

**2022 John Carroll University Two-Day Title IX Workshop**  
***Discussion Hypotheticals***

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## Sexual Harassment Hypotheticals: Chuck and Mary Sue

Chuck and Mary Sue are both custodians. They are assigned to work the same night shift in the same academic building, five nights per week. They are both supervised by the same person, Jason, who works in the administrative building. All of the custodians across campus communicate with each other, and with Jason, by using university-issued walkie-talkies that they carry with them at all times during their shifts. Each custodian must clock in and out at the administrative building before reporting to their assigned building.

Mary Sue believes that Chuck may be sexually harassing her. She relays the following facts. At what point, if any, do you believe that sexual harassment has occurred, and why?

1. Chuck asks Mary Sue out on a date after a shift. Mary Sue says no.
2. Chuck brings flowers to work and asks Mary Sue out on a date again. Mary Sue says no again.
3. Chuck asks Mary Sue out on a date over the radio. Mary Sue says no again.
4. Jason informally warns both Chuck and Mary Sue not to discuss personal matters on the radio.
5. Chuck corners Mary Sue in the break room at the beginning of shift to ask her why she won't date him, and he won't let her leave until she says yes. (She gets away.) Jason writes them both up for starting their shifts late that day.

### **Changing it Up**

Chuck and Mary Sue are both students. Mary Sue believes that Chuck may be sexually harassing her. She relays the following facts. At what point, if any, do you believe that sexual harassment has occurred, and why?

1. Chuck asks Mary Sue out on a date. Mary Sue says no.
2. Chuck brings flowers to class and asks Mary Sue out on a date again. Mary Sue says no again.
3. Chuck asks Mary Sue out on a date on social media. Mary Sue says no again.
4. Chuck and Mary Sue's professor sees that they are on social media during class time and asks them both to stop and pay attention.
5. Chuck corners Mary Sue in an academic building lounge to ask her why she won't date him, and he won't let her leave until she says yes. (She gets away.) Their professor is not happy that they are both late to class.

## Sexual Harassment Hypotheticals: Baldwin Hall

### **Hypothetical #1**

Fran Yeager is a First-year student and a resident of Baldwin Hall, a co-ed, all First-year residence hall. Baldwin Hall is co-ed by room, meaning that residents are paired by the same gender identity as roommates on a hall with two single-gender bathrooms. Fran has an extremely positive body image and is comfortable walking to and from the bathroom wearing nothing but a very small towel.

Some of the male-identified residents are uncomfortable with Fran's conduct and come to Sarah Overton, the Second-year (but not sophomore) resident advisor, to request that Sarah intervene. The residents state that Fran's conduct has created a hostile environment under the Title IX Policy and they want Fran to be removed from the hall.

### **Questions:**

- Does Fran's conduct meet the definition of sexual harassment? Why or why not?
- What questions would you ask to determine if Fran's conduct meets the definition of sexual harassment under your policy?

Fran is walking to the bathroom and Bryan, one of the residents, yells out, "Fran! You sexy beast! Work it!" Fran proceeds to turn toward the resident and slowly and seductively removes the towel. Fran smiles and walks to the bathroom wearing only the fuzzy slippers. Some of the other residents see Fran and, again, go to Sarah insisting that Fran be removed. They share with her that some of the residents are now using the bathrooms on other floors of the building to avoid Fran.

### **Questions:**

- Does Fran's conduct meet the definition of sexual harassment now? Why or why not?
- Does Bryan's conduct meet the definition? If not, what other facts would you need?

Bryan and Fran go to a party. Both have been drinking heavily and are visibly intoxicated, but are coherent and laughing loudly in the hallway. The laughter wakes up Sarah and she opens her door to see Bryan and Fran in the hallway. She sees Bryan's hand on Fran's buttocks and overhears him saying, "Just kiss me you sexy beast!" Sarah observes Fran push Bryan away. Fran walks unsteadily past Sarah to exit the hall. Sarah observes that Fran appears to be "upset" and the next day confirms that Fran was angry with Bryan for "making a move."

### **Questions:**

- Does Bryan's conduct constitute sexual harassment? Why or why not?
- How should Sarah and the college respond to this situation?

## **Hypothetical #2**

Second year resident advisor, Sarah Overton, has even more difficulties on her floor. One of her residents, Max, is a transgender male. He is currently taking hormone replacement therapy and has started to grow a beard. Max has been using the male restroom on the floor since the beginning of the school year. Shortly before fall break (middle of October) a resident comes to Sarah and expresses his concerns that a woman should not be using the bathroom. In talking to Sarah, the resident expresses that his religious beliefs do not permit him to accept Max's "lifestyle choices." He adds quickly that "Max is a nice person and if she wishes to act like a man, that's okay," but he's uncomfortable being in the bathroom with Max.

### **Questions:**

- Is your policy implicated by the fact pattern that is currently written? For example, does your policy protect gender identity or gender expression? What should Sarah do?

Sarah tells the resident that she is going to check in with her area coordinator (professional staff member responsible for her building) and wishes her resident a good fall break. Sarah returns early from fall break and notices that someone has written the words "fucking freak" in dry erase marker on Max's door. Sarah quickly erases the comment. She is not sure if anyone has seen the graffiti. She makes an incident report.

### **Questions:**

- You are now in the role of the area coordinator. Does this constitute a policy violation under your policies? If it does, which policies are implicated?

[You are still in the role of the area coordinator] Max comes down to your office and is visibly upset. He tells you that as he was walking out of the bathroom this morning, a group of residents stopped him in the hallway and told him that he needed to "shave off that ridiculous beard and act like the woman that you are." Max explained that he pushed his way past the three residents and when he did so, one of them, he's not sure which one, shoved him from behind calling him a "freak."

Max has come to you seeking a room change to another residence hall. He says "I don't want to make any trouble, I just don't feel safe living in this building anymore." Fighting back tears, Max tells you that he doesn't want anything to be reported. You tell Max that you are deeply concerned about the behaviors and want to respect his requests.

### **Questions:**

- What potential policy violations are implicated now?

- If Max does not want to move forward with a formal investigation, do your policies permit that to happen under these circumstances? What are your tests or considerations in determining whether or not the case would move forward with a formal investigation?
- Assuming that your policy covers harassment on the basis of gender identity, are these facts sufficient to create a hostile environment? If not, why not? If so, why?

## Sexual Harassment: Professor Player

### Statement of the Reporting Person, Becca Newcomer

I am a first-year student enrolled in Professor Player's Long and Boring Equations class this semester. I am writing to complain about Professor Player's treatment of women in the class.

Everyone knows that Professor Player treats women badly, but I needed the class for my major and so I thought that it wouldn't be so bad, but it is. He is awful. One day in class, he declared that in an effort to promote diversity, he was going to have a "Famous Female Mathematician Day" and give us a slide show of all the Famous Female Mathematicians. He joked it would be a short slide show. Then he put up a picture of Hedy Lamarr and said that she was a female mathematician, but couldn't you tell she was famous for something more than her equations? Then he kind of leered at the class. Some people laughed, but I didn't.

I think he grades women unfairly, too. I am a good student, but I have a B- in his class. He doesn't offer any feedback on my papers, but I sit between two guys and they both get A's and lots of feedback. Some of the other women in the class say they have heard for a long time that he grades women lower than men.

Last week, I finally got the guts to go ask him about it, so I took my last three papers and I went to his office hours. There were lots of people there, so I waited in the little waiting area outside his office with some other people from my class. When it was my turn, I went in and showed him the three papers and asked him for feedback. He didn't have any, and it was like he hadn't even read them. I asked him point blank if he was grading me lower because I was a woman, and he said that if anything, he was grading me higher than I deserved. Then he put his hand on my shoulder and told me that maybe if I bothered coming in for his office hours more often, I would understand more about the class. He said he needed to meet with another group of students, but that I could accompany him to dinner later if I wanted so we could discuss it more. I didn't like the way he looked at me. I grabbed my papers and ran out of the room.

I was so upset, I didn't do the homework that night. The next day in class, he called on me at the beginning of the lecture and kept calling on me for the entire class period. He completely humiliated me. It was obvious I hadn't done the work yet, and I told him that, but he kept asking me questions and didn't even give anyone else a chance to raise their hands.

I am still shaking with anger about how I have been treated. I don't want to go to his class anymore, and I don't want anyone else to have to put up with him either.

### Statement of the Responding Person, Professor Player

These allegations are completely ridiculous. I have never treated any of my students with anything other than my utmost respect, regardless of whether they are male or female. Ms. Newcomer's allegations are patently false. Simply put, she is not used to receiving anything less than an A, but in my class, her substandard work does not deserve to be rewarded with such high marks.

We have had three papers and a multiple choice exam thus far in the semester. Ms. Newcomer earned a D+, B, and C+ on the papers, and a B- on the exam. The first paper often earns students low scores because it is early in the semester and they have little experience in scientific writing at a college level. I offered extra office hours to give feedback on early drafts, and those students that took advantage of this help received much higher grades.

Ms. Newcomer did not attend those or any other office hours, until last week when she showed up waving term papers at me and screaming that I hated women. I told her that I did not hate women, that she was welcome to come to my office hours at any time for assistance, and that I would be happy to schedule time with her outside those office hours if she needed more help or had scheduling conflicts. She started crying. Professor Bystander, who has the other office in my suite, was standing in my doorway to see what all the noise was about, and Ms. Newcomer pushed past him to leave.

I did once put a picture of Hedy Lamarr in a PowerPoint. I did not say that it was "Famous Female Mathematician Day." We talked about Ms. Lamarr's underappreciated contributions to mathematics with regard to her contributions to war-time technology, some of which is the foundation to other technologies that we have been studying. There is no denying Ms. Lamarr is beautiful, and I believe I expressed the opinion that her beauty detracted from the proper appreciation of her mathematical genius.

### Upon Further Investigation...

Neither Professor Bystander nor the students outside the office door were able to provide any information on the content of the conversation. The students stated that Ms. Newcomer entered the office in a calm state. The students and Professor Bystander agreed that when she left, she was crying and highly agitated.

Professor Bystander stated that after Ms. Newcomer pushed past him, he asked Professor Player what had happened. Professor Player responded, "She doesn't like her grades and I don't like her attitude, so everyone is unhappy at the moment." Professor Player does not recall having any conversation with Professor Bystander about the incident.

## Is the Playwright Discriminating?

Professor Gene O’Neill is a well-regarded scholar and playwright at your institution. He is a respected teacher and for the last 25 years has received nothing but exceptional feedback from his students. He is well connected to the Broadway community and runs an intensive two-week summer class in New York City. Students vie to get into this intensive program because of the opportunities it provides to interact with playwrights and performers.

Professor O’Neill is scrupulous about gender balance in his class. He works with the Registrar to ensure that all genders are well represented in his classes.

In recent years, Professor O’Neill has decided to not meet alone with female students without his office door being open. His colleagues have noted that he is uncomfortable in social settings with female students. They have commented that he appears to make sure that he is never alone with female students in social settings (*e.g.* departmental functions, dinners during the New York trip, etc.).

An assistant professor and informal mentee of Professor O’Neill asked him if there was a pedagogical or other reason for his behavior. Professor O’Neill responded that he was trying to avoid any situation that could be deemed “improper.” He recognized that this meant that female students had fewer one-on-one interactions with him, but he shrugged off any negative implications of it stating, “My student evaluations are excellent and I’m just trying to avoid any Title IX issues.”

### **Is there Sexual/Gender Harassment? Why or Why Not?**

- If students raised concerns about Prof. O’Neill’s conduct to the Dean of the College and reported that they noticed these behaviors and also reported having fewer opportunities to interact with Prof. O’Neill outside of the classroom, would this change your analysis?

## Understanding Consent: Mini-Hypotheticals

**Hypo #1:** Charlie and Andy are dating. Charlie tells Andy, “I’ve always thought it would be nice to wake up to oral sex.” A few days later, Andy wakes Charlie up with oral sex.

Did Charlie consent to the oral sex?

**Hypo #2:** Remy and Sage are kissing. Remy asks Sage if it is OK to have sex. Sage says it is OK, “but only if you use a condom.” Remy puts on a condom and penetrates Sage. Halfway through the sexual encounter, Remy removes the condom without telling Sage and continues to penetrate Sage.

Did Sage consent to the sexual intercourse?

**Hypo #3:** Alex and Chris are kissing. Alex asks Chris if it is OK to have sex. Chris agrees. They have sex. Chris doesn’t realize that Alex has hidden a friend in the closet to watch.

Did Sage consent to the sexual intercourse?

**Hypo #4:** Quinn is giving oral sex to Riley after Riley gives verbal consent. After a minute, Riley lays hands on Quinn’s shoulders, pushing Quinn back somewhat but not totally away. This keeps Quinn from being able to push as hard, but still allows Quinn to continue. Quinn continues for a few more moments, then stops and the two go on to do something else.

Did Riley consent to the oral sex for the entirety of the act?

**Hypo #5:** Angel threatens to post pornographic pictures of Jordan on Facebook if Jordan does not have sex with Angel. Jordan has sex with Angel.

Did Jordan consent to sex?

**Hypo #6:** Kai and Dylan have been in a relationship for the past semester. Dylan tells Kai that if Kai loves Dylan, Kai would have sex with Dylan. Kai reports feeling pressure to have sex or lose the relationship. Kai has sex with Dylan, although Kai is reluctant to do so.

Did Kai consent to sex?

**Hypo #7:** Hunter and Jayden have been in a relationship for nearly two years. Jayden has been experiencing serious mental health issues and has recently attempted suicide after Hunter stated that their relationship was over. After Jayden attempted suicide, they reconciled. Hunter reported that Jayden threatened to commit suicide if Hunter did not engage in sexual contact with Jayden, so Hunter did so.

Did Hunter consent to sex?

**Hypo #8:** Cameron and Nova met at a party. They have both been drinking and they return to Nova's apartment. When they arrived, they went to Nova's small bedroom in the apartment. They hook up briefly and Cameron decides to leave the room. Nova blocks the door to the room and tells Cameron that Cameron needs to kiss Nova before Cameron can leave. Cameron kisses Nova, then heads to the bathroom.

Did Cameron consent to the kiss?

## Keys to Consent Analysis

When a case relates to consent, look for behaviors that demonstrate a willingness to participate in sexual activity, such as:

- Words or phrases that suggest consent
- Taking off own clothes
- Providing protection from STIs
- Assisting with penetration
- Guiding the other person's touch

Lack of such behaviors may constitute a lack of consent. The presence of behaviors that demonstrate an unwillingness to participate in sexual activity may likewise constitute a lack of consent, for example:

- Saying "no"
- Pushing the person away
- Physically moving oneself away
- Putting clothes back on
- Lying about having protection in the hopes of deterring sexual activity

## Keys to Incapacity Analysis

When a case relates to incapacity, an investigator's goal is to create a timeline of:

- Drug and alcohol use by the reporting party
- Use of medications by the reporting party that could interact with drug and alcohol use or affect consciousness
- Physical and cognitive behaviors demonstrated by the reporting party to suggest intoxication level – observed by whom?
- Text messages, photographs, and videos of the reporting party that could help to demonstrate intoxication levels
- Card swipes and security footage of the reporting party
- Any other information with a timestamp

## Consent and Incapacitation Mini-Hypotheticals

Work together in small groups to determine whether the conduct was non-consensual in each of these situations.

**#1:** Casey and Jessie go to Casey's apartment. Both are sober. Casey asks Jessie if they can have sex. Jessie says yes. They proceed to have sex. Both Casey and Jessie actively participate in the sex.

Was the conduct consensual?  Yes  No

Why or why not? \_\_\_\_\_

**#2:** Dakota and Harper don't know each other. Harper is sleeping in the student lounge when Dakota arrives. Dakota rubs Harper's genitals, which awakens Harper.

Was the conduct consensual?  Yes  No

Why or why not? \_\_\_\_\_

**#3:** Jamie and Rory are roommates. Jamie spends the evening drinking alone to the point of incapacitation. Rory returns to their apartment to find Jamie in Rory's bed. Rory gets into bed with Jamie. Jamie wakes up, kisses Rory, and asks Rory for sex. Rory says yes. Rory and Jamie have sex.

Was the conduct consensual on Jamie's part?  Yes  No

Why or why not? \_\_\_\_\_

**#4:** Angel and Avery meet at a party. While they are sitting together, Avery has two "Long Island Iced Teas," each of which contain five shots of alcohol. Avery asks Angel to assist with the walk home, and Angel ends up carrying Avery partway. When they get to Avery's room, Avery kisses Angel passionately, then proceeds to give Angel oral sex.

Was the conduct consensual on Avery's part?  Yes  No

Was the conduct consensual on Angel's part?  Yes  No

Why or why not? \_\_\_\_\_

**#5:** Quinn takes sleeping medication and drinks a wine glass full of vodka, intending to sleep for twelve hours or more. Parker, Quinn's friend, stops by to see Quinn before bedtime and convinces Quinn to go to a party. Quinn and Parker walk down two flights of stairs, out the door, down a hill, and across campus to the party. While at the party, they dance and talk. Parker kisses Quinn. Quinn then kisses Parker. They walk back together. The next morning, Quinn remembers nothing about being with Parker.

Was the conduct consensual on Quinn's part?  Yes  No

Why or why not? \_\_\_\_\_

**#6:** Charlie and Kendall are at a party dancing. Charlie comes up behind Kendall and begins grinding against Kendall's back, with Charlie's genitals rubbing against Kendall's hip. Kendall is sober and steps away from Charlie.

Was the conduct consensual?  Yes  No

Why or why not? \_\_\_\_\_

**#7:** Ryan drinks three beers, three shots of vodka, and a whiskey and coke. Ryan is able to text a friend, Taylor, in a coherent manner for about twenty minutes. Taylor asks Ryan to stop in before bed, and Ryan obliges. Taylor's door is open when Ryan arrives, and Ryan leans against Taylor's doorframe as they talk. Taylor asks Ryan for sex, and Ryan initially says no. After talking for a few more minutes, Taylor asks again and Ryan comes into the room and closes the door. Taylor kisses Ryan, but Ryan pulls away. Then Ryan kisses Taylor, and the two have sex.

Was the conduct consensual on Ryan's part?  Yes  No

Was the conduct consensual on Taylor's part?  Yes  No

Why or why not? \_\_\_\_\_

## Incapacitation Scenario

Our scenario facts have been established as indicated below. For purposes of this scenario, you may assume that each drink constitutes one standard serving of alcohol.

Kevin and Caden are roommates. Kevin is gay. Caden is questioning. One night, they go to a party together.

10:00 p.m. - They arrive at the party and split up at the door. Kevin goes to the basement. Caden goes to the third floor. Kevin has two beers with a group of friends. Caden has a glass of wine and a cup of vodka and punch with a separate group of friends.

11:00 p.m. – Kevin climbs the stairs to the third floor. Kevin asks Caden if he’s ready to leave. Caden takes a shot of vodka and announces that he is “good to go.” Kevin leads the way down the stairs. Caden stumbles on the last step but catches himself on the handrail. He is laughing. On the way back to their room, Caden texts with a friend:

James: You going out tonight?  
Caden: with kevin coming home  
James: Stop over to my place to say hi.

Caden tells Kevin that he wants to stop on the floor below where they live to see James. They take the elevator to the fourth floor where James lives.

11:15 p.m. -- James is in his room with his girlfriend, Amanda, and his friend Pat. They have purchased three different types of whiskey and are making their own flights (one shot of each type). James doesn’t drink. Kevin tries one sip of whiskey but doesn’t like it. Caden finishes a flight while they talk.

12:30 a.m. – Amanda, Pat, and Caden finish off Kevin’s flight by each taking one shot.

1:15 a.m. – Caden starts an argument with Pat about whether the “new Browns” are the real deal or whether next year will be the same old Browns. Caden can’t choose a position, then begins to get depressed.

1:30 a.m. – Kevin announces that it’s time to take Caden back to their room. Caden leads the way. In the hallway, he puts his right palm against the wall as he walks. James texts Caden: “Drink water and take aspirin, dude.” James explains that he sent this because he feared Caden would be very sick the next morning. Caden responds, “no rsswyf”

1:45 a.m. – Kevin undresses Caden so that he can go to bed. The two begin kissing. Kevin says that Caden initiated the kiss; Caden does not believe he did so. The two have sex. Caden has limited memory of the encounter.

**What facts suggest Caden was incapacitated? What facts suggest Caden was capable of consenting? What additional context would you like to know?**

## Coercion Hypotheticals

Hypothetical No. 1: Complainant has reported that the Respondent has naked pictures of the Complainant and threatened to post them publicly if Complainant refuses to engage in sexual intercourse with Complainant.

**Is this coercion?**  Yes  No  Need more information?

Hypothetical No. 2: Complainant and the Respondent have been in a relationship for the past semester. Respondent tells Complainant that if Complainant loves Respondent, Complainant would have sex with Respondent. Complainant reports feeling pressure to have sex or lose the relationship. Complainant decided to have sex although Complainant is reluctant to do so.

**Is this coercion?**  Yes  No  Need more information?

Hypothetical No. 3: Complainant and the Respondent have been in a relationship for nearly two years. Respondent has been experiencing serious mental health issues and has recently attempted suicide after Complainant stated that their relationship was over. After Respondent attempted suicide, they reconciled. Complainant reported that Respondent threatened to commit suicide if Complainant did not engage in sexual contact with Respondent.

**Is this coercion?**  Yes  No  Need more information?

Hypothetical No. 4: Complainant and the Respondent met at a party. They have both been drinking and they return to Respondent's apartment. When they arrived they went to Respondent's small bedroom in the apartment. They hook up briefly and Complainant decides to leave the room. Respondent blocks the door to the room and tells Complainant that Complainant needs to kiss Respondent before Complainant can leave.

**Is this coercion?**  Yes  No  Need more information?

### **Definition #1:**

Coercion is compelling another individual to participate in sexual activity in a manner that makes the participation involuntary. Consent for sexual activity must be clear, knowing, and voluntary. The reasonable person standard is used to establish whether participation was voluntary. Coercion contains a wide range of behaviors which override the voluntary nature of participation. Such acts include, but are not limited to, threatening to disclose personal sexual information, or threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity. Consent cannot be obtained by coercion.

## Definition #2:

An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.

Force: violence, compulsion, or constraint; physically exerted by any means upon or against a person.

Coercion: the application of pressure by the respondent that unreasonably interferes with the complainant's ability to exercise free will. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.

## Stalking Hypotheticals

When does the behavior cross into stalking under your policy (if it does at all)? Each scenario is cumulative. You may assume that substantial emotional distress occurs where you believe a reasonable person would feel substantial emotional distress.

### Scenario #1 – Student on Student

1. On the first day of class, Jamie sits next to Alex. Jamie smiles at Alex, but says nothing.
2. On the second day of class, Jamie sits next to Alex.
3. After that day's class, Alex sees Jamie in the student union grabbing lunch. Jamie sits at the table immediately behind Alex and eats lunch alone.
4. Every day at lunch from then on, Jamie sits at the table behind Alex in the Union, grabbing lunch. They never speak.
5. Jamie "friends" Alex on Facebook. Alex accepts.
6. Jamie "likes" a few old pictures that Alex has on Facebook.
7. Jamie begins "liking" every picture that Alex posts on Facebook.
8. Jamie begins commenting on every picture that Alex posts on Facebook.
9. Jamie tags Alex on Facebook and says, "See you in class."

### Scenario #2 – Student on Faculty

1. Professor hands back an assignment. Student got a D.
2. Student emails Professor to argue about their grade.
3. Student comes to office hours to argue about their grade.
4. Student stays after class to argue about their grade.
5. Professor tells student that the grade stands, that the conversation is over, and that the Professor needs to leave.
6. Student follows Professor out of the classroom, still arguing about their grade.
7. Another professor steps into the hallway and stands between Student and Professor.
8. The other professor takes Student into an office, listens for a few moments, and tells the Student to stop harassing the Professor and let it go. (Professor makes a quick getaway.)
9. Student shows up at office hours the next day to argue about their grade.

### Scenario #3 – Student on Student

1. Jen breaks up with Ben after two years. Jen would describe the relationship as “abusive.”
2. The next day, Ben shows up outside Jen’s class to talk. Jen declines.
3. As Jen walks across campus, Ben follows her.
4. Ben begins crying hysterically and pleading with her as she walks away.
5. Ben gets on his knees and follows her, begging her to come back to him.
6. When Jen gets to her next class, Ben sits outside the door and waits for her.
7. After class is over, Jen tells Ben to go away, and Ben leaves.
8. In Jen’s third class, Ben keeps walking back and forth past the classroom windows wearing a thick wool sweater that Jen hand-knitted for him. It’s eighty degrees outside.
9. Jen texts Ben to go away. Ben texts her back that he intends to “follow [Jen] to the ends of the earth” until she takes him back.

### Intimate Partner Violence Scenarios

Would the following behaviors constitute IPV under your policy? Why or why not?

*A is the reporting party and B is the responding party. They are dating.*

- B slaps A.
- B threatens to hurt A’s dog if A breaks up with B.
- B threatens to tell A’s parents that A is gay.
- B threatens suicide if A moves out.
- B constantly puts A down, calls A names, and tells A that A is “horrible.”
- B berates A for texting friends and staying late at the library, saying that A “must be cheating.”
- B tells A that A is “immoral” and “ungodly.”

Remember to challenge your assumptions when working IPV cases:

- A person may stay in abusive situations for much longer than an objective outsider might assume is appropriate.
- A person may return to their abuser many times before they leave for good.
- The motives a person may have for staying with their abuser may not “make sense” to someone outside the relationship.
- One person who experiences abuse may respond differently than another person who experiences similar abuse.
- On the other hand, counterintuitive response could also be a sign that the person is not accurately relating the facts. Don’t assume that a counterintuitive response automatically indicates that the person is or is not a victim of IPV. Either way, as an investigator, you have more digging to do – but don’t stop digging because you have made an up-front assumption one way or the other.

## IPV Scenario – Credibility Assessment Exercise

Credibility is determined based on the “totality of the circumstances.” Factors to consider in determining credibility include:

- Statements by witnesses to the incident.
- The detail and consistency of each person’s account.
- Corroborating evidence, such as medical records, key card records, surveillance video.
- The lack of corroborating evidence, if such evidence should logically exist.
- Information about how the reporting person acted following the incident – immediately and over time.
- Information about whether the reporting person reported the incident or told others soon after the incident occurred.
- Other contemporaneous evidence –social media posts, text messages, etc. – that tend to support a person’s version of the incident.
- Credible reports of similar incidents by the responding person (Be cautious here!).
- Whether the reporting person has been shown to make false reports (Again, exercise caution here).

### **Charlie and Jesse**

Charlie and Jesse dated during fall semester of this year. The alleged incident reportedly occurred on December 13<sup>th</sup>. Both parties agree that they later broke up on Christmas Day.

#### *Charlie’s story*

It was late at night, and it was very cold. Jesse and I had gone on a long walk through town to talk about our relationship, but I had an exam the next morning so we got back in the car to drive back to campus. I was in the passenger seat of Jesse’s car, and Jesse was driving. When we got to my residence hall, Jesse parked and we continued talking for a while. I told Jesse that I wasn’t happy and thought it might be time to break up. Jesse got mad and started yelling that I was “self-absorbed,” and that when Jesse expressed concerns about the relationship, I would ignore or blame Jesse for everything. I told Jesse that I wasn’t going to be yelled at and that I thought it was time to go inside. Jesse grabbed my left arm forcefully and told me that I “can’t get away that easily.” I tried to wrench my arm free. Then Jesse slapped me across the face. I screamed, and Jesse let go. I ran out of the door up to my room, locked the door, and stayed in for the rest of the night. I didn’t talk to anyone that night and ate my way through a box of chocolates I had in my room. The next morning before my exam, Jesse snapped me, “I love you. I am so sorry. Let’s talk.” I had a deep bruise on my left forearm that didn’t go away for two weeks. I wish I had taken pictures.

#### *Jesse’s story*

Yeah, I remember that night, but that’s not how it happened. Charlie and I drove into town for dinner. Charlie had a glass of wine; I didn’t drink because I was driving. After dinner, we walked down to a little park and talked. It was freezing. Charlie spent a lot of time telling me

how I never listened and was always late. When I tried to respond, Charlie started playing with a phone. I got mad because Charlie was accusing me of not listening, but now Charlie wasn't listening. I told Charlie it was time to head back to the car, and we didn't talk most of the way back. Once we got to the residence hall, I wasn't in the mood to talk anymore so I pulled up outside the door and said "Good night." Charlie said, "Figures you don't want to talk. You don't want to hear anything bad about yourself. Why do I keep dating you? I think it's time for me to leave." Then I felt guilty for brushing Charlie off, so I said, "Oh, don't be like that. Let's talk after your exam," and leaned over to kiss Charlie good night. Charlie leaned away from me so I missed the kiss, then got out of the car. Later I snapped Charlie, "I love you. I'm sorry. Let's talk tomorrow." The next day, I was waiting for Charlie outside the exam room and we talked it through. There's no way I bruised Charlie's arm. If I touched Charlie's arm, it was just to get my balance when I leaned over for the kiss.

### *Whitney's story*

Charlie lives next door to me, and we have bio together. Charlie came home around midnight the night before our exam in a huff. Charlie had borrowed my winter coat for a date and stopped by to drop it off. I asked Charlie what was wrong. Charlie told me about an argument with Jesse and said that the relationship was getting to be too much. I told Charlie to get some sleep for the exam tomorrow, and Charlie left, talking about wanting to gorge on chocolate and go to bed. The next day, Jesse was waiting for Charlie outside the exam room. I never saw any bruises on Charlie's arm. I left for home a few days later.

### *Other information*

- Security footage shows the car pulling up to the residence hall at 11:44 p.m. and Charlie exiting approximately one minute later. The camera can't see the inside of the car.
- Card swipes show Charlie entered the residence hall at 11:45 p.m., then again at 12:08 a.m. through a different door; security footage could not be obtained for the later swipe.

### **Questions for discussion:**

- Do you believe that Jesse grabbed Charlie's arm? Why or why not?
- Do you believe that Jesse bruised Charlie's arm? Why or why not?
- Did Jesse violate the policy regarding IPV? Why or why not?

## Editing Samples

### **Brief Samples for Editing:**

1. Respondent engaged in sexual intercourse with Complainant from behind.
2. Complainant couldn't explain why she was sitting on the couch by herself.
3. Complainant stated that Respondent jacked himself off, then gave him a blow job.
4. Respondent visibly winced when Complainant said "no."
5. John stated that Alice told him to "knock it off."
6. On a scale of 1 to 10, the witness described the Respondent as being a "level 4 kind of drunk."
7. There was no evidence to support Complainant's assertion that the activity was without consent.
8. During the mediation, Respondent admitted to the misconduct and promised not to do it again.
9. Professor Clark indicated that he had never known Respondent to commit sexual misconduct at 2:00 in the morning in the back of a bar before.
10. Respondent stated that Complainant was diagnosed with bipolar disorder and that the complaint was "all in his head."
11. When Respondent asked if Complainant wanted oral sex and Complainant said, "That's OK," that was indication of the Complainant's consent.

**Sample 1:**

The investigators interviewed the following witnesses:

- Rod Stewart;
- Paul McCartney;
- John Lennon;
- Ringo Starr;
- John Denver;
- Kermit the Frog; and
- Fozzie Bear.

The respondents' witnesses (Gonzo, Ms. Piggy, Ralph, and the Chicken) were not interviewed.

**Comments****Sample 2:**

When reviewing Alice's credibilities when compared to John's, we find that Alice is more credible than John. Therefore, we must adopt Alice's factual allegations as true and discount John's for the sake of analyzing whether or not a policy violation was committed.

**Comments**

**Sample 3:**

Complainant went to a party that night. When he arrived, he had a cup of beer, quickly followed by a glass of wine. Later in the evening, he had another glass of beer and a shot of whiskey. Before he left the party, Complainant had another shot of whiskey. By the time that Complainant arrived back at his residence hall, he was incapacitated and could not hold a conversation.

**Comments****Sample 4:**

Walt described the complainant as being “wasted.” When asked to describe what “wasted” means, Walt stated that the complainant was drunk, and that he had seen her consume three or four drinks.

**Comments**

**Sample 5:**

Respondent explained that he is significantly taller than Complainant. When they laid down together and were kissing, his penis was above her belly button. There was no way that he could have penetrated her while kissing her, as she alleged.

**Comments****Sample 6:**

Findings of Fact: Complainant states that Respondent was engaging in non-consensual sexual activity, including intercourse, in the early morning hours of September 1<sup>st</sup>.

**Comments**

**Sample 7:**

The panel concludes that there was insufficient evidence to demonstrate that Complainant had not consented to the sexual activity. Therefore, no policy violation occurred with respect to the non-consensual sexual intercourse charge against Respondent. However, Respondent admits that he voluntarily had sex with Complainant in the back office of the library while they were on duty, which is prohibited. Therefore, Respondent is terminated from his employment effective immediately.

**Comments**

## Decision Matrix

**Question 1:** Did the complainant and respondent engage in sexual activity? \_\_\_\_ Yes \_\_\_\_ No  
(If no, respondent is not responsible for violation. Proceed no further.)

**What facts support that sexual activity occurred?**

**What facts support that sexual activity did not occur?**

**What facts (if any) are disputed that are relevant, and how do you resolve each?**

**Question 2:** Was the complainant capable of giving consent to the activity? \_\_\_\_ Yes \_\_\_\_ No  
(If no, respondent is responsible for violation.)

Consider: age of complainant, cognitive capability of complainant, sleep, incapacitation, medical condition, force, coercion

**What facts support the complainant's capability to consent?**

**What facts support the complainant's incapability to consent?**

**What facts (if any) are disputed that are relevant, and how do you resolve each?**

**If you found that the complainant was incapacitated, did the respondent know or should the respondent have known that the complainant was incapacitated such that the respondent is responsible for a policy violation?**

**Question 3:** Did the complainant give consent to each sexual activity? \_\_\_ Yes \_\_\_ No  
(If no, respondent is responsible.)

**What facts support this determination?**

**What facts (if any) do not support this determination?**

**What facts (if any) are disputed that are relevant, and how do you resolve each?**

**Was consent, if given, withdrawn at any time? If so, when?**

**Is the Respondent responsible for Non-Consensual Sexual Intercourse?**

\_\_\_ Yes \_\_\_ No

**For the sake of argument, how would you argue that the opposite is true?**