission]
- The nature and impact of the violation(s)
- Phase II Information
  - Disciplinary History
  - Character Related Statements
  - Impact + Desired Outcome Statements
- Aggravating & Mitigating Factors



# Sanctioning

## Educational Sanctions - What to consider

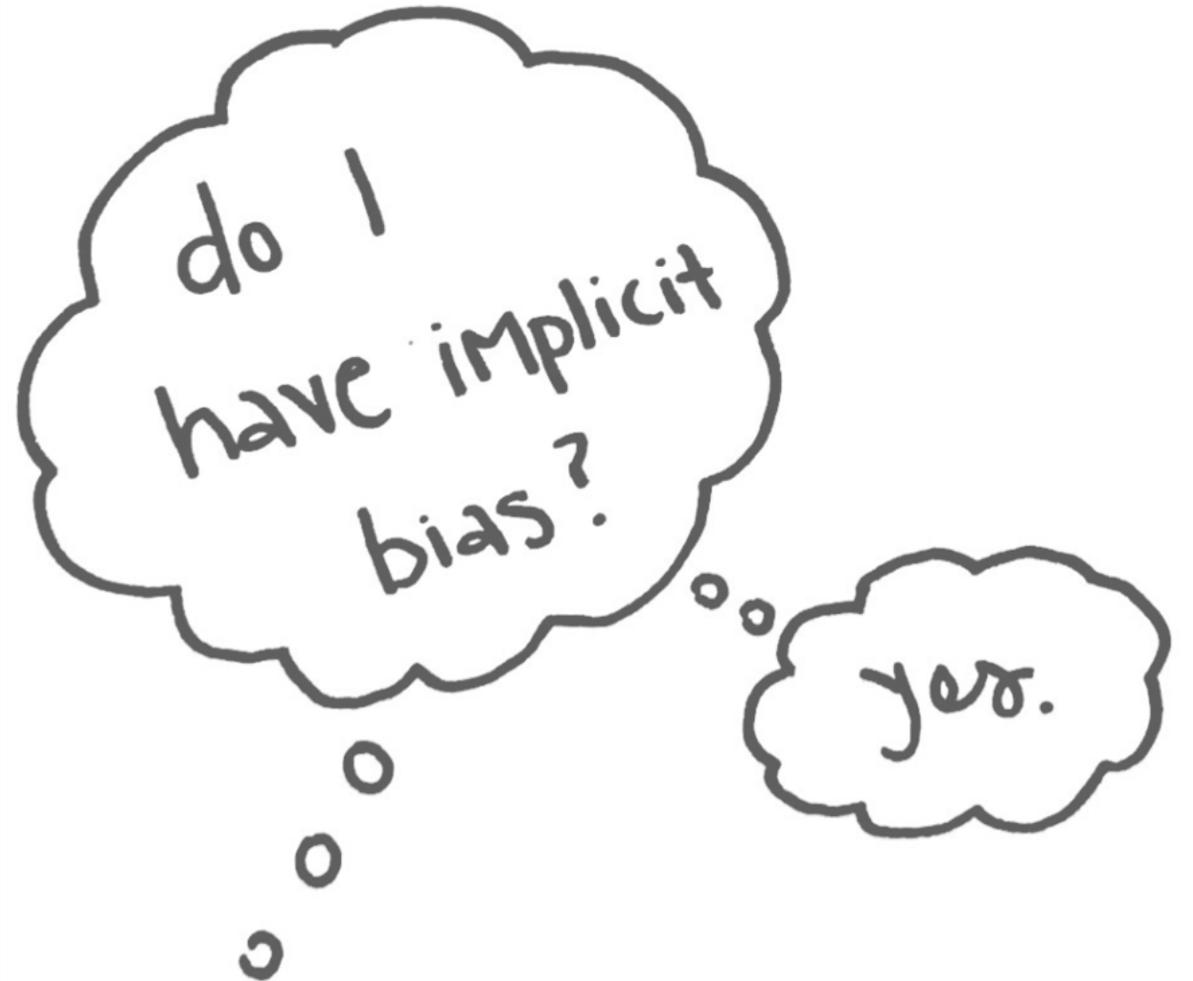
- Expectations are clear
  - Minimum word count
  - Hours of service
  - Topics/Prompts
- You've set a realistic completion deadline
- Progress/Completion able to be monitored



# Sanctioning

## Challenge yourself & others

- Bias/Implicit Bias
- Stereotypes



the MORE  
YOU PRACTICE  
THE PRACTICE  
BETTER  
YOU GET

## Sanctioning Activity

# Questions?



Rony Die

Assistant Dean of Students

# Petitions for Readmission



# Petitions to the Appropriate Subcommittee

- Persons who have been dismissed from the university for disciplinary reasons may petition for permission to re-enter the university.
- Petitioners must demonstrate that they are fit to return to the academic community, **not simply that they have completed all listed sanctions in the dismissal letter.**



# Petition Hearing

- The petitioner will be invited to address the appropriate subcommittee to discuss the petition in a statement of ten or fewer minutes in duration. The petitioner may invite an advisor to the petition, but this advisor may not actively participate in the petition hearing.
- If (1) the final decision in the case for which the petitioner was dismissed included a finding that the petitioner caused bodily harm to a student victim or otherwise engaged in sexual misconduct directed at a student victim, and (2) the victim indicated to OSCR staff at the time of the original decision that they would like to participate in any future petition hearings, then the victim will be invited (by email) to participate in the petition hearing. If the victim chooses to participate, they will present a statement of ten or fewer minutes in duration to the subcommittee prior to the petitioner's statement. Neither the petitioner nor the victim will be present while the other is addressing the subcommittee.



# Petition Hearing

- The subcommittee will then have the opportunity to question the petitioner
- The subcommittee should consider the following when evaluating a petition:
  - Demonstrated reflection and growth of the petitioner
  - Any potential concerns of safety towards the campus community
  - The likelihood of recidivism
  - Reintegration plan
- The subcommittee must not readjudicate the original case that led to the petitioner's dismissal.



# Petition Results

## Successful

- Student is readmitted and placed on Conduct Probation until Graduation.
- Generally given at least one semester of Probationary Review.
- Subcommittee may impose additional requirements. Not very common.

## Unsuccessful

- Subcommittee determines when the student may petition again.
- Subcommittee may require additional sanctions for the student to complete.
- There are no limits on petitions.
- Most petitions are successful.



# New Title IX Regulations

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

Published: May 19, 2020

Effective Date: August 14, 2020



# The Two Processes

The Subcommittee on Sexual Misconduct is now responsible for deciding cases through two distinct processes:

Article II/III (often called the *normal process* by us)

Appendix D (often called the *Title IX process* by us)



# Title IX Sexual Harassment

**Title IX Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

- A. Quid Pro Quo Sexual Harassment; or
- B. Hostile Environment Sexual Harassment; or
- C. Sexual Assault; or
- D. Stalking; or
- E. Dating Violence; or
- F. Domestic Violence

# Title IX Scope

For Title IX Sexual Harassment to fall under the scope of Title IX, it must occur:

- In an education program or activity of the university; and
- Against a person in the United States.

In addition, the complainant must be participating or attempting to participate in the education program or activity of the university at the time they file a formal complaint.



# Student Disciplinary Procedures

Title IX cases are addressed through the process in Appendix D.

All other sexual misconduct cases are addressed through the process in Articles II and III.

Title IX cases must begin in the Appendix D process. If, at some point, a case is determined to fall outside of the scope of Title IX, it can be transitioned to the Article II/III process.

# Appendix D



# Highlights

1. Evidence: all information that is directly related
  - Directly related but irrelevant information is included in the evidence packet.
  - Rape shield provisions are included (with exceptions).
  - Expert witness testimony must be accepted (if relevant).
2. Jurisdiction: Subcommittee on Sexual Misconduct hears all
3. Evidence Packet: electronic access
4. Investigative Report: electronic copy



# Highlights (continued)

## 4. Advisors at Hearings

- Complainants and respondents must have an advisor at the hearing.
- A party can send an advisor in their place.
- A party without an advisor of their choosing will be assigned a University-Provided Hearing Advisor.
- Advisors can only directly participate in hearing when conducting cross-examination.

## 5. Cross-Examination

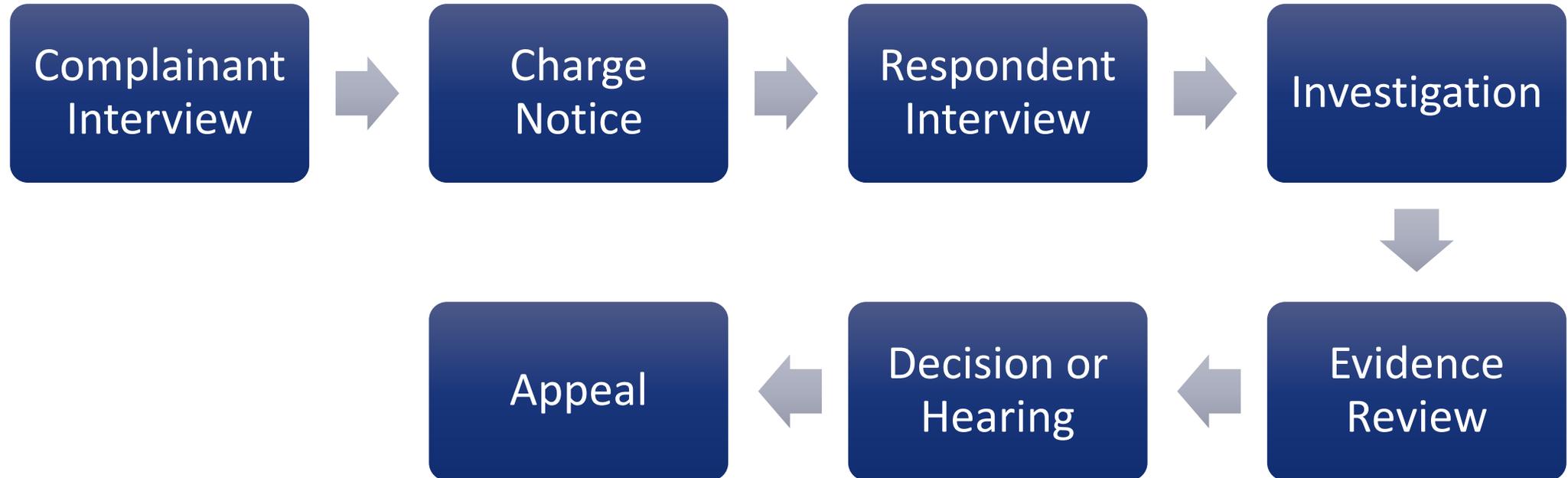
- Advisors directly question the investigator, the other party, and witnesses.
- All questions must be relevant and not worded in a manner intended to disparage, intimidate, or otherwise harass.
- Chair can intervene during cross-examination but must explain their decision.



If a respondent, complainant, or witness does not submit to cross-examination during the hearing, the Panel will not rely on **any** statement in reaching a determination regarding responsibility. The Panel may not, however, draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.



# Article II/III



# Highlights

1. Evidence: all and only information that is relevant
  - Rape shield provisions are included (with exceptions).
  - Expert witness testimony may be accepted on a case-by-case basis.
  - Character references/witnesses are only used in sanctioning decisions.
2. Jurisdiction
  - Subcommittee on Sexual Misconduct: Suspension/Dismissal cases
  - Case Coordinators: everything else
3. Investigative Materials: (electronic) access



# Highlights (continued)

## 4. Advisors at Hearings

- Complainants and respondents may have an advisor at the hearing.
- Advisors cannot directly participate in hearing (with some reasonable exceptions).

## 5. Cross-Examination

- Questions are suggested by the parties to the Chair.
- All questions must be relevant and not worded in a manner intended to disparage, intimidate, or otherwise harass.



If a respondent, complainant, or witness does not submit to cross-examination during the hearing, the Panel may still rely on other statements provided by that individual in reaching a determination regarding responsibility.

You should still not draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions. *But it may affect your credibility assessments and/or the weight you assign a given piece of evidence.*



# FORMAL HEARINGS



# The Panel

Three SSM members: at least one staff/faculty member and at least one student

Scheduled by Tracey Berman: *ALWAYS RESPOND*

Advised by OSCR or OSCR-affiliated staff (Justin, Rony, etc.)



# Panel Review of Materials

The Panel will typically receive the materials a week or more in advance.

Always look over the materials immediately to see if you might have a **conflict of interest** or **bias** with respect to the case.  
We need time to find a replacement!



# Overview of Major Hearing Rules

- The hearing is closed to the public and is audio recorded.
- Hearings may be entirely or partially virtual.
- Disruptive individuals may be removed by the Chair.
- Late evidence submissions are allowed only under limited circumstances.
- All questions, including cross-examination questions, must be relevant.
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# Hearing Procedures: Phase One

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- Complainant closing
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- First Deliberation (to find facts and determine responsibility)

# Hearing Procedures: Phase Two

- Only if respondent is found responsible
- Relevant complainant impact statements, then questions
- Complainant excused
- Respondent disciplinary history
- Respondent can share any additional information
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- Final deliberation (to determine sanctions)

# Hearing Decorum

- There is no dress code, but you should use good judgment.
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- Always be understanding and kind, even with difficult participants.
- Be conscious of your facial expressions and body language.



# Life Outside of the Committee: An Aside

- What does your online presence say about you?
- Are your extracurricular activities compatible with service on this committee?
- Are your academic pursuits compatible with service on this committee?





# IMPLICIT BIAS

RONY DIE

## A Bat and a Ball

A bat and a ball costs \$1.10. If the bat costs \$1 more than the ball. How much does the ball cost?

The answer is: 5 cents

$$(\$1.05) + (.05) = \$1.10$$

# Kahneman's two systems approach to judgement and choice

“System 1 operates automatically and quickly, with little or not effort and no sense of voluntary control.”

- The automatic system.

“System 2 allocates attention to the effort mental activities that demand it, including complex computations. The operations of System 2 are often associated with the subjective.”

- The effortful system

(Kahneman, 2011)

**BLACK YELLOW BLUE**

**ORANGE RED PURPLE**

**BLUE YELLOW GREEN**

**PURPLE BLUE BLACK**

**RED ORANGE PURPLE**

**BLUE YELLOW BLACK**

# Kahneman's two systems approach to judgement and choice

System 1 provides information to System 2 such as impressions, intuitions, intentions, and feelings. System 2 turns this information into beliefs, impulses, and actions.

What happens if the impressions, intentions, and feelings are incorrect?

(Kahneman, 2011)

Please describe what emotion's of the individuals in these pictures?



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© Can Stock Photo

# System 1 Thinking: Social Conditioning

The pictures are from a Google search for “annoyed man” and “annoyed woman”.

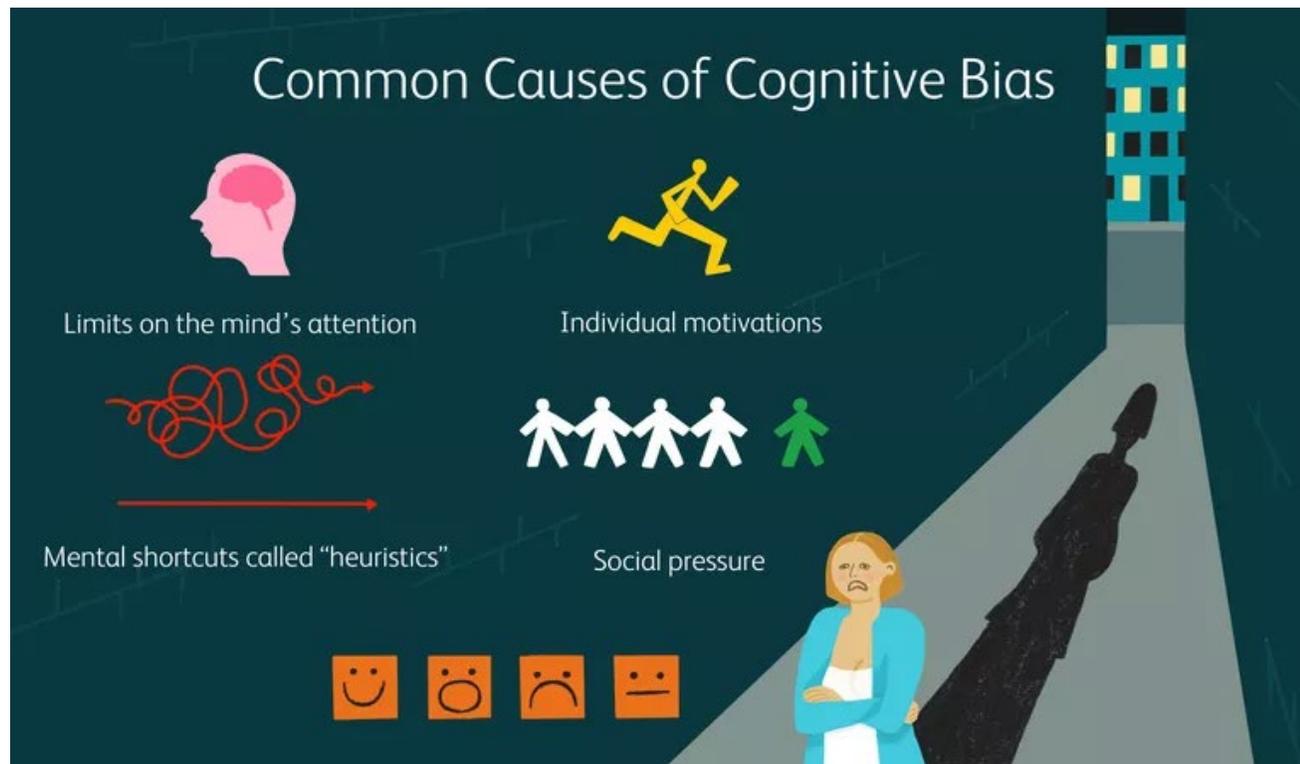
Scientific evidence shows how people communicate anger, disgust, fear, happiness, sadness, and surprise varies across cultures and situations. (Barrett et al., 2019)

Our impressions, intuitions, and feelings are a product of how our social conditioning.

# System 1 Thinking: Heuristics and Bias

- A heuristic is a mental shortcut that allows an individual to make a decision, pass judgment, or solve a problem quickly and with the least amount of mental effort. *–Psychology Today*
- In cognition, an **experience-based** strategy for solving a problem or making a decision that often provides an **efficient means of finding an answer but cannot guarantee a correct outcome**. Some heuristics, such as the availability heuristic or representativeness heuristic, involve **systematic bias**. - *APA Dictionary of Psychology*
- System 1 Thinking can lead to cognitive bias and logical fallacies.

# What is Implicit Bias?

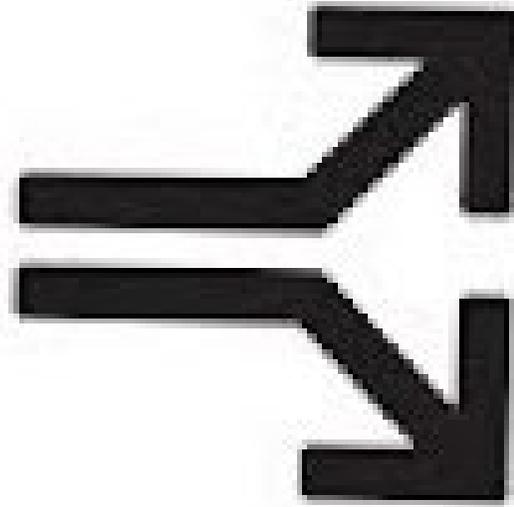


Also known as Unconscious Bias

“Bias that happens automatically, is outside of our control and is triggered by our brain making quick judgments and assessments of people and situations, influenced by our background, cultural environment and personal experiences” (Storey, 2017, pp 3)

Photo Credit: Verywellmind.com

implicit bias



# 2016 Yale University Study

- Conducted at the request of the Department of Health and Human Services
- 135 individuals were recruited from a large annual conference of early care and educational professionals.
- Demographics
  - 93.9% Female
  - 66.7% White
  - 22% Black
  - 77% were Non-Hispanic/Latinx origin

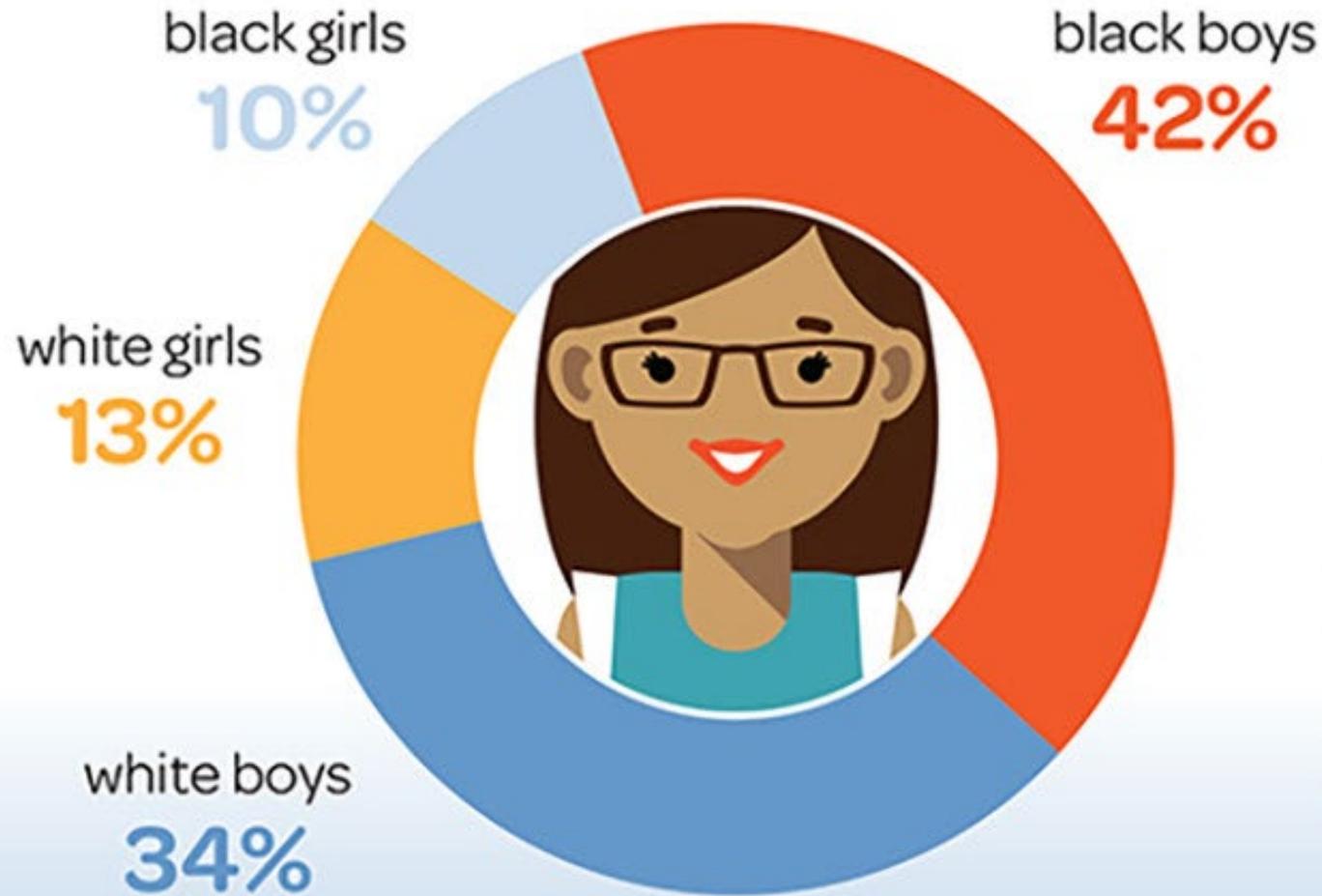


# 2016 Yale University Study

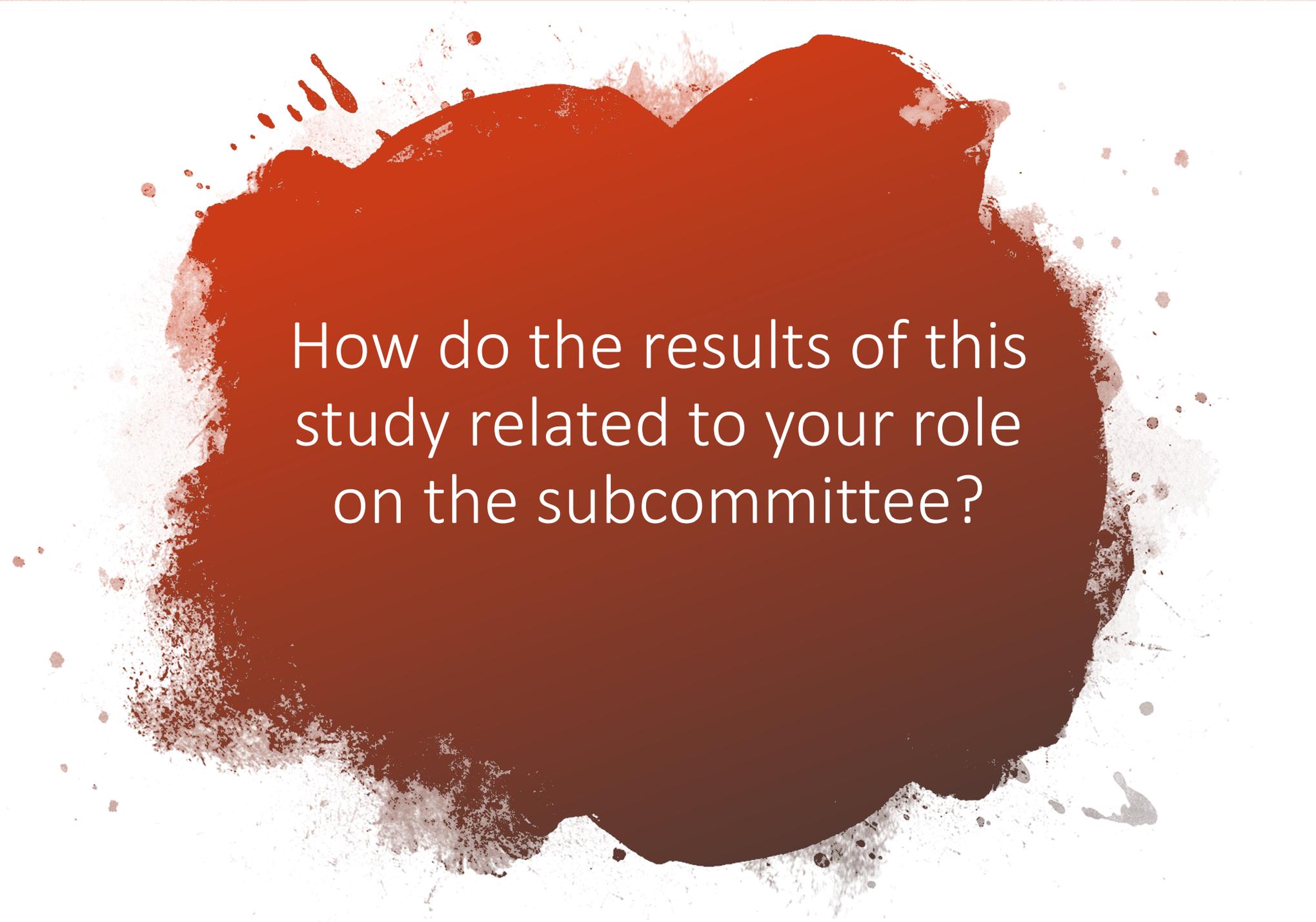
- Task 1: Eye-Tracking Study

“Now you are ready to view a series of video clips lasting 6 minutes. We are interested in learning about how teachers detect challenging behavior in the classroom. Sometimes this involves seeing behavior before it becomes problematic. The video segments you are about to view are of preschoolers engaging in various activities. Some clips may or may not contain challenging behaviors. Your job is to press the enter key on the external keypad every time you see a behavior that could become a potential challenge [experimenter demonstrates]. Please press the keypad as often as needed.”

# Track the eyes: Which students are teachers watching?



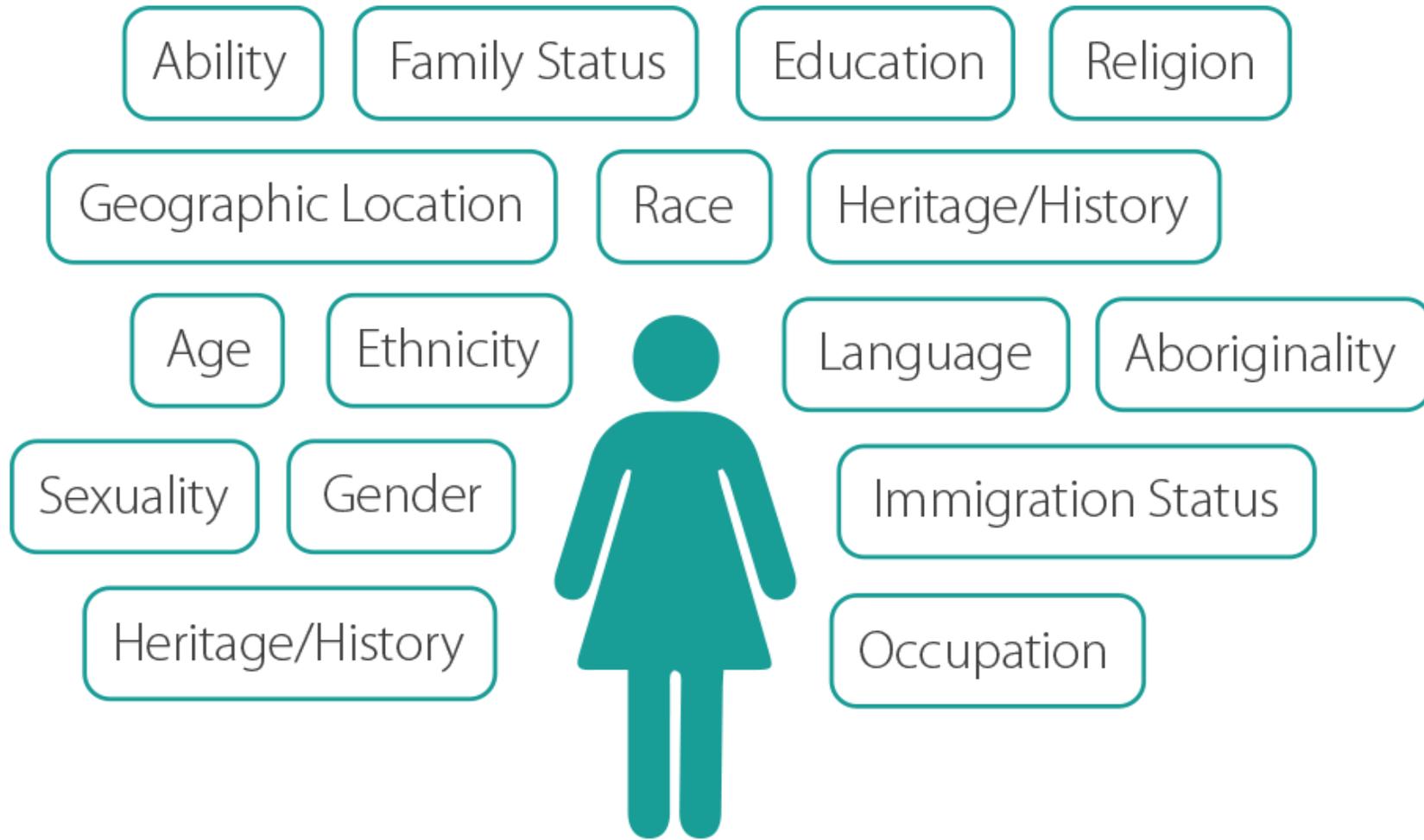
Preschool teachers tend to more closely observe blacks than whites, especially black boys, when challenging behaviors are expected.

A dark red, irregularly shaped graphic with a splatter effect, containing white text. The graphic is centered on a white background and has a rough, ink-like border with small droplets and splatters extending outwards. The text is centered within the graphic and is written in a clean, white, sans-serif font.

How do the results of this study related to your role on the subcommittee?



# Discrimination vs Likability







How can we check our  
biases while serving on  
the subcommittee?

# Addressing Implicit Bias

- Be receptive to other opinions
- Don't be afraid to identify the blind spots of others
- Question cultural stereotypes
- Cross reference your conclusion with the facts (analytical thinking)



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Justin M. Brown  
Associate Dean of Students

# LEGAL PROTECTIONS



# Your Authority

Senate Committee on Student Discipline: Your authority to act on behalf of the university comes from the Article XI of the University Statutes.

Subcommittee on Sexual Misconduct: Your authority to act on behalf of the university comes from Appendix D of the Student Disciplinary Procedures (supported by the same section of the Statutes).



# Your Duty

We have been talking about this throughout training. Each committee has its own specific responsibilities.

But recall from Day 1 that everyone here is charged with maintaining “the integrity of the student discipline system through fair and objective decision making and individual ethical conduct.”



# Getting Sued

Guess what! You can fulfill your responsibilities perfectly and still get named in a lawsuit!

YAY!

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
\_\_\_\_\_ DIVISION

PLAINTIFF(S)	}	
(List all)	}	
	}	Case No.
vs	}	
	}	COMPLAINT
DEFENDANT(S)	}	JURY DEMAND
(List all)	}	

\*If jury trial demanded, please add as set forth above. There is no jury fee in federal court. A jury demand must be filed as a separate pleading or requested in the complaint and included in the title of the complaint. Designating the jury demand on the JS 44 Civil Cover Sheet alone will not constitute a request.



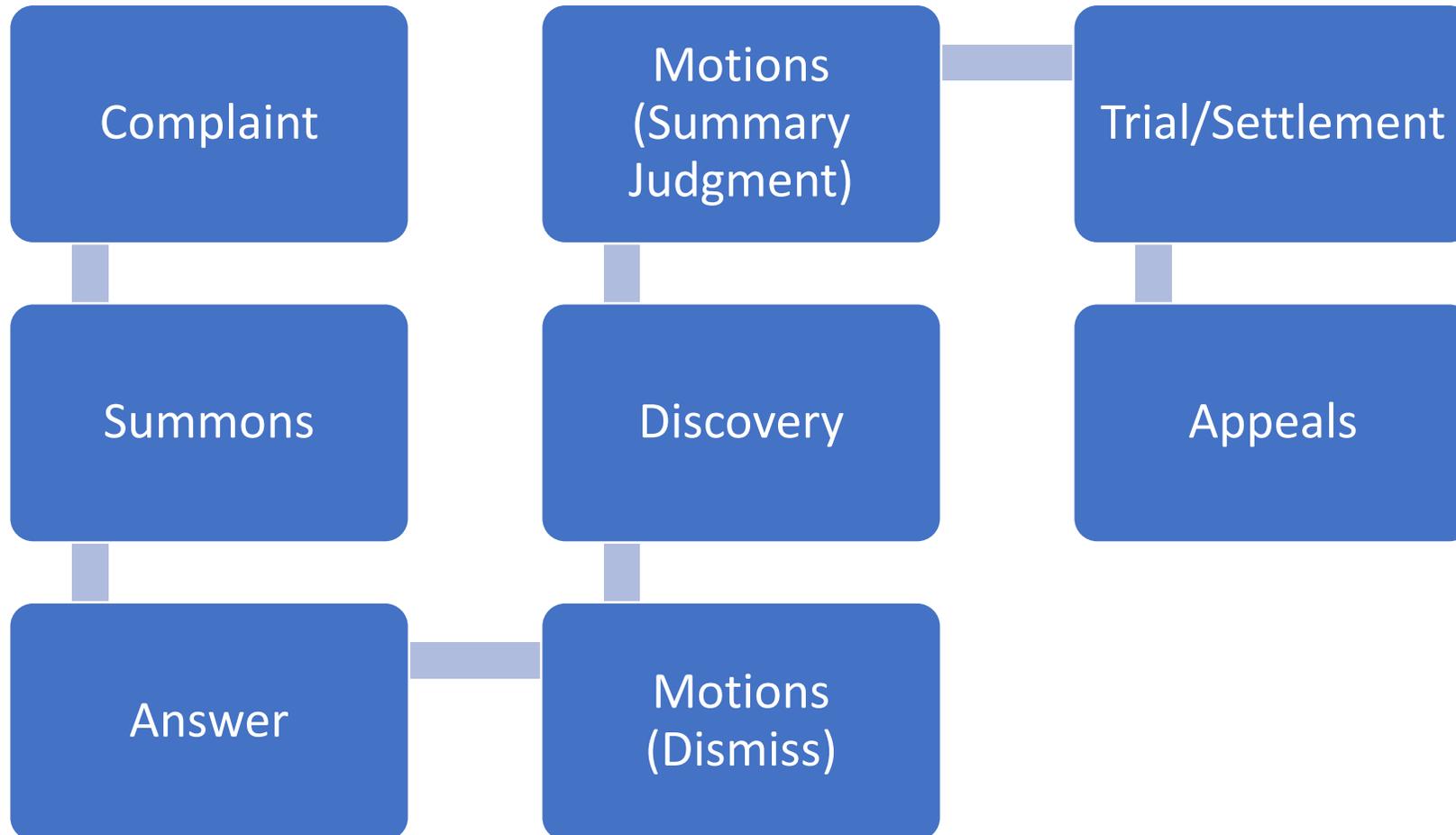
# What should you do?

Often, if you are named in a lawsuit for your service on this committee, you will hear from the Office of University Counsel first. But if you are served directly (out of the blue):

- Contact the Office of University Counsel (Collin Richmond or Adrienne Yasunaga).
- Contact the Office for Student Conflict Resolution (Justin Brown).
- Let the university help you. And please cooperate as much as possible.



# A Typical Lawsuit



# FOIA!

Illinois Freedom of Information Act (5 ILCS 140/)

If contacted directly, send to [foia@uillinois.edu](mailto:foia@uillinois.edu) and ask for assistance. If contacted by the FOIA office, feel free to reach out to Justin and/or University Counsel (if they aren't copied).

If you are following our procedures, you are unlikely to have responsive documents (other than, perhaps, an email or two from Tracey). And whatever you have is likely also being submitted by OSCR. So, please don't worry.

