



THE TRAINING WILL BEGIN IN...LY.

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WALKING THE **EO** TIGHTROPE

COOGS GET CONSENT

Sexual Harassment Training for
Academics and their Assistants

RICHARD ANTHONY BAKER, M.P.A., PH.D., J.D.

AVC/AVP EQUAL OPPORTUNITY SERVICES

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IS IT TRUE OR FALSE?

There exists a general “academic” culture where the pressures of production (faculty – teaching, research, and community service)(Administration – budgets, recruitment, quality control, personnel management) requires so much attention that it is best to mind your own business.

A person is walking on a tightrope, balancing on a thin red line. The person's legs, wearing grey pants, are visible in the center. The background is a bright, cloudy sky. The image is overlaid with a semi-transparent white horizontal band in the middle and a solid red horizontal band at the bottom.

WHAT IS EO?

PART ONE

SCENARIO 1

After class one day, a student comes to you and asks if you have a moment. You say that you do and the student begins by asking you a series of questions. In general, she wants to know if she told you something could you keep it confidential – at least until you both figure things out.

SCENARIO 1

You reluctantly tell her that you will keep what she says confidential but it depends on what it is that she tells you. She, also reluctant, decides to disclose her concern which is, her best friend, who is also a student in your department, is pregnant and she does not know how to approach the father of her child.

SCENARIO 1

She then identifies the father as a tenured faculty member in the department, who, in fact, is your colleague and is very much married. But this does not seem to be a problem. What appears to be the problem is that other students who are aware of the affair are now saying that she received special treatment in the department because of their affair.

What do you do?

What is EO?

The background features a series of stylized human figures. On the left, there are four grey figures standing in a line, holding hands. On the right, there is one orange figure standing. The figures are set against a light grey background with a subtle grid pattern.

NOT THE **PC** POLICE.

ADVOCATES OF THE LAW/POLICY.

ACCIDENTS OF BIRTH.

PART TWO

Discrimination?

DISPARATE TREATMENT OR IMPACT.

An act that **discriminates** against an individual based on his/her membership in a protected group protected or **retaliates** against an individual for engaging in protected EEO activity under one of those statutes.

Discrimination?

HARASSMENT.

Unwelcome verbal or physical conduct based on one or more of an individual's protected bases.

Discrimination?

FAILURE TO ACCOMMODATE.

UH is required to provide reasonable accommodation(s) for the known physical or mental limitations of a “**qualified individual with a disability**” unless to do so would cause an undue hardship.

Discrimination?

FAILURE TO ACCOMMODATE.

A reasonable accommodation is any change in the work environment or in the way things are customarily done that would enable an individual to enjoy equal employment opportunities.



EO RIGHTS? THINK...

GIV²E GR³ANDS

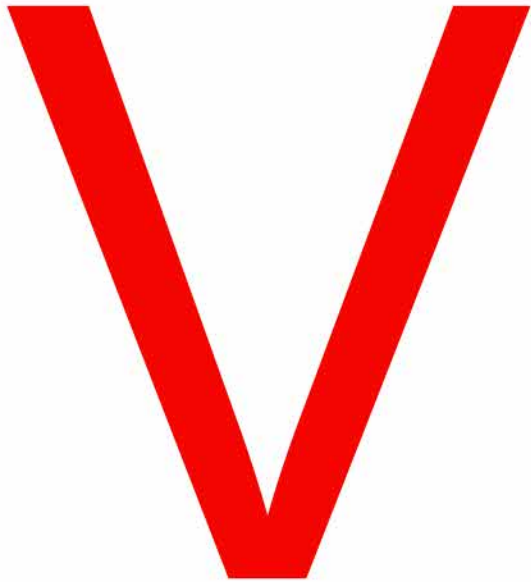
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GIV²E GR³ANDS

G I

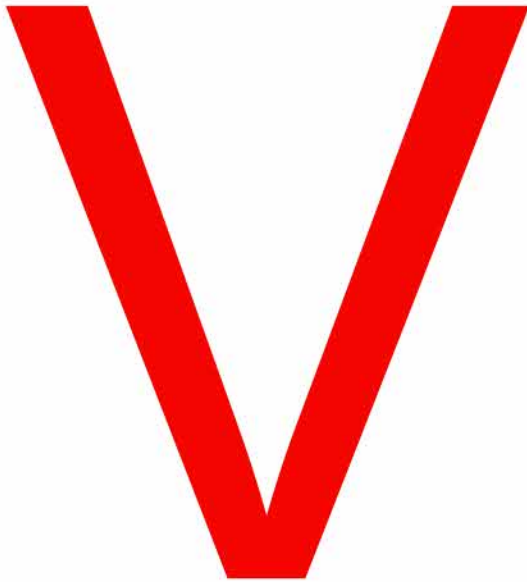
It is unlawful to make **employment decisions** based on an employee's genes or ***genetic information***.

GIV¹E GR³ANDS



It is unlawful to make **employment decisions** based on an employee's military service or **veteran** status.

GIV²E GR³ANDS

A large, bold, red letter 'V' is positioned on the left side of the slide, partially overlapping the text to its right.

Any act of **violence** committed against any member of the UHS community within its **jurisdiction** must be **reported**.

GIV²E GR³ANDS

E

It is unlawful to
make
employment
decisions based
ethnicity.

GIV²E GR³ANDS

A large, bold, red letter 'G' is positioned on the left side of the slide. It is a simple, sans-serif font with a thick stroke.

Discrimination against an individual because of that person's **gender** is unlawful. This means that any employment decisions based on **gender-stereotypes**, or a person's **sexual orientation, gender identity, or expression** is prohibited by UHS policy.

GIV²E GR¹ANDS

R

It is unlawful to make employment decisions based on an employee's race.

GIV²E GR²ANDS

R

It is unlawful to make **employment decisions** based on an employee's **religion**.

GIV²E GR³ANDS

R

It is illegal to take action against, negatively evaluate, fire, demote, harass, or otherwise “*retaliate*” against employees or students because they made a complaint of discrimination, harassment, or sexual misconduct or participated in the complaint process.

GIV²E GR³ANDS

Age

A

discrimination
involves treating
someone less
favorably because
of his/her age.

GIV²E GR³ANDS

National origin

N

discrimination involves treating people unfavorably because they were born or their family originated from a particular country or part of the world.

GIV²E GR³ANDS

D

Disability discrimination occurs when a qualified individual with a disability is treated unfavorably because of his or her disability, has a history of having a disability, or because he or she is regarded as having a disability.

GIV²E GR³ANDS

S

Sex discrimination involves treating a member of the UHS community unfavorably because of that person's sex.



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REMEMBER THIS...

There exists a general “academic” culture where the pressures of production requires so much attention that it is best to mind your own business?

IS IT TRUE OR FALSE?

If it is true, this is stinking thinking.

Minding your own business does not absolve you from your duty to report or act. You are the keeper of the halls. In fact, while UH will ultimately be liable, you will go on record for what you did or did not do at some point. Thus, this is your business.

IS IT TRUE OR FALSE?

Let's try another.

IS IT TRUE OR FALSE?

The academic community is so small that people within your discipline will learn of your complaint and blacklist you from employment.

IS IT TRUE OR FALSE?

If true, that means that if you fail to disclose or violate the law/policy, then your conduct also will be known by the academic community.

In a world of weighing risk, either would make you a risky investment.

IS IT TRUE OR FALSE?

Let's try another.

IS IT TRUE OR FALSE?

There is an unwritten code among academics that faculty/stars watch out for each other. While obvious violations of law are indefensible, since reputations and careers are at stake, the victim must prove BARD.

IS IT TRUE OR FALSE?

If true, you fail to understand how the law works. A preponderance of the evidence is all that is needed (50.01). Also, all allegations deserve immediate and serious investigation. Ask Penn State.

REMEMBER THIS...

Student claims your
colleague was the **father** of
her unborn child?

Now imagine this.

SCENARIO

In order to protect her friend from the abuse coming from the other students, she tells her concerns to a local investigative reporter. Two weeks after her visit with you, a story runs on the evening news.

Surprisingly, you learn through the report that your colleague has had a child with two previous students in the past seven years. All three are now claiming to have been victims of sexual harassment.

SCENARIO

BUT THAT'S NOT THE WORST PART! Due to the exposure of the story, the Department of Education Office of Civil Rights Division (**OCR**) contacts UH and requests information regarding the situation. **OCR** claims that not only might there be Title VI and IX violations, but also that persons knew about the harassment and did not do anything to correct it and prevent its recurrence.

SCENARIO

UH federal funding
is now in jeopardy.
What about you?

REAL TALK

You may think it is easier to mind your business and stay focused on production, but imagine the impact of such a claim on UH/department/you.

REAL TALK

A person wearing a red jacket and khaki pants is walking a tightrope. The tightrope is a thin red line stretched across the frame. The background shows a cityscape with buildings and a blue sky with clouds. The person's feet are visible as they balance on the wire.

You may think it is easier to mind your business and stay focused on production, but imagine the impact of such a claim on UH/department/you.

COSTS OF HARASSMENT

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COSTS OF HARASSMENT

Lo\$t work time and productivity

\$

Decrease in feeling\$ of teamwork

Lost employee\$ / high turnover

Work avoidance

Incivility to customer\$ / client\$

\$

Legal cost\$ due to litigation

\$\$\$\$\$\$\$\$\$\$\$\$

Lowered job motivation

Health cost\$ due to stress\$

COSTS OF HARASSMENT

You?

WHAT WE MUST DO

1

Report it, report it, report it.

AND

2

Take immediate action to address/correct, eliminate, and prevent its recurrence.

A person in a white suit is walking a tightrope over a cityscape. The background shows a city with buildings and a blue sky with clouds. A red line representing the tightrope stretches across the scene. A red banner is at the top, and a blue banner is at the bottom.

Back to Scenario 1

That's what
EOS does.

What exactly does EOS do for UH?

Investigates the allegations

Use evidence to make a finding

Recommendation/Recurrence



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THE SECRETS



PART TWO

THE SECRETS

I work in an office environment where everyone hugs each other every day – I don't want to offend anyone so I hug everyone back. Am I being sexually harassed? Could I be sexually harassing anyone?

THE SECRETS

Am I being sexually harassed?

Depends.

Is the behavior unwanted?

You are allowed to change your mind.

THE SECRETS

Am I being sexually harassed?

*What if I never told them that it was
unwanted or to stop?*

**It does not matter because you do
not have to tell them anything.**

THE SECRETS

Am I being sexually harassed?

However, the quickest way to get someone to stop doing something is to tell to stop.

THE SECRETS

*Could I be sexually harassing
someone?*

Yes.

THE SECRETS

*What if I believe or I am
told that someone else
is being sexually
harassed?*



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THE SECRETS

I pinch everybody, I even pinch my mom. That may be annoying but it isn't sexual contact right?

THE SECRETS

What is the standard used to determine what is sexual contact/harassment?

Reasonable person standard.

Think of a handshake.

THE SECRETS

What is the standard used to determine what is sexual contact/harassment?

Who is the reasonable person?

EOS is.

THE SECRETS

If the sexual harassment complaint is truly a simple fix, shouldn't I try to resolve it internally/informally without EOS?

THE SECRETS

Internal/informal resolutions.

No. Think Dr.

Naughty/Scenario?

You may get it wrong.

THE SECRETS

*I was told never to compliment
or joke about someone's
physical appearance because
that may be regarded as
sexual harassment.*

THE SECRETS

Compliments/Jokes?

It is much more than that.

Pervasiveness

Severity

THE SECRETS

Speaking of severity...

Sexual Assault

Dear Colleague Letter

THE SECRETS

College students who were victims of rape or sexual assault were about _____ times more likely to be victimized by someone they knew than by a **stranger**.



THE SECRETS

College students who were victims of rape or sexual assault were about **4** times more likely to be victimized by someone they knew than by a **stranger**.



IS IT TRUE OR FALSE?

Whether on or off campus, sexual assaults are a police matter. If we hear about such an event, we should report it to the police.

IS IT TRUE OR FALSE?

Let's try another.

IS IT TRUE OR FALSE?

Until the criminal complaint is adjudicated (found guilty or not), the university cannot take action based on allegations alone. This would be a violation of the respondent's due process rights.

THE DEFINITIONS

Both are incorrect. As soon as we know about the allegation of sexual assault, a form of sexual violence covered under Title IX, WE HAVE TO ACT IMMEDIATELY.

PART TWO



What are the pieces
of a sexual assault?

SEXUAL ASSAULT **DEFINED**

In essence, a SA

*intentionally or knowingly sexually touching or penetrating another person by any means, without that person's **CONSENT**.*



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A photograph of a baseball game in progress. A player in a white uniform with "KINSLER" and the number "5" on the back is sliding into a base. Another player in a grey uniform is positioned to receive the ball. The scene is set on a baseball field with green grass and brown dirt. A large, semi-transparent green rectangular box is overlaid on the center of the image, containing the text "Said another way." in white. At the bottom of the image, there is a red horizontal line above the text "UNIVERSITY of HOUSTON | EOS".

Said
another
way.

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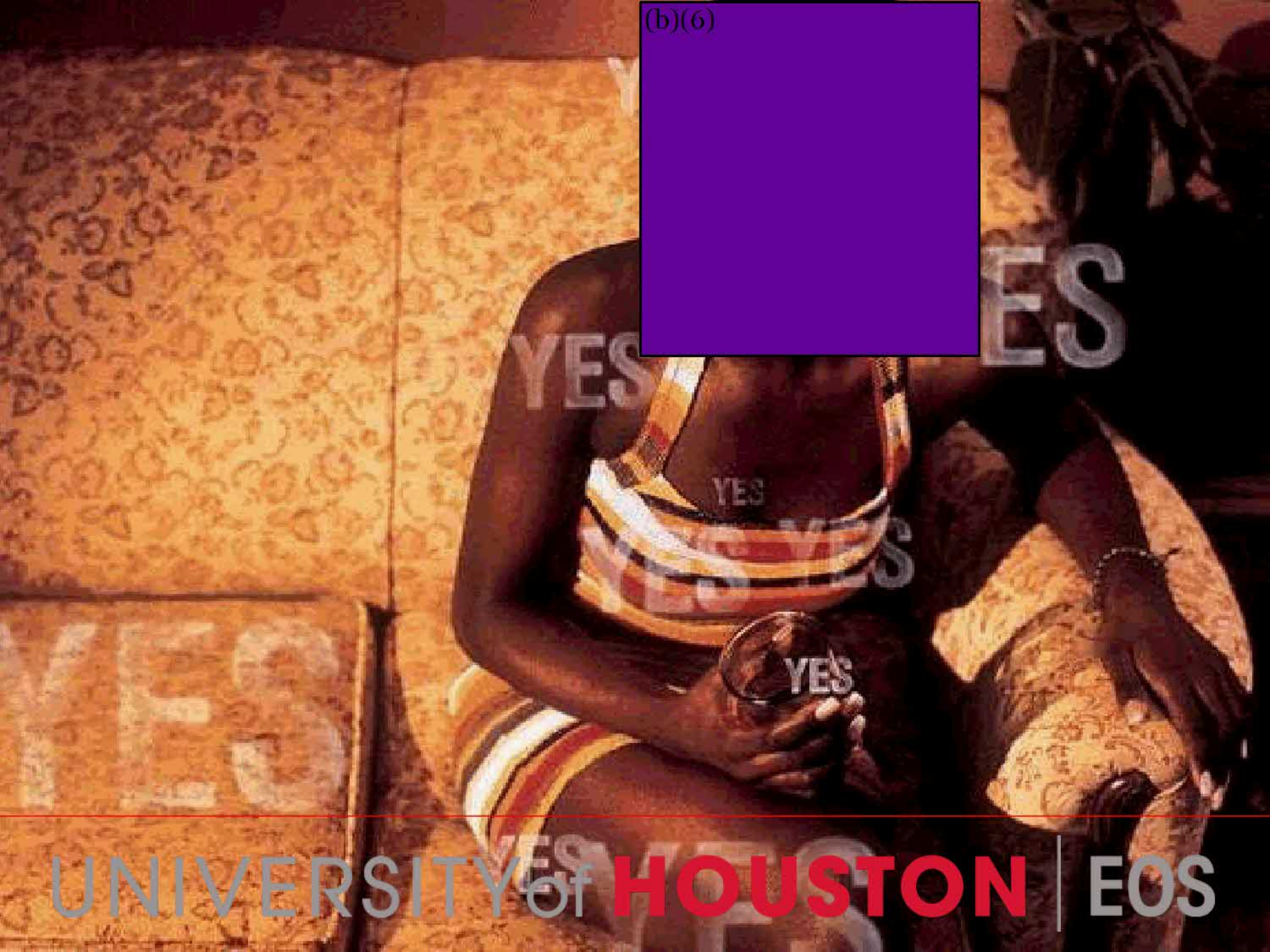
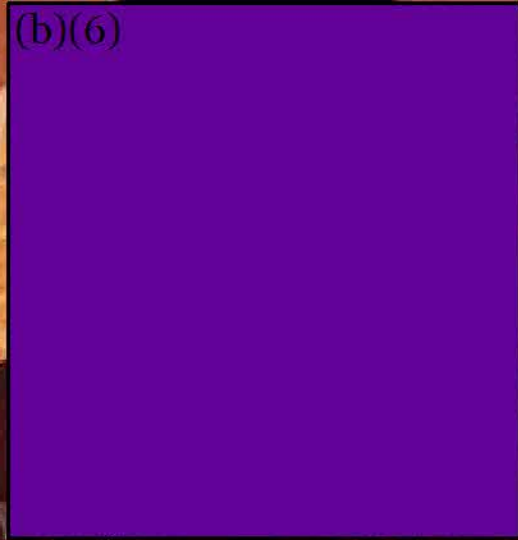
Again, what *does*
consent look like?

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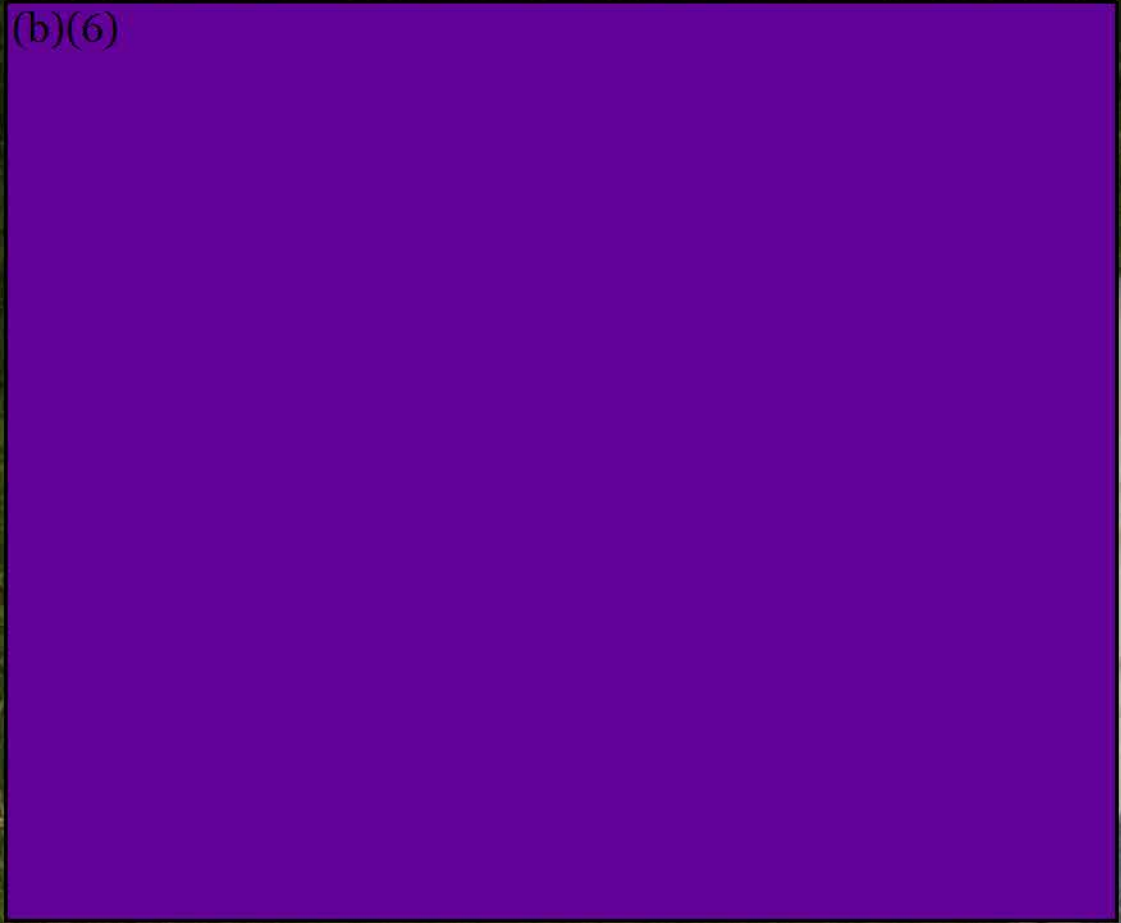
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Last time, what *does*
consent look like?

You know what...

yes you

CAN

!

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One *last* piece you
should know...



Repeat ***Rape***
and Multiple
Offending
Among
Undetected
Rapists by
David Lesak
and Paul M.
Miller.

Sample Description

They sampled 1882 college students, ranging in age from 18 to 71 with a median age of 26.5 — so somewhat older than a traditional college population. The group was also ethnically diverse.

Study ?'s

Have you ever *attempted unsuccessfully* to have intercourse with an adult by *force* or *threat* of force?

Have you ever had *sexual intercourse* with someone who did not want you to because they were *too intoxicated* to resist?

Have you ever had *intercourse* with someone by *force* or *threat* of force?

Have you ever had *oral intercourse* with someone by *force* or *threat* of force?

Results

120 men admitted
to **raping** and to
attempting to **rape**.

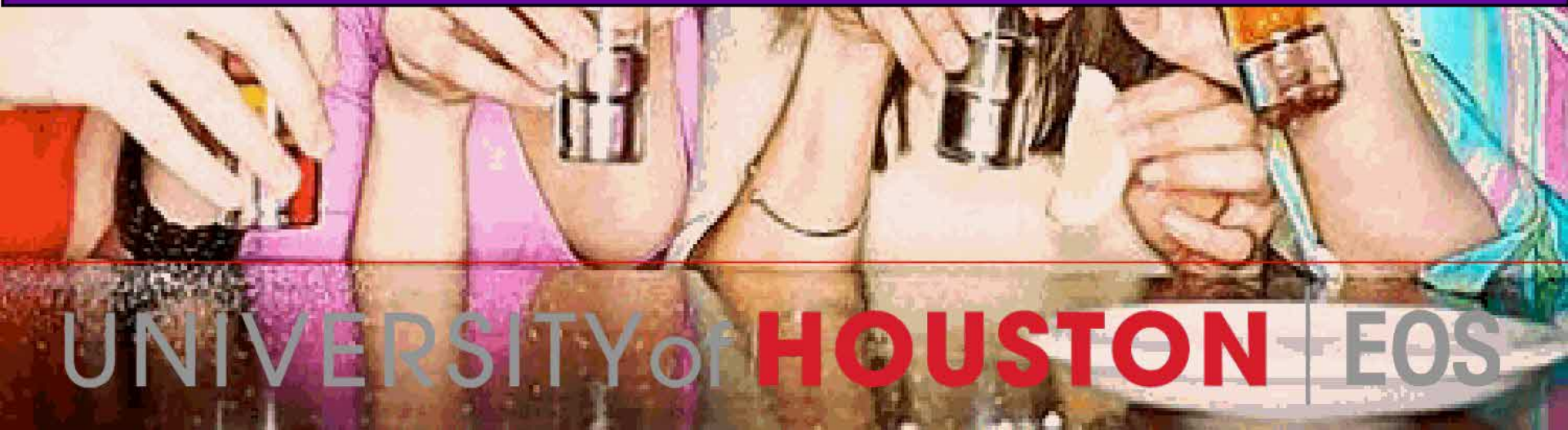
Result

But the more interesting part of the findings were how those rapists and their offenses broke down. Of the 120 rapists in the sample, **76** were repeat offenders. These 76 men, 63% of the rapists, committed 439 rapes or attempted rapes, an average of **5.8 each** (median of 3, so there were some super-repeat offenders in this group).

Overt-force v. Intoxication

The breakdown between the *modus operandi* of the rapists also tells us a lot about how wrong the script is. Of all **120** admitted rapists, only about **30%** reported using force or threats, *while the remainder raped...*

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(b)(6)

*The Curious
Case of Elton
Yarbrough*

The Curious Case of Elton Yarbrough

Elton Yarbrough was a young man seemingly on his way up. An economics major at Texas A&M University; a member of the university's military cadet corps; a musician in the marching band; the pride of little Palestine, Texas; and soon to be an officer in the U.S. Air Force.

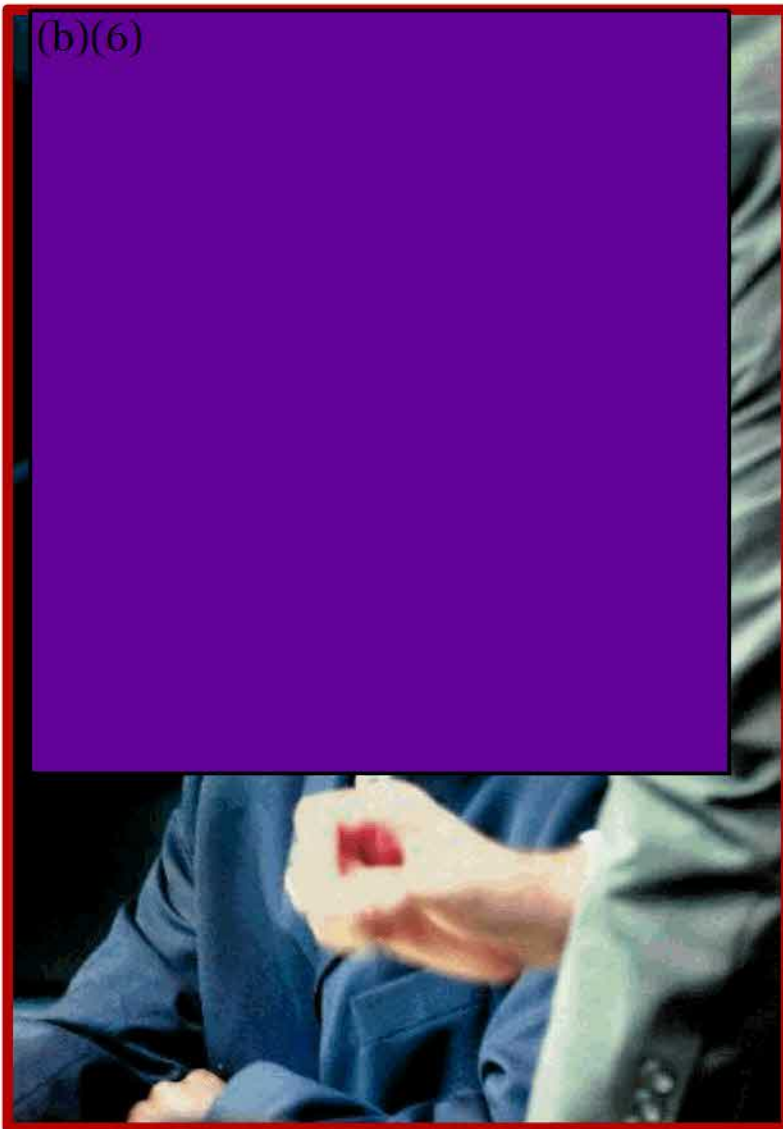


The Curious Case of Elton Yarbrough



One night, Elton hung out with a friend of a friend that he met on Facebook and played pool with. During the Thanksgiving break at her off-campus apartment, she and her roommate couldn't get Yarbrough to take the hint to go home after a night of drinking and they all laid down to sleep in the same bed.

The victim then alleged that she woke up to find him on top of her, having sex with her. She **screamed** and **demanded** he leave, and he did.



Victim: “I was passed out, Elton, and you knew it. I don’t care if you were drunk. I was out cold. Why would you do that? Had you planned it, or was it just something that came to you spontaneously? What?”

Yarbrough: “No, I didn’t plan it. I don’t know. I don’t know what happened.”

Victim: “ **Why** did you do it?”

Yarbrough: “I don’t know why ... Look, I’m sorry.”

Victim: “You made me feel so sick, so violated, so helpless ...”

Yarbrough: “I don’t really — I don’t even know what to say. It was my fault. It’s no excuse but I was drunk. Sorry for making you feel that way.”

The Curious Case of Elton Yarbrough

The one-time Texas A&M senior is now sitting in a Texas prison until at least 2015 for felony sexual assault. ___ women, including several female A&M students, testified Yarbrough raped or sexually assaulted them between 2003 and 2006, although he was only tried on one assault charge. Yarbrough says he is innocent.



The Curious Case of Elton Yarbrough



5

COOGS GET CONSENT

Get the yes/consent before you're told no. If you are told no or nothing at all – STOP. Leave nothing to chance, mystery, or “luck.” ***COOGS GET CONSENT*** is about being confident and safe.



Help!

HELP: PROSECUTE



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HELP: FILE A COMPLAINT



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HELP: GET COUNSELING

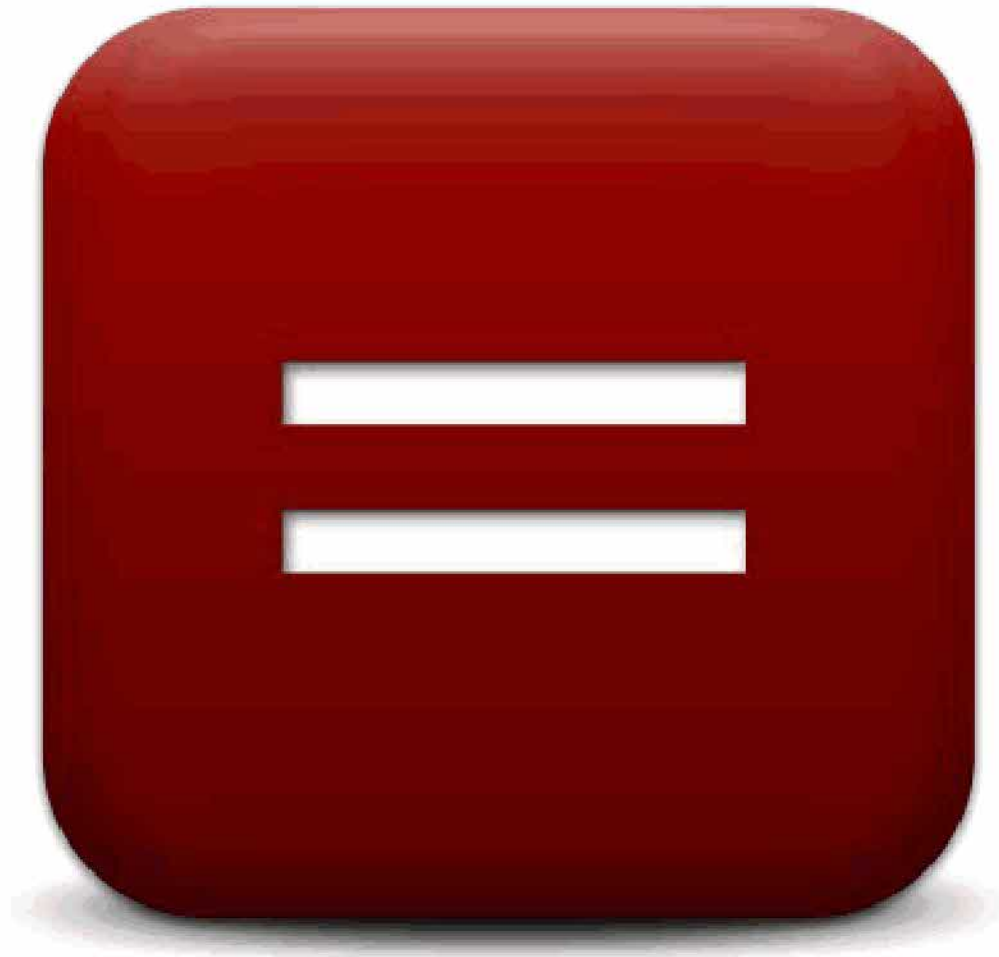


ECSTATIC

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