

“Sexual Assault Policies of DC Universities:

Creating a Model that Balances Protecting the Victim and Defending the Accused”

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I. Date Rape, Media and the American University Community

In the spring of 2010, a columnist for the Eagle newspaper at American University, Alex Knepper, wrote an article titled “Dealing with AU’s anti-sex Brigade” in which he blasts feminists’ definition of rape saying,

“ “Date rape” is an incoherent concept. There’s rape and there’s not-rape, and we need a line of demarcation. It’s not clear enough to merely speak of consent, because the lines of consent in sex — especially anonymous sex — can become very blurry. [...] Don’t jump into the sexual arena if you can’t handle the volatility of its practice!”¹

His assault on feminist ideas continued while trying to appeal to a “pro-sex” policy, charging that

“like the other great religions of the world, though, the goal of contemporary feminism and Gay Party activism is not to explain sex, but to abolish its passion. The yin and yang of masculinity and femininity is what makes sexual exploration exciting. Sex isn’t about contract-signing. It’s about spontaneity, raw energy and control (or its counterpart, surrender). Feminism envisions a bedroom scene in which two amorphous, gender-neutral blobs ask each other “Is this OK with you?” before daring to move their lips any lower on the other’s body. Worse yet: a gender-neutral sexuality can have no conception of the inherently gendered thrills of fetishism, sadomasochism, kink or cross-dressing. How blasé!”²

And most insulting to the AU community he described date rape as women “crying rape” writing,

“let’s get this straight: any woman who heads to a [fraternity] party as an anonymous onlooker, drinks five cups of the jungle juice, and walks back to a boy’s room with him is indicating that she wants sex, OK? To cry “date rape” after you sober up the next morning and regret the incident is the equivalent of pulling a gun to someone’s head and then later claiming that you didn’t ever actually intend to pull the trigger.”³

¹ Alex Knepper. “Dealing with AU’s Anti-Sex Brigade.” (The Eagle, 28 March 2010).

² Knepper, “Dealing with AU’s”

³ Knepper, “Dealing with AU’s”

His inflammatory comments enraged feminists from across the spectrum, and caused combative discussions among the student and faculty population. Some students advocated that Knepper be punished, arguing that he be removed from The Eagle staff or that he should be expelled from campus. Others defended Knepper's ideas that date rape is different than stranger rape or that his right to contribute to the marketplace of ideas should be respected as free speech. In addition to passionate discussion protestors attacked Eagle newsstands, shredding the paper containing Keeper's comments. This controversy attracted attention from multiple news organizations such as the Huffington Post, CBS's The Early Show, and ABC's Good Morning America.

From these discussions, it was clear that students have divergent ideas about not only what constitutes rape, but whether date rape even should be considered in the overall definition of rape. The groups most vocal represented the extremes of feminist ideals and anti-feminist reactions, and even sparked reaction against the University itself. One American University student said in an interview with CBS's The Early Show that "Our institution has taken a very hands-off approach to sexual assault [...] "and is trying very hard to make it just go away."

This controversial discussion begs several questions. If the students of American University were having such passionate discussion about the definition of every part of rape or sexual assault, what definition were they supposed to be following under American University guidelines? While universities did not have criminal legal power over students, accusations on something as serious as rape could result in expulsion and other serious condemnations for any student. What definition were students supposed to be operating under? And does this match up with student's opinion or actions on college campuses? Also how did the University come to these definitions? Do other universities share similar definitions? Or like the groups on campus, do universities' definitions represent diverse amount of opinions?

As described more fully in section II, colleges and universities in the past few decades have developed student codes of conduct, these codes include policies that aim for a high standard of

student behavior, and have a procedure for students to be punished for violating that code for academic violations or more serious violations such as theft or assault. Universities were largely left to their own devices to develop academic codes; there is a wealth of literature advising universities, but the United States government and courts have imposed very few requirements of universities. One effect of universities being left on their own is that their policies are incredibly diverse, especially policy on rape where there is academic and public controversy. Because the policies are so different, and students may not realize what their own schools' policy is, students can be easily confused and misled about what their university requires for sexual relationships. As shown by the public discussion at American University, students themselves have very different ideas about what sexual assault is and what should be done about it. In order to evaluate American University's sexual assault policy (found in the student code of conduct), I compare it to other DC University's sexual assault policy. There are many ways one could examine these policies, but I focus on the very specific balancing of protecting the victim and protecting defendant's rights. Based on the extreme differences in policies and in opinion about those policies, I form a "best practice" policy as a recommendation to American University and other universities to create consistency among university and have a policy that focuses on balancing protecting the victim and defendant's rights.

First I examine relevant literature describing academic discourse on the development of school policy of sexual assault by including relevant discourse on feminist ideas of rape and their push for reform, feminist backlash authors and their influence on the discussion of rape, various issues when considering rape definitions, and considerations for the development of university policy. I then the development of student's codes of conduct, and look at six universities in the District of Columbia's sexual assault policies including American University, Catholic University, Georgetown University, George Washington University, Howard University and the University of the District of Columbia. My analysis of sexual assault policies focuses on points of public and academic controversy and tries to avoid the extremist viewpoints that this controversy propagates. Although there are many ways one

could evaluate the school's policy, I focus my analysis on balancing protecting the victim from further victimization and allowing him or her to have a policy that represents his or her experience that he or she identifies as rape, and protecting the defendant from being wrongly accused in a complicated situation and from having his or her perspective of the situation ignored so that his or her actions are gathered up in a sweeping definition of rape that portrays him or her as a violent criminal.

I start my analysis by examining how the policies deal with alcohol or drug use, showing how universities address impairment, intoxication or incapacitation by alcohol/drug use drastically effects the definition of sexual assault and can easily set up any committee hearing to be in favor of the victim or defendant. Building on this very focused analysis, I examine the slightly broader issue of coercion considering how equating or differentiating the different types of coercion can stack the deck against the victim or the accused, so that they do not stand a chance of being fairly heard or have their perspective fairly respected. The definition of coercion is directly related to the issue of consent, which I examine next. With this analysis I continue to show the importance of perspective and context, and that universities need to build on their definitions of coercion and alcohol/drug use without removing autonomy from a student or setting unrealistic expectations of conduct. I then examine the definition of sexual assault showing that the terms used by the different universities are all based on different concepts related to rape. After analyzing these I develop a "Best Practice" model for American University and others to aspire to that best protects the victim while keeping in mind protecting any accused. Because the definition of rape has expanded in common social understandings, universities should differentiate between different degrees of rape based on the previous definitions use consent, coercion and alcohol/drug use. Using consent as a basis for the definition will focus on the actions of the victim, using coercion for the definition will focus on the actions of the perpetrator, and since most sexual assaults occur when either the defendant or victim is under the influence of alcohol and/or drugs, universities need to include how the use of alcohol/drugs will affect these other definitions. Finally, I will address what universities should be doing both proactively and reactively with their Sexual Assault Policies and

the importance of education to students of the definitions provided. In the end, I will show how my policy is successful because it does not lend itself to extremes in public opinion or academic discourse, but instead focuses on creating a safe environment for a student as a potential victim and protecting the belief and perspective of an accused student as a potential defendant.

II. Review of Relevant Literature

I compare different school's sexual assault policies as an important addition to a wealth of literature concerning rape and sexual assault because they are a pinpoint for controversial and complex issues including the definition of rape, the development of recognition of acquaintance rape, rape on college campuses, the connections between rape and alcohol use, the rights of victims/survivors in light of the gravity of rape offenses, and the rights of respondents/defendants, among others. The emphasis on college campus brings many of these issues to light. The additional look at policy helps frame how colleges and universities are dealing with the complexities of rape with the backdrop of academic discourse that occurs on campus. Understanding these discussions helps to explain the different sexual assault policies of schools and the complexities of rape in general.

The importance of rape and sexual assault as issues in the United States was promulgated by the second-wave of feminists in the 1960s and 1970s. The anti-rape movement was itself spawned off by this larger wave of feminism throughout the United States.⁴ Researchers, including Bavacqua, describe how this movement focused on dispelling rape myths, exposing the trauma experienced by rape victims, and showing society's failure to help women who has been exposed to violent acts related to sex.⁵ Those involved in the anti-rape movement also looked deeply at women's control of their own sexuality, and saw anti-rape as part of a larger issue of women's equality with men.⁶

⁴ Maria Bavacqua, *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault* (Boston: Northeastern University Press, 2000).

⁵ Bavacqua

⁶ Catharine Pierce Wells, "Date Rape and the Law: Another Feminist View" in *Date Rape: feminism, philosophy and the law* ed. by Leslie, Francis. (PA: Pennsylvania State University, 1996)

Feminist discussion of rape focuses on a variety of issues. One of the most important works is by Brownmiller⁷ who first exposed rape as a problem for all women. In it she calls women to recognize that rape is an issue that affects everyone and rape is more than just forcible rape by a stranger. Following Brownmiller other authors focus on trying to combat various rape myths such as the connection of rape to sexuality, instead of their connection of rape to violence.⁸ Some feminists focus on consciousness-raising by showing that all sexual interaction between men and women are tainted by men's need to control and be violent toward his woman. . These authors view all sexual interactions as indicative of the stereotypes of masculinity and femininity assigned by males.⁹ These ideas of sexuality are connected to the idea that a rape of one woman was a rape against all women, because of this commonality of inequality in sexual interactions for all women. Feminists try to dispel the myth that rape is committed by the stranger attacking you from the bushes, and bring to light that rape was most often committed by dates, friends, husbands and relatives.¹⁰ They also assert that women should not be blamed for the violent acts of these men. They call for recognition of the trauma experienced by rape victims that can be shown through silence, depression, increased sexuality, and mental illness.¹¹

Part of the feminist discussion and consciousness-raising of rape issues developed into the effort to re-define rape both legally and socially. Until that point rape was very narrowly defined by force, penetration and lack of consent, and often required corroboration of the victim's testimony to prove the incident had occurred.¹² Consent itself was loosely defined so that anything other than a vocal "no" was

⁷ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine Books, 1975)

⁸ Brownmiller, Andrea Dworkin., *Intercourse* (New York: The Free Press, a division of Macmillan, Inc., 1978)

Catharine A. MacKinnon, *Women's Lives, Men's Laws* (Cambridge, Massachusetts; The Belknap Press of Harvard University Press, 2005) &

Catharine A. MacKinnon, Catharine A. *Toward a Feminist Theory of the State* (Cambridge: Massachusetts; Harvard University Press, 1989)

⁹ Dworkin, *Intercourse* & Andrea Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics* (New York: Harper & Row, Publishers, 1976)

¹⁰ Dworkin, *Blood: Prophecies and Discourses on Sexual Politics*.

MacKinnon, *Toward a Feminist Theory of the State*.

¹¹ MacKinnon, *Toward a Feminist Theory of the State*.

¹² MacKinnon, *Toward a Feminist Theory of the State*.

consent, including silence.¹³ In general feminists called for the recognition that rape was anytime that consent was not verbalized as a yes at any stage of sexual interaction, not just at penetration.¹⁴ Some feminist scholars called for the use of a communicative consent requirement, which would require a “yes” at every level of intimacy.¹⁵ In general feminists advocated for a woman’s absolute control of her body, and for any violation of a woman’s autonomy to be declared an act of violence punishable by society..

MacKinnon and Dworkin both enhanced this literature by becoming more radical in their feminist ideas. They call for the understanding that because women are not equal with men, then all sexual relations between men and women could be considered rape.¹⁶ They see sex as tool for men to continue their domination of women. According to Dworkin, “rape is a colonizing act” and a “function of male imperialism over and against women.”¹⁷ MacKinnon points out that women and men are not similarly situated in regards to sexual assault because they are not equally subject to it. She advocates for recognition that rape cannot be defined in a gender-less statute, because “women are sexually assaulted because they are women: not individually or at random, but on the basis of sex, because of their membership in a group defined by gender.”¹⁸ MacKinnon also looks at the definition of rape in regards to coercion, because she sees the gender hierarchy as innately coercive on sexual relations. She looks at positions such as teacher/student or boss/employee and sees a relationship between a man and a woman which is inherently coercive and therefore a violation of a woman’s total control of her body. She looks at this as part of the understanding of consent, where she finds that consent can include sex that is forced by inequality. Dworkin advocates for consent to denote “meaningful and knowledgeable

¹³ MacKinnon, *Toward a Feminist Theory of the State*.

¹⁴ Dworkin, *Our Blood* & MacKinnon, *Toward a Feminist Theory* & Brownmiller, *Against Our Will*.

¹⁵ Lois Pineau “Date Rape: A feminist Analysis” in *Date Rape: feminism, philosophy and the law* ed. by Leslie Francis, Leslie (PA: Pennsylvania State University, 1996)

¹⁶ MacKinnon *Toward a Feminist Theory of the State*, MacKinnon *Women’s Lives, Men’s Laws* Dworkin *Our Blood: Prophecies and Discourses on Sexual Politics*

¹⁷ Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics*, 32.

¹⁸ MacKinnon, *Women’s Lives, Men’s Laws*, 129.

assent not mere acquiescence.”¹⁹ For MacKinnon every sexual act is under some sort of coercion, which she sees as the continued oppression of women. She asserts that rape is any sex that lacking female desire not just sex lacking female consent.²⁰

Feminist discussion of rape in society and a general campaign to be hard on crime during the Reagan era caused a variety of rape reforms. Researchers point to the way states expanded the definition of rape to include rape by a husband, removed corroboration requirements for rape, eliminated requirements of physical injury, and created rape shield laws to protect victims becoming re-victimized by the legal system as some of the most important reforms.²¹ Part of this reform included social programs to increase efforts for victim treatment through rape crisis centers, and counseling.²² Others advocating for reform saw solutions through re-adjusting men’s commitment to equality in sexual relations.²³

Reactions to these changes and feminist ideas of rape were numerous, but the anti-anti-rape academic movement sparked headlines throughout print media and gained attention through a larger militant reaction against feminism. The authors featured most prominently include Paglia, Sommers, Roiphe and Farrell. One of the biggest concerns of these authors and others is the increased definition of rape, which they see as a too-broad sweep at the law.²⁴ After scholars presented high statistics of women who had been raped, reactionary academics attacked the definitions used in the research. Academics saw that there were events in the study that were counted as rape even when the person participating in the study did not identify that experience as rape; they argued this drastically increased the rape statistics, and feminists used this as a way to gain media attention and baselessly increase fear

¹⁹ Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics*, 43

²⁰ MacKinnon, *Women’s Lives, Men’s Laws*, 244.

²¹ Bavacqua, *Rape on the Public Agenda*

²² Bavacqua, *Rape on the Public Agenda*

²³ Dworkin, *Our Blood*

²⁴ Warren Farrell, *The Myth of Male Power: Why Men are the Disposable Sex* (New York: Simon and Schuster, 1993), Camille Paglia, *Vamps and Tramps: New Essays* (New York: Vintage Books, 1994) & Christina Hoff Sommers, *Who Stole Feminism: How Women Have Betrayed Women* (New York: Simon and Schuster, 1994).

among women. Paglia argues rape should be defined as either “a stranger rape or the forcible intrusion of sex into a nonsexual context.”²⁵ Farrel argues that the change of the definition of rape to include date rape was a huge mistake, because the violence associated with forcible rape is not the same as a date rape event which he saw as the most potential for morning regrets after a drunken night.²⁶

Paglia, Farrel and Sommers react against the feminist expansion of the definition of rape, because they think sexual relations between men and women are being inaccurately described by feminist scholars. Similarly, Shalit reacts very negatively to feminist ideas of sexuality, calling for more modesty and for women to be more demure in their actions instead of the feminist way of more equal and showing an increased understanding and interest in sexuality.²⁷ Paglia’s research in particular attacked feminist views of sexual politics in general, which she argued was out of touch with real sexuality and propagated by middle class privileged girls.²⁸ Farrel in particular pointed to the probability of false allegations by women, and how the change in rape laws helped her to abuse the system in her favor.²⁹ While feminists call for more open discussion of sex, Shalit calls for sexuality to return to private bedrooms. They advocate for a change to graduate rape laws so that date rape was not equated with stranger rape.³⁰ This kind of definition change has other effects as well. Sommers despairs this increased role of the victim caused by the dramatically increased definition of rape, which she sees as hurting women who only continued to see themselves in the passive, victim role in gender relations.³¹ Similarly, Alexandre sees that women’s general autonomy is limited by those who pretend that all situations regarding sexual assault are the same especially when one considers non-traditional victims

²⁵ Paglia, *Vamps and Tramps*, 25.

²⁶ Farrel *The Myth of Male Power*.

²⁷ Wendy Shalit, *A Return to Modesty: Discovering the Lost Virtue* (New York: The Free Press, 1999).

²⁸ Paglia *Vamps and Tramps*.

²⁹ Farrel *The Myth of Male Power*.

³⁰ Mark Cowling, *Date Rape and Consent* (Brookfield Vermont: Ashgate, 1998).

³¹ Sommers, *Who Stole Feminism*.

such as women who participate in prostitution and women who engage in multi-partner sexual activities.³²

Even with reforms, the definition of rape is still in flux and academics still pursue reform from different perspectives. Duncan notes that “too many modern statutes cast such a broad net that they unjustly brand some individuals as rapists; and [...] that these statutes result in conviction for a particularly serious crime (rape) that does not always adequately reflect the offense committed (nonconsensual sex).”³³ Duncan argues the definition of rape should be changed to forcible rape and nonconsensual sex based on the ideals of our criminal justice system which is “founded on the principle that it is better for ten guilty persons to go free than it is for one innocent person to go to jail” which is why for any crime “an evil act without an evil mind is insufficient to sustain the charged criminal offense.”³⁴ She argues that we as a society should be more careful about convicting men and boys of rape in uncertain circumstances of he-said/she-said. At the very least, acquaintance rape should be defined differently than forcible rape because the offender in these different kinds of rape are different kinds of criminals according to Duncan. In response to the idea of graduated rape laws, legal analysts argue that the graduated rape law would be no more effective because prosecutors using laws defined on amount of force would have limited effect on prosecuting those rapes lacking force.³⁵

Related to the definition of rape, many authors also debate the definition of consent. Adams argues that the assumptions and implications of consenting are in many ways gendered and that we can only understand consent through an understanding of this gendered lens.³⁶ Little shows how the “no means no” standard (comparable to the “just say no” concept for drugs) has not caught on enough in

³² Michele Alexandre, ““Girls Gone Wild” and Rape Law: Revising the Contractual Concept of Consent and Ensuring Unbiased Application of “Reasonable Doubt” When the Victim is Non-Traditional” in *American University Journal of Gender, Social Policy & the Law*, (2009), 41.

³³ Meredieth J. Duncan, “Sex Crimes and Sexual Miscues: The Need for a Clearer Line Between Forcible Rape and Nonconsensual Sex” in *Wake Forest Law Review* (2007), 1092

³⁴ Duncan, “Sex Crimes and Sexual Miscues”, 1131

³⁵ Kathleen F. Cairney, “Addressing Acquaintance Rape: The New Direction of the Rape Law Reform Movement” *St. John’s Law Review Association* (1995), 291.

³⁶ David M. Adams, “Date Rape and Erotic Discourse,” in *Date Rape: feminism, philosophy and the law* ed. by Leslie Francis, (University Park, PA: Pennsylvania State University, 1996), 38.

society so that women are still fighting for the ability to say no and be taken seriously.³⁷ Cowling looks at whether the idea of consent taken from political theory applies to sexual consent by looking at the framework for making sense of consent: knowledge of what is consented, intending to consent, communicating one's consent, against a background of free choice.³⁸ Cowling shows how intending to consent is often confused by vague terms or innuendo, and by the fact that some consenting behavior is metaphorical and symbolic. He argues that there is a continuum for consent which ranges from consent with reservations to pressurized sex to rape. Although he finds that good communication would fix problems about what is consented, he acknowledges that lawmakers should represent these degrees of consent in the degrees of rape.³⁹

Another important topic for academic research in sexual assault is research advocating for victim's within the criminal justice system. Those who defend victim's rights do so passionately against the fear of re-victimization by the legal system and society of women who say they have been raped. Reardon and Hotelling point to the way that society still blames the victim for being raped if the victim was using drugs or alcohol, consenting to a date with the offender, or dressing provocatively as a call for more reform. Hotelling also shows how despite the complexities of sexual assault, any survivor needs to be treated with dignity and respect and not be told to have complete fear in sexual interactions be healing through education that sexual assault is about power and control. Research in this area includes analysis of society's perception of victims regarding alcohol and clothing.⁴⁰ Others conduct in-depth analysis of allegations of rape mostly finding that false allegations are minimal, and that prosecutors deem most allegations not legitimate enough to prosecute fully.⁴¹ There is also increasing recognition

³⁷ Little, "From No Means No to Only Yes Means Yes", 1322

³⁸ Cowling, *Date Rape and Consent* 81

³⁹ Cowling, *Date Rape and Consent* 86-90

⁴⁰ Trent W. Maurer, & David W. Robinson, "Effects of Attire, Alcohol, and Gender on Perceptions of Date Rape" *Sex Roles*, (2008), 423-434.

⁴¹ David Lisak, Lori Gardinier, Sarah C. Nicksa, & Ashley M. Cote, "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases" in *Violence Against Women*, (2010), 1318.

that the treatment of victims and women in general needs to include empowerment through education, dialogue, and activism.⁴²

Others in the legal arena have researched defendant's rights when defendants are faced with charges such as sexual assault or rape. These researchers fear that in rape cases many states have removed the option for a defendant to have the defense of mistaken consent, and that increasingly the legal concept of mens rea is left out of rape cases in order to side with victims in the legal process with the consequence of violating this basic principal of our judicial system.⁴³ Others see the right to confront our accusers, another vital principal of our judicial system, as continually violated by the growth of rape shield laws.⁴⁴ Klein in particular examines rape laws and shows how Due Process is violated by several of the provisions in rape laws because rape has become an exception to the protections typically given to those charged with criminal activity.⁴⁵

There is still controversy over whether there can be a mistaken belief in consent by defendants, and whether that should be included in policy considerations. "Mistaken belief in consent [...] entails a claim by the defendant that though the victim may not have consented to sexual intercourse with him he reasonably believed that she consent ed. This defense is appropriate whenever the victim's conduct is equivocal or ambiguous, such that it was reasonable for the defendant to infer consent. The defendant usually points to the victim's conduct and argues that he reasonably believed the victim consented. A mere claim of mistake by the defendant is generally not dispositive; it is merely one factor to be considered by the court."⁴⁶ Pineau explains that a man's sincere belief in the consent of his victim may be sufficient to defeat mens rea requirement, although the court (or in this case hearing

⁴² Hotelling, "Summary Remarks: Emerging Themes and Implications."

⁴³ Angela P Harris, & Lois Pineau, "A Dialogue on Evidence" in *Date Rape: feminism, philosophy and the law* ed. by Leslie Francis (PA: Pennsylvania State University, 1996). & Richard Klein, "An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness" *Akron Law Review*, (2008), 981.

⁴⁴ Klein "An Analysis of Thirty-Five Years of Rape Reform."

⁴⁵ Klein "An Analysis of Thirty-Five Years of Rape Reform."

⁴⁶ Okechukwo Oku., "Unveiling the Cloak of Deception: Determining When Ignorance or Mistake Should Excuse Responsibility in Louisiana" in *Southern University Law Review* (1996), 233.

committee) will also take into consideration whether that belief was or was not reasonable.⁴⁷ Oku argues that the defendant's drunkenness should not be a factor at all in the court's decision of whether the claim of mistake is reasonable, but that the defendant's context in the situation is important. Oku argues that reasonableness should not be an "artificially constructed standard of reasonableness"⁴⁸ that forces the court to hold the defendant to an unrealistic standard. This idea of perspective is confounded by society accepting the idea of male aggression and female reluctance as normal parts of seduction.⁴⁹ Pineau criticizes this as a return to the idea that "women were taught to deny their sexuality and to aspire to ideals of chastity" which she believes has not changed much at all.⁵⁰ Harris shows that consent in the courts is measured from what a reasonable woman would feel so it makes sense to have a defense that an accused could have reasonably misconstrued her behavior. She argues that "the reasonable mistake defense is not simply a concession to legal sexism; it reflects a recognition that the criminal law must respect the principal of mens rea in the broad sense, the so called culpability principal."⁵¹ MacKinnon opposes the use of mistaken belief in consent, because her deeply gendered view of society and the law makes this kind of idea impossible. She argues that "whether the law calls this coerced consent or defense of mistaken belief in consent, the more the sexual violation of women is routine, [...] the more belies equating sexuality with violation become more reasonable, and the more honestly women can be defined in terms of their fuckability."⁵²

While the literature mentioned thus far has focused on rape and sexual assault generally, the research focusing on rape and sexual assaults on college campuses is also important. The most quoted and seminal study of acquaintance rape on college campuses was completed by Mary Koss which found

⁴⁷ Pineau, "Date Rape: A feminist Analysis" 2.

⁴⁸ Oku, *Unveiling the Cloak of Deception*, 255.

⁴⁹ Pineau, "Date Rape: A feminist Analysis" 9.

⁵⁰ Pineau, "Date Rape: A feminist Analysis" 12.

⁵¹ Angela P. Harris, "Forcible Rape, Date Rape, and Communicative Sexuality: A Legal Perspective" in *Date Rape: feminism, philosophy and the law* ed. by Leslie Francis (PA: Pennsylvania State University, 1996), 60.

⁵² MacKinnon, *Toward a Feminist Theory of the State*, 183.

that one in four college women had been raped.⁵³ There have been many studies looking into the rate of sexual assaults especially detailing the nature of the relationship of the offender to the victim, and other factors relating to the assault such as location and alcohol or drug use.⁵⁴ There are, however, limitations in trying to compare these studies to each other to gauge their own accuracy. Obviously each study may have its specific area of focus that makes it different; i.e. whether it focuses on coercion or alcohol use. However, the biggest issue comes from the varying definitions used to describe rape and sexual assaults. Some researchers choose to categorize different kinds of assault whether completed rapes or attempted rapes, while others use any unwanted sexual contact as a rape. This stems from earlier discussion on the complication of defining rape in general in the academic field. There has been research looking into what those participating in the study define as rape and what the study producers define as rape which shows developments in rape acceptance on college campuses.⁵⁵ Lombardi and Jones looked specifically at reports from university officials of the amount of rapes. They examine these numbers while analyzing how these numbers are affected by the Clery Act which requires universities and colleges to report rapes. They argue that the Clery Act is typically not followed either through definition problems or blatant misuse of reporting by colleges.⁵⁶

⁵³ Robin Warshaw, *I Never Called it Rape: the Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape* (New York: Harper and Row Publishers, 1988).

⁵⁴ Warshaw.

Shelly Schaefer Hinck, & Richard W Thomas, "Rape myth acceptance in college students: How far have we come?" *Sex Roles*, 815.

Victoria L. Banyard, S. Ward, E. S. Cohn, E. G. Plante, C. Moorhead, & W. Walsh, "Unwanted Sexual Contact on Campus: A Comparison of Women's and Men's Experiences" in *Violence and Victims*, (2007) 22

Bonnie S. Fisher, Leah E. Daigle, & Francis T. Cullen. *Unsafe in the Ivory Tower: The Sexual Victimization of College Women*. California: SAGE publications, 2010).

Terri L. Messman-Moore, Aubrey A. Coates, Kathryn J. Gaffey, & Carrie F. Johnson. "Sexuality, Substance Use, and Susceptibility to Victimization: Risk for Rape and Sexual Coercion in a Prospective Study of College Women. *Journal of interpersonal violence*, 2008), 1730.

Antonia Abbey, Donna McDuffie, & Pam McAuslan, "Alcohol and Dating Risk Factors for Sexual Assault Among College Women" in *Psychology of Women Quarterly* (1996) 147-149.

⁵⁵ Warshaw.

Arnold S. Kahn, "2003 Carolyn Sherif Award Address: What College Women Do and Do Not Experience as Rape" in *Psychology of Women Quarterly* (2004) 9-15.

⁵⁶ K. Lombardi, & K. Jones, "Campus sexual assault statistics don't add up." (The Center for Public Integrity, 2009)

Even though these make comparison difficult, each study highlights different issues within rape and sexual assault which are useful when looking at what kind of policy is needed. Especially important is recognition through this research that men and women view their sexual interactions differently, the association of sexual assault and alcohol⁵⁷, and the prominence of fraternity and athletic team issues and sexual assault.⁵⁸ Research into the type of assaults that occur has brought public awareness about how acquaintance rape is much more prevalent on college campuses than stranger rape. Many researchers have pointed to prevention by universities as the best possible response to this through education of collegians about sexual interactions.⁵⁹ Others have called for closer analysis of communication during sexual interactions, and the increased complexity when alcohol is involved on so many college campuses.⁶⁰

Following Koss' survey, part of the campus movement was to construct rape on college campuses as a new social problem.⁶¹ Reflecting other reform, academics advocate for the expansion of the definition of rape on college campuses. Ward et al. found four types of sexual assault: stranger, party, acquaintance, and date. There are, however, serious consequences to the change in definition. The change in policy has created a strong disconnect between the university's policy and student understanding. One study found that college women themselves did not agree on what constituted rape. Additionally, some scholars notice that the growing definition of rape can be extremely detrimental to potentially accused students. This is because rape is originally defined and conceptualized as a violent crime, and the offender of that crime can have serious punishments and be

⁵⁷ Antonia Abbey, Donna McDuffie, & Pam McAuslan, "Alcohol and Dating Risk Factors for Sexual Assault Among College Women" in *Psychology of Women Quarterly* (1996) 147-149 & George W Dowdall, "Alcohol Consumption on College Campuses" in *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case*, ed. by Michael L. Siegal., (Durham, North Carolina: Carolina Academic Press, 2009), 79-99.

⁵⁸ Michelle S. Jacobs, "Invisible Criminality: Male Peer-Support Groups, Alcohol, and the Risk of Aggressive Sexual Behavior." In *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case*, ed. by Michael L. Siegel., (Durham North Carolina: Carolina Academic Press, 2009). 103-123.

⁵⁹ Carol Bohmer & Andrea Parrot, *Sexual Assault on Campus: The Problem and the Solution* (New York: Maxwell Macmillan International, 1993).

⁶⁰ John J. Sloan III & Bonnie S. Fisher, *The Dark Side of the Ivory Tower: Campus Crime as a Social Problem*. (Cambridge: Cambridge University Press, 2011)

⁶¹ Sloan & Fisher.

considered a violent criminal. Expanding the definition of rape expands this label of violent criminal to a much wider net of men. They note that “a student accused of sexual assault has an important interest in his or her education that must be scrupulously protected by schools. A dismissal or expulsion from a college or university, the “capital punishment” of campus disciplinary systems, can alter a student’s legal status and make admission to another school impossible. Specifically, when a student is expelled, he is often unable to enroll in a different university because in order to transfer, he must demonstrate to the new school that he left his former school in good standing.”⁶² Tenecorwiz also shows that students can be forever damaged, monetarily if they cannot attend a university, and by reputation if the case is highly publicized.

Another response to the alarming issue of rape and sexual assault on college campuses has been through the student conduct code. Here university officials have been able to show the potential actions, and provide relief for the victim through proper channels of judicial reaction and counseling opportunities available. Researchers recommend that conduct codes be written on all college campuses, have easily follow able procedure, and have appropriate penalties that give both specific and general deterrence.⁶³ Bohmer emphasizes that the codes need to have a procedure that is easily accessible to victims, and one that they can see will have consequences to follow, part of this includes making sure the code is not over legalistic. Other analyses of conduct codes compare the definitions and procedures with general ideas of rape and sexual assault in the legal system.⁶⁴ Some call for greater tools for victims while others advocate the importance of student rights. Analyzing the famous rape accusation of Duke Lacrosse players that ended up being false, Orenstein argues that because of the notorious labeling of rape and the harsh punishments associated with it, there must be proper rules that

⁶² Lisa Tenerowicz, “Student Misconduct at Private Colleges and Universities: A Roadmap for “Fundamental Fairness” in Disciplinary Proceedings” *Boston College Law Review* (2001), 653.

⁶³ Martin D. Schwartz, & Walter S. DeKeseredy. *Sexual Assault on the College Campus: The Role of Male Peer Support* (California: Sage Publications, 1997).

Reardon, Bohmer & Parrot

⁶⁴Matthew R. Silliman, “The Antioch Policy, A community experiment in communicative sexuality” in *Date Rape: feminism, philosophy and the law* ed. by Leslie Francis (University Park, PA: Pennsylvania State University, 1996).

protect the innocent from these kinds of false accusations. She also acknowledges, however, that underreporting is a far larger problem than false reporting, so one cannot forget about making sure the victim is protected as well. She writes, “the rules and procedures must be formulated with both the sexually brutalized victim and the absolutely innocent accused in mind.”⁶⁵

Schools look to greater academic discussions for the definitions in their policies. For example, Pineau advocates for a new kind of consent, communicative consent where verbal consent must be achieved at every level of intimacy.⁶⁶ Antioch University put this idea into place by having communicative consent be a part of their sexual assault policy. Cowling summarizes the three criticisms of communicative sexuality: that it doesn’t match women who are passive and romantic sexually, that it is too remote from real life, and that consensual sex under patriarchy is rape so even communicative sexuality is suspect.⁶⁷ Silliman contradicts the negative to reaction to this by saying the policy does not restrict overly restrict anyone’s liberty and if it restricts liberty at all it restricts the liberty of men to have privilege over women in sexual interactions.⁶⁸ Little finds no reason why communicative consent should negatively affect intimacy, he argues that two partners willingly discussing their preferences and desires will only produce better sexual results.⁶⁹ Biebel also advocates for the communicative consent standard used by Antioch College.⁷⁰ Little argues that communicative consent does not undercut women’s sexuality, but only insists that prior to rough sex or being swept off her feet, she has provided consent in a previous communication.⁷¹ He argues that communicative consent does not require permission slips; it only requires that men cannot use women’s silence as consent. He also sees it as a way to gain equality in the relationship, and a way to try and get rid of the antiquated model of female

⁶⁵ Aviva Orenstein, “Presuming Guilt or Protecting Victims?: Analyzing the Special Treatment of Those Accused of Rape” in *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case* ed. by Michael L. Seigel (Durham, North Carolina: Carolina Academic Press, 2009), 352.

⁶⁶ Pineau, “Date Rape: A feminist Analysis.”

⁶⁷ Cowling, *Date Rape and Consent*. 101.

⁶⁸ Silliman, “The Antioch Policy,” 175.

⁶⁹ Nicholas J. Little, “From No Means No to Only Yes Means Yes: the Rational Results of An Affirmative Consent Standard in Rape Law” in *Vanderbilt Law Review* (2005), 1359-1360

⁷⁰ Biebel, “I Thought She Said Yes,” 153.

⁷¹ Little, “From No Means No to Only Yes Means Yes,” 1346.

passivity in relationships.⁷² Cowling shows that consenting behavior involves ambiguous invitations and responding to male advances, so that those who want communicative consent to be verbal consent are recommending entire changes to sexual customs.⁷³ Cowling notes that “the policy seems largely to have functioned in a symbolic way, as a statement of what is expected on the Antioch campus, rather than as the basis of numerous prosecutions” but “the main flaw in the policy was felt by those at Antioch to be that it does not deal satisfactorily with mutual initiation.” Additionally, “the Antioch policy generated...ridicule in the media: the public image of the college had its students setting out on dates with a pile of consent forms, a breathalyzer and a lawyer, whereas the main force of the policy is simply a very strong insistence on constituting verbal consent throughout sexual transaction”⁷⁴

III. How Universities Deal With Rape on College Campuses

a. Rape on College Campuses

In the early 1980s, a study funded by the National Institute of Health was conducted sampling 6,100 college women across the country. Mary Koss, who spearheaded the project, found that one in four college women had experienced rape or attempted rape.⁷⁵ This number shocked the general public, and is still cited today in support of action on rape and sexual assault on college campuses (although this number is disputed due to Koss’s definition of rape⁷⁶). What Koss’ study also found was that the majority (84%) of the raped women knew their attacker.⁷⁷ Warshaw points out that many college girls were taught, that they should only have sex in the context of a loving relationship, leaving many women confused and disoriented since most rapes were actually done by people knew whether it was a date, friend, or long-term boyfriend.⁷⁸ She notes that college campuses were a “petri dish” of date rape and

⁷² Little, “From No Means No to Only Yes Means Yes,” 1348.

⁷³ Cowling, *Date Rape and Consent*, 92.

⁷⁴ Cowling, *Date Rape and Consent*, 100.

⁷⁵ Warshaw, *I Never Called it Rape*, xx.

⁷⁶ Katie Roiphe, *The Morning After; Sex, Fear, and Feminism on Campus*. Boston: Little Brown and Company, 1993).

⁷⁷ Warshaw, *I Never Called it Rape*, xxi.

⁷⁸ Warshaw, *I Never Called it Rape*, 54.

acquaintance rape, something that had never before been brought to national attention.⁷⁹ Beginning late in the 20th century, more people were attending college, and more importantly leaving home and removing themselves from parental guidance and adolescent controls. In this environment many students exert that freedom through a social culture of partying and dating.⁸⁰ Alcohol is available across college campuses, and some authors point to the rise on some campuses of “hooking up” where students focus on sexuality without bonds or commitments.⁸¹ Campus wide, students are experimenting with drugs, alcohol and sex in ways that many were saying is unsafe for women.⁸² Indeed the Ms. Survey found that alcohol was a significant factor in acquaintance rape, since about 75% of the men and at least 55% of women involved in acquaintance rape had been drinking or taking drugs just before the offense.

Although Koss points to a rampant problem of acquaintance rape on college campuses, rates of sexual assault reported by DC universities are actually very low. According to the Office of Postsecondary Education⁸³, each of the schools reported extremely low rates of rape and sexual assault between 2007 and 2009. American University reported 2 forcible sexual offenses in 2007, 2 forcible sexual offenses in 2008 and 3 forcible sexual offenses in 2009. They reported 0 non-forcible sexual offenses through 2007, 2008 and 2009. Catholic University reported 1 forcible sex offense in 2007, 2 forcible sex offenses in 2008 and 2 forcible sex offenses in 2009. They reported 0 non-forcible sex offenses through 2007, 2008, 2009. George Washington University reported 5 forcible sex offenses in 2007, 6 forcible sex offense in 2008, and 9 forcible sex offenses in 2009. They reported 0 non-forcible sex offenses in 2007 and 2009, and 1 non-forcible sex offense in 2008. Georgetown University reported 6 forcible sex-offenses in 2007, 8 forcible sex-offenses in 2008, and 9 forcible sex offenses in 2009. They reported 0 non-forcible sex offenses through 2007, 2008 and 2009. Howard University reported 1

⁷⁹ Warshaw, *I Never Called it Rape*, 4.

⁸⁰ Warshaw, *I Never Called it Rape*, 24.

⁸¹ George W. Dowdall, “Alcohol Consumption on College Campuses” in *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case* ed. by Michael L. Siegal (Durham, North Carolina: Carolina Academic Press, 2009)

⁸² Warshaw, *I Never Called it Rape*, 40.

⁸³ “The Campus Safety and Security Data Analysis Cutting Tool”. Office of Postsecondary Education. U.S. Department of Education.

forcible sex offense in 2007, 1 forcible sex offense in 2008, and 4 forcible sex offenses in 2009. They reported 0 non-forcible sex offenses through 2007, 2008, and 2009. The University of the District of Columbia reported 2 forcible sex offenses in 2007, 1 sex offense in 2008, and 1 forcible sex offense in 2009. They reported 0 non-forcible sex offense through 2007, 2008, and 2009. For these reports, forcible sex offense includes acquaintance rape and fondling, while non-forcible sex offense only applies to incest and statutory rape.⁸⁴ For comparison, there are other studies that have found incidents of rape and sexual assault to be between Koss' results (1 in 4) and the assaults reported by universities including the study by Messman-Moore et al, which found that 9.5% of women surveyed self-reported being raped.⁸⁵ Another study done in 2001 by the Justice department completed through interviews with college women found that 3% of college women are sexually attacked.⁸⁶

There are a variety of reasons for the disparity between Koss' account and campus statistics. The most striking difference is that Koss' analysis used surveys of students themselves, while universities would only report sex offenses that were reported to the university. Additionally, college campuses are wary of addressing the issue of sexual assault, since it might diminish the school's appeal to prospective students. The image of the university is at stake, especially with a topic like rape and sexual assault. Another large problem with the comparison of these statistics is that Koss defined sexual assault very broadly, including any unwanted sexual contact while universities report according to a stricter definition of sexual assault. Lombardi and Jones note that "Across the higher education community, such discrepancies are not unusual. A nine-month investigation by The Center for Public Integrity has found that limitations and loopholes in the federal mandatory campus crime reporting law, known as the Clery Act, are causing systematic problems in accurately documenting the total numbers of campus-related sexual assaults."⁸⁷ Generally Lombardi and Jones show that far more sexual offenses are

⁸⁴ Lombardi & Jones.

⁸⁵ Messman-Moore, Coates, Gaffey, & Johnson, 1731.

⁸⁶ Cindy Hanford, "The Sexual Victimization of College Women". The National Organization for Women. March 7, 2002.

⁸⁷ Lombardi & Jones.

occurring on campuses than those that are reported. In fact, even the crisis-service programs and clinics at universities show higher numbers of reported rapes than those reported by universities. In 2006, in fact, 3,068 two- and four-year colleges and universities -77 percent - reported zero sexual offenses.”⁸⁸ Lombardi and Jones argue that this can be attributed to college impropriety and that students may not be reporting offenses. This corresponds to other studies which found that respondents reported sexual attacks less than 5% of the time to law enforcement officials.⁸⁹ Another issue is that the Clery Act also only counts offenses that occurred on or near campus and in school affiliated buildings like fraternity houses. It does not include off-campus locations like apartments, where many date rapes are believed to take place.

Regardless of reporting issues, colleges deal with the problem in a variety of ways. Many put up “blue lights” around campus, a visual reminder to parents touring college campuses that the college is fighting rape.⁹⁰ Many schools also provide self-defense classes for women, along with student run programs like “Take Back the Night” which advocate women’s place in the public arena.⁹¹ While this is a nice reminder to parents, it actually does little for college students since most rapes don’t occur on campus by a stranger but off campus in apartments or houses by friends and dates.⁹² Most recently, students have asked for better policies regarding sexual assault including- education programs for students on healthy sexual relations and policy⁹³, the removal of students who are accused of rape from the university⁹⁴, better victim advocacy programs⁹⁵, and better resources for victims dealing with the trauma of rape or sexual assault.⁹⁶

⁸⁸ Lombardi & Jones. “Campus sexual assault statistics don’t add up.”

⁸⁹ Hanford, “The Sexual Victimization of College Women”.

⁹¹ Bavacqua. *Rape on the Public Agenda*

⁹² Andrea Parrot, “Recommendation for College Policies and Procedures to Deal with Acquaintance Rape” in *Acquaintance Rape: the Hidden Crime* ed. Andrea Parrot and Laurie Bechhofer (New York: A Wiley-Interscience Publication, John Wiley and Sons, Inc., 1991), 366.

⁹³ Hinck & Thomas, “Rape myth acceptance in college students,” 815.

⁹⁴ Parrot, Recommendation for College Policies,” 399

⁹⁵ Lombardi, & Jones. “Campus sexual assault statistics don’t add up.”

⁹⁶ Hanford, “The Sexual Victimization of College Women”.

Neidig offers a slightly different solution when it comes to protecting victims in the event of a sexual assault when alcohol or drugs are involved: make it clear that “an intoxicated student is unable to give consent to sexual acts.”⁹⁷ Although he shows that some find this kind of rule to be unfair since it tends to hold the offender responsible for his/her actions when he/she is intoxicated but does not hold the victim responsible when they are intoxicated. Neidig shows, however, that any other kind of rule would be difficult to enforce on a college campus where drinking is so prevalent and that a bright line such as this provides clarity to students. Kramer shows that some state laws clearly establish someone alcohol in order to intoxicate so that they cannot give consent as coercion, equated with force or the threat of force.⁹⁸ Fisher, Daigle and Cullen make similar distinctions about alcohol and drug related sexual assault for research study purposes, they argue that rape induced by alcohol is a different kind of rape, but one that should be treated with the same harshness as forcible rape. They further show that there are two kinds of alcohol or drug induced rape: incapacitated rape which means intoxicated by voluntary use by victim, and alcohol or drug facilitated rape which means the offender deliberately and deceptively administered drugs or alcohol to the victim.⁹⁹ They argue that although forcible rape and incapacitated rape may have similarities, it is the inability of the victim to consent to sexual intercourse that is distinctive in incapacitated rape.¹⁰⁰ The key is the distinction whether force or alcohol/drugs was used as coercion.

b. The Development of Student Codes of Conduct

Up until the 1970s, colleges followed the concept of *in loco parentis* becoming a substitute parent for the students. This meant strict rules and regulations (including curfews and three-feet-on-the-floor rules) where students had limited recourse or rights.¹⁰¹ Following student protests in the late

⁹⁷ Niedig, “Sex, Booze, and Clarity,” 2009

⁹⁸ Karen M., Kramer, “Rule by Myth: The Social and Legal Dynamics Governing Alcohol-Related Acquaintance Rapes” in *Board of Trustees of Leland Stanford Junior University Stanford Law Review* (1994), 125.

⁹⁹ Bonnie S. Fisher & Francis T. Cullen, Michale G. Turner, *The Sexual Victimization of College Women*. (Washington, DC: US Department of Justice Office of Justice Programs, 2000), 74.

¹⁰⁰ Fisher, & Cullen, Turner, *Unsafe in the Ivory Tower*, 76.

¹⁰¹ Warshaw, *I Never Called it Rape*.

1960s and early 1970s for more student rights as part of a larger social movement, the university's role fundamentally changed. It allowed more freedom of expression and government officials dictated that students should be afforded rights even on college campuses. There was a time when colleges and universities reacted to this change by simply backing away from any controversy claiming had no responsibility over students. In this way they tried to avoid getting sued if something happened to a student while they were attending that college. However in the past couple of decades a new model has emerged which is university as a facilitator, where the university is responsible for students and provides some structure for them but still allows them afforded freedom of speech and other required rights.¹⁰² This model is recommended because it asks "colleges to exercise reasonable care for student safety and asks students to be accountable when they are at fault."¹⁰³ Bickel and Lake argue that this model is "equitable, balanced, safer, and contributes to a sense of community."¹⁰⁴

An important aspect of the facilitator university was the development of Codes of Conduct that laid out student's rights, and provides policy which reflected the university's structure for student's behavior. These codes outline liabilities for practices that violate the policy from academic discrepancies to burglary and assault. According to court rulings, any rule or policy must bear a rational relationship to a legitimate interest and "must not infringe on an established substantive right of the student."¹⁰⁵ This means that the "zero tolerance" policies popular in the 1990s where students caught with alcohol or drugs were expelled from school were thrown out by courts for being too extreme and not rationally related to a legitimate interest.¹⁰⁶ Legally private universities are not constitutionally required to protect the rights of their students, but students hold important contractual interests and deserve to be treated with fundamental fairness.¹⁰⁷ Generally if a student violates a Code of Conduct they must be

¹⁰² Bickel, Robert D. and Peter F. Lake. *The Rights and Responsibilities of the Modern University*, 220-222

¹⁰³ Bickel and Lake, *The Rights and Responsibilities of the Modern University*, 221.

¹⁰⁴ Bickel and Lake, *The Rights and Responsibilities of the Modern University*, 221.

¹⁰⁵ Jason J. Bach, "Students Have Rights Too: The Drafting of Student Conduct Codes" *Brigham Young University Education and Law Journal* (2003).

¹⁰⁶ Bach, "Students Have Rights Too."

¹⁰⁷ Bach, "Students Have Rights Too."

provided with due process and adequate notice of the violation. In most Codes of Conduct, students are not allowed to cross-examine adverse witnesses or bring counsel to any hearing.¹⁰⁸ In addition to policies laying out behaviors are expected from students, Codes of Conduct typically include a list of student's rights (both accused and victim), the process for a violation of a policy (some kind of hearing with a panel of university officials), and the process for appeal. With any process it is important to have procedures that protect the rights of the accused as well. With specific violations where there is a victim such as assault, the victim has the option of using campus disciplinary procedures or going to local or state officials for action, or both. Another issue that universities have to consider is how accessible the policy is to students.¹⁰⁹ Students need to be able to find the policy and understand what it says, so some universities focus on easily understandable definitions and wording that is not too legalistic.

IV. Sexual Assault Policies of DC Universities

The sexual assault policies found in the Student Codes of Conduct of American University, Catholic University, George Washington University, Georgetown University, Howard University and the University of the District of Columbia varied widely. The length, detail, and definitions provided in each policy all differ. In this section include a general description of the policies; more detail will be provided on the issues I am focusing on later.

Generally, Georgetown University, American University and Catholic University had the longest and most detailed policies. Georgetown's policy is very focused toward providing information for any victim so that they know what to do after an attack. It is helpful to students because it clearly explains what is expected in sexual relations, and establishes what is punishable in those actions. American University's policy is even more geared toward providing information to a victim than any other policy. The policy is essentially a resource for victims to see not only what their university options are, but what their legal and counseling options are as well. I believe this policy is intended it to be seen as a comfort to those who have gone through this kind of trauma. Catholic University's policy explicitly defines

¹⁰⁸ Bach, "Students Have Rights Too."

¹⁰⁹ Reardon, "Beyond Prosecution."

sexual assault and consent. Because of the religious background of the school, the policy is steeped in religious terms and understandings. It stresses the virtues of chastity, the sacredness of human sexuality, and that sexual relationships are designed by God to be within a marriage between a husband and a wife.

George Washington University, the University of the District of Columbia and Howard University did not have extensive policies on sexual assault, and instead included sexual assault as an item of misconduct with other violations such as burglary and assault. George Washington University has a very limited policy on sexual assault. In a section titled “Prohibited Conduct” the University defines Sexual Assault as an example of misconduct subject to disciplinary action. The section is brief and is only included under a larger heading of misconduct. It is given very little special consideration. The University of the District of Columbia’s policy is also very limited. The policy briefly defined what this misconduct is, ranging from lewd comments toward a victim to unwanted touching of a sexual nature. It does not list resources available to victims, nor does it help students understand expectations or common misunderstandings in regard to sexual assault. Howard University has a limited policy, but it provides more information than GWU or UDC. It defines Sexual Abuse and Sexual Misconduct. Howard University also includes descriptions on the circumstances of sexual abuse and sexual misconduct.

V. Analysis of Sexual Assault Policies

a. How is alcohol/drug use addressed?

Universities deal with alcohol and drug use in their codes of conduct in multiple ways. (For a full replication of the policies’ references to alcohol and drug use see Appendix A). American University emphasizes the rights of victims by creating a bright line rule which protects the victims in situations involving alcohol/drug use. It states that a partner cannot give consent if that person is or appears to be under the influence of alcohol or drugs. Similarly Georgetown University sets a standard for all students that even if they are under the influence, they must still obtain consent. Students are required to acknowledge that sexual activity with someone who is under the influence creates confusion

regarding questions of consent, and that having sex with someone who is impaired could be a violation of the code of conduct. The Georgetown Policy clearly explains how alcohol lowers inhibitions, impairs judgments, and causes confusion over consent. This makes it seem like it is leaning toward protecting an accused student who under the influence with his or her partner (who is also under the influence) may not understand the gravity of his or her actions. While admitting the complexity of the situation, it does not fully explain the connection between someone being impaired and the violation of the Student Code of Conduct. This “I’ll know it when I see it” kind of judgment, does not help students set standards of conduct nor does it help accused students fully understand the reason behind accusations or the ways they could present a defense. The policy does make it clear, however, that giving another person drugs or alcohol in order to impair them is coercion which can effect a ruling on whether the student committed sexual assault or not.

George Washington University focuses on protecting the defendant by simply stating they will take alcohol use into consideration when evaluating issues of sexual misconduct. Due to its vague nature this type of policy leaves little guidance to students regarding the relationship between alcohol/drug and sexual assault.

Differing from these policies is the policy of Howard University, which only correlates rape or sexual assault with alcohol use when the offender causes his or her partner to become intoxicated, or if the partner is incapacitated. This policy is unclear in defining what incapacitated is, but from its general message it would seem that it means severe impairment of physical or mental inability. Catholic University and the University of the District of Columbia give no assistance to students, whether they be victims or accused on how sexual assault is considered with alcohol or drug use; they don’t provide any descriptions or definitions.

None of the Universities discussed here, like the majority of colleges and universities, have policies that address how the sexual assault policy is connected to the school’s alcohol or drug use

policy¹¹⁰. For example, although American University condones any drug or alcohol use, it does not say how this affects a victim of sexual assault or someone who has been accused of sexual assault so that either of these students could be further disciplined for breaking that aspect of the policy as well. In addition to the confusion that students may have about their experience regarding sexual relationships with alcohol/drug use, they are further deterred from talking to University Officials about the incident because they don't know if they could be penalized for the said alcohol/drug use especially if that use occurred on campus.

It is essential when analyzing sexual assault policies to understand the connection between alcohol use and sexual assault on college campuses. Dowdall shows that in a study that found that one out of every twenty college women had experienced sexual intercourse without consent, 72% of them had been too intoxicated to give consent.¹¹¹ Generally, alcohol has the unfortunate consequence of interfering with "a man's ability to perceive a woman's sexual intent accurately, alcohol may also lead to a general decrease in concern for consequences for self or others"¹¹² which makes it dangerous for relationships between young men and women. While some dispute the direct causation between alcohol use and sexual assault, one can at least see that alcohol and drug use is relevant on college campuses.¹¹³

Alcohol use and sexual behavior can and cannot be sinister. It can be sinister when the offender uses alcohol as a weapon to get another person to engage in sexual acts that that person does not want, but it can also not be sinister in the sense that college students use alcohol to "build up their own confidence when dealing with a member of the opposite sex."¹¹⁴ Neidig found that one study "indicated that more than seventy-five percent of students relied "heavily on alcohol as a tool with which to

¹¹⁰ Michelle J. Anderson, "All-American Rape," in *St. John's Law Review Association* (2005), 625.

¹¹¹ Dowdall, "Alcohol Consumption on College Campuses," 95.

¹¹² Tim Marchell & Nina Cummings, "Alcohol and Sexual Violence Among College Students" in *Sexual Violence on Campus: Policies, Programs, and Perspectives, Springer Series on Family Violence* ed. Allen J. Ottens and Kathy Hotelling (New York: Springer Publishing, Inc., 2000), 37

¹¹³ Justin Neidig, "Sex, Booze, and Clarity: Defining Sexual Assault on a College Campus" in *William and Mary Journal of Women and the Law* (2009).

¹¹⁴ Neidig, "Sex, Booze, and Clarity."

manipulate social interactions to produce sexual activity."¹¹⁵ Dowdall explains that this is partly a result of a "hooking up" culture on college campuses where binge drinking facilitates sexual activity.¹¹⁶ Students used alcohol to facilitate casual sexual encounters and as an excuse to engage in sexual behavior that would tarnish their reputation or in general that they normally would not engage in. This general idea of using alcohol creates dangerous consequences in college interactions where women use alcohol as an excuse to engage in sexual activity without risking a negative label associated with feminine sexual activity.¹¹⁷ It also creates a perception by men that puts the responsibility of preventing any inappropriate behavior on women.¹¹⁸

Due to the confusion and social perception of alcohol and sexual relations, universities need to be clear about expectations and how those expectations differ from the expectations of the students' peers. This explanation will help students understand what behavior is expected of them even when they are under the influence, and will assist survivors understand that certain behaviors, as determined by the university, are wrong and should be reported.¹¹⁹ The regulation needs to provide definitions that are broad enough to capture the entire scope of the problem but also be specific enough to accurately describe what is prohibited.¹²⁰ Policies need to be readable by students so that the student can easily apply the policy to their own interactions with other students. Specifically in regard to alcohol and drug use with sexual assault, colleges and universities have to be able to deal with the realities of the college social scene and also have a clear rule that students can understand.

Although American University has the clearest policy because of its bright line rule that anyone under the influence cannot give consent, I believe the policy reaches too far and covers too much conduct. With the intent of protecting victims who have been given alcohol to lessen their ability to consent, American University has unwisely taken in activities that college students consensually engage

¹¹⁵ Neidig, "Sex, Booze, and Clarity."

¹¹⁶ Dowdall, "Alcohol Consumption on College Campuses," 95.

¹¹⁷ Neidig, "Sex, Booze, and Clarity."

¹¹⁸ Neidig, "Sex, Booze, and Clarity."

¹¹⁹ Neidig, "Sex, Booze, and Clarity."

¹²⁰ Neidig, "Sex, Booze, and Clarity."

in. In the end the rule only makes it unclear for students what type of sexual activity is prohibited because what students view as consensual sex with alcohol in the background, the university sees as sexual assault. This is dangerous for students who are accused of rape or sexual assault as they could be prosecuted on an occasion where both students were under the influence of alcohol, which therefore makes the victim unable to give consent. It ignores the realities of the collegiate atmosphere where binge drinking and sexual activity are commonplace, and automatically assumes that these activities are sinister. Students should be given some benefit to their ability to make decisions and understand that they are drinking in order to make social and sexual interactions more acceptable to themselves.

Georgetown University and George Washington University do not try to simply protect the victim, but lay out a policy that wisely admits the confusion that surrounds consent with alcohol or drug use. Georgetown University clearly establishes that when a student intentionally gives another student drugs or alcohol in order to impair someone, that is coercion. This is clear to students to show that this situation where drug/alcohol use is involved is prohibited. Otherwise, however, both Georgetown University and George Washington University are unclear of how a committee will deal with alcohol or drug use when the use is not coercive. Any accused will have no idea how the hearing committee will view their own alcohol/drug use or the alcohol/drug use of the accuser. The university does well to acknowledge the complexity of the situation, but fails to explain any rule for guiding students. This is a failure for disciplinary action, and it is a failure showing expectations of conduct. Students will not know how their behavior should change in order to conform with the policy.

In his article Niedig establishes an important balance between these two extremes of overly protecting the victim and leaving no guidance to students by having a bright-line rule that explicitly states that a person who is intoxicated cannot give consent. Incapacitation would need to be more fully defined, such as trouble walking or speaking, memory loss, and passing out. I believe this gets at the intended prohibited behavior: when someone forces sex on someone after they have passed out or are otherwise physically unable to give consent due to intoxication. It does not, however, have the kind of

sweeping policy that American University utilizes. In order to get at the kind of consent reduction that I believe is their aim, it should be explained as a kind of coercion that is prohibited and can have an effect on consent as a whole. It will be best to create a rule that clearly prohibits taking advantage of a person who is incapacitated, but not completely give the benefit of the doubt in the situation to the victim with the result that the defendant's perspective is not considered. If the University wants to make a statement about impaired consent, they can do so under the section of coercion, which I shall look at next.

b. Definition of Coercion

Georgetown University is the only university that provides a definition of coercion in its policy. It defines coercion as the "use of force, or the threat of force, the use of a threat of immediate or future harm, or the use of physical or severe and/or pervasive emotional intimidation to cause or attempt to cause another person to engage in or submit to certain activities. Coercion also includes the administration of a drug, intoxicant or similar substance that impairs the faculties of a person" (For full replication see Appendix B).

In developing a definition of sexual assault, after considering the controversial issue of alcohol and drug use, we must look at the related issue of coercion in order to develop a proper definition of consent. Defining coercion helps victims to understand the manipulation that can occur against them, and will help to set a standard of behavior. Coercion is typically described as the use of force or threat of force. In fact, some states require proof of force or threat of force in order to convict someone of sexual assault.¹²¹ What makes consent complicated is dealing with what kind of coercion that consent or nonconsent takes place in. Too often universities broadly describe assault so that consent under any kind of coercion is nullified. However universities must realize that any decision is not without influence and context, and delineate between context and coercion. It is too extreme to place any kind of influence as coercion in order to protect a victim. This gives him/her a child-like ability to handle the

¹²¹ Kramer, "Rule by Myth."

realities of the world, and sets up too much against an accused who may be damned by societal context alone. Too often what is normally accepted in dating relationships does not treat men and women equally, but schools must be careful to try and set a standard for behavior without setting unrealistic expectations. As many radical feminists have asserted, it is a sliding slope from saying the majority of sexual relations occur with intense coercion in any relationship to saying that all sexual acts could be classified as rape. While we want to provide for victims by increasing the definition of coercion beyond just physical force, we also want to be careful of placing a definition that completely belies the actions of the accused. If any person in any relationship could reasonably be considered coercing his or her partner, then the accused has been treated unfairly. We must create a definition that accurately protect victims, but also allows autonomy for both partners in any sexual relationship.

Georgetown University sets up a standard of coercion that uses immediate threat or intimidation, physical and emotional, that would cause a person to commit an immediate act. They also include administration of drugs/alcohol, as mentioned previously. While this tries to set a clear standard for the use of investigation by the committee, it does not necessarily reflect coercion in relationships. Coercion typically occurs as part of a longer term sexual abuse, although it can also occur with stranger rapes and the use of force. Fisher, Daigle and Cullen note that coercion is along a continuum that includes psychological or emotional coercion, deception, interpersonal threat, threatened or physical force.¹²² They also argue that law makers should look at force as a continuum as well. They argue that force should be considered in degrees including whether the force was threatened, attempted or completed and what type of force was used.¹²³ This idea of a continuum of coercion does not match Georgetown University' definition which is limited, but it is important that Georgetown provide a definition of coercion.

There are several ways that schools can use the definition of coercion to achieve a specific goal with other definitions of alcohol/drug use, consent and, finally, sexual assaults. Edwards pointed out

¹²² Fisher, Daigle, & Cullen, *Unsafe in the Ivory Tower* 91.

¹²³ Fisher, Daigle, & Cullen, *Unsafe in the Ivory Tower* 91.

that defining force as only physical action confines rape to only stranger rape, which she identifies as a blatant myth.¹²⁴ She argues that coercion should be expanded so that verbal coercion is included in legal definitions as well, and not be just some kind of legal seduction. However, some argue that if verbal coercion constitutes rape, then the word “rape” itself expands to include any kind of sex a woman experiences as negative.¹²⁵ By further expressing coercion as an explanation for nonconsensual intercourse, some states such as Washington have created rape statutes with degrees. Concerning this kind of coercion, Washington’s third degree rape statute “criminalizes nonconsensual intercourse without any showing of force.”¹²⁶ Edwards finds this as realistic to sexual relationships while still providing protection for the victim. Defining coercion to include more types of influence than force can help you explain why there needs to be different degrees of rape, based on different degrees of coercion.

Conversely, however, universities could also use coercion as a way to draw together the fact that forcible rape and literal “date rape”, where someone is drugged and raped, are both rape. By equating force with drugging someone, they equate forcible rape and date rape. This definition of sexual assault is again based on the idea that it is not force that defines assault, but coercion whether that coercion is physical or not. One could also expand that even further, so that emotional and verbal coercion could be equated with forcible coercion. Some even argue that coercion should be defined to include “economic deprivation, abuse of authority, and deception among others.”¹²⁷ While this would make all victims equal in the eyes of the law regardless of what kind of coercion occurred, I think this is too damaging to defendants and too falsely accused men or women because it expands the definition of sexual assault too far.

¹²⁴ Daphne Edwards, “Comment: Acquaintance Rape & the “Force” Element: When “No” is Not Enough” in *Golden Gate University Law Review* (1996) 1996, 2412.

¹²⁵ Roiphe, *The Morning After* 80.

¹²⁶ Edwards, “Comment: Acquaintance Rape,” 2412.

¹²⁷ Joanna Bourke, *Rape: sex, violence and history* (Great Britain: Virago Press, 2007), 84.

Defining coercion in degrees would help protect the accused in a number of ways. First it helps to define different kinds of defendants, so that those who drunkenly have sex with an impaired partner are not equated with someone who forcibly rapes a partner, since these are different kinds of coercion. As discussed previously, it is the label of rapists that is one of the most damaging aspects of being accused, and one that does not go away even if you are not convicted. Changing to types of coercion helps define different kinds of defendants who use those types of coercion. It would also clarify for defendants the use of mistaken consent doctrine, because this kind of evidence would be clearer for a committee to understand if the type of coercion clearly explained. If someone uses physical force or the threat of force on a partner, it is less reasonable to say that person had a mistaken belief of consent. But if the victim is stressing verbal coercion, then perhaps the defendant can make a strong case of mistaken belief of consent when it is accurate. In the end I also believe defining coercion this way helps victims to accurately describe what has happened to them. There are some who would argue that creating degrees would only make victims of verbal coercion less of victims, even though they go through many of the same traumas as victims who have been forcibly raped. In the end I think it is a reasonable sacrifice in order to protect the accused, and I think that the concept of victim will be better addressed through social change as opposed to legal definition.

c. Definition of Consent

Many schools do not bother to define coercion because they all focus on the related issue of consent. (For a full replication of each definition of consent see Appendix C). The idea of consent has been an integral part of rape law since English common law, but the idea has changed since different ideas of consent were propagated by feminists in the second-wave feminism movement.

American University represents the end of the spectrum that leans toward protecting the victim since it emphasizes achieving consent at every level of intimacy (although it is not as extreme as other schools' policy discussed below). It does not require a verbal consent or yes; the policy accepts conduct as consent as well which shows an understanding of typical college sexual relationships. Georgetown

University's definition is extremely similar to American University's definition, and represents clear instructions and warnings to students. Both of the policies explain that consent cannot be assumed because of a previous sexual relationship, that it must be freely given, and that a person may give up consent at any time. Georgetown University also adds that it is incumbent upon the person who has already given consent to say no if they wish to stop.

George Washington's definition of consent has some of these basic underpinnings, underlying the importance of freely given consent, but it also adds a strange caveat, that all other issues touched on by American University and Georgetown University depend on the circumstances. As a student this seems to tell me, for example, the current relationship between the persons involved may have an impact on consent and may not have an impact on consent. This concept is foolish because it clouds the idea of acquaintance rape; it leads the student to think that consent could be based on whether or not they have had sex with the person before. This leads students to not understand when consent needs to be obtained and when it does not need to be obtained. As a society we have moved far beyond the understanding that rape cannot happen with someone you know, and it is not useful for universities to return to this type of understanding. Additionally I believe the connection between a couple's previous sexual interactions and current consent is a dangerous one. There are times when a previous relationship is important, such as considering the accused's intent or understanding of the situation, but in making a clear rule it is important to have the understanding that consent must be actively achieved. Little notes that the focus of the law should not be on the previous relationship, but on the occasion at issue.¹²⁸ He tries to draw focus away from the traditional ideas of women as passive receptors of male aggressive sexuality with the emphasis on the event which places women as equals in the relationship. Neither Howard University nor the University of the District of Columbia defines consent.

In order to better protect victims, some have called for policies (like the one at Antioch University analyzed by several scholars) that require active, verbal consent at every stage of intimacy.

¹²⁸ Little, "From No Means No to Only Yes Means Yes," 1335.

This is charged as the way to change the way students interact in their sexual relationships, and would provide a higher standard to protect young men and women against sexual assault. This idea is met with high amount of resistance and ridicule by some who point to it as trying to make sex into a contractual interaction and takes the spontaneity out of intimacy.¹²⁹ Reactions against the idea of communicative consent come from a variety of sources, including even radical feminists who believe that communicative consent is missing the point. For example, Dworkin finds that the idea of consent itself where women award men the privilege of bodily access as something that only protects the system of patriarchy in our society.¹³⁰ Although the idea that women cannot give consent in the system of patriarchy is one I cannot condone, I agree that women are negotiating sexual encounters on a slope that is adverse to them and women's ability is different from men's ability to negotiate sexual encounters.¹³¹

Little warns against following radical feminists such as Dworkin and MacKinnon who argue that "women are incapable of making a true consensual decision to engage in sexual intercourse."¹³² While I agree with Little's argument that going down a path with radical feminism can lead to ridiculous expectations for policy, I believe the communicative consent standard comes to this same result with a different path. Although there may be promise in using education to encourage communicative consent, I do not think it matches reality enough to properly make it into policy. While there is some benefit out of using policy as a deterrent to change behavior, in this case the change in policy would be so overwhelming that the definition of rape would expand to a point that the importance of what is truly horrible about rape, the emotional and physical trauma, would be lost.

Some argue that communicative consent is a standard that must be held, even if it means expanding the definition of sexual assault far and creating new ideas of who makes a rapist. Little belies any problem with the possibility of false accusations due to the emphasis on communicative consent,

¹²⁹ Silliman, "The Antioch Policy," 174.

¹³⁰ Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics*, 30.

¹³¹ Cowling, *Date Rape and Consent*, 131.

¹³² Little, "From No Means No to Only Yes Means Yes," 1365.

noting that rapes are under-reported and that prosecutions know how to deal with accusations of false rape. While this may be true in the context of criminal prosecutions, universities must be cautious because of the limited investigative role and limited procedural rights afforded to the accused. Any definition that leans too heavily toward the victim will disadvantage the accused differently in the context of a university hearing, which means that the problem of false accusations cannot so easily be tossed aside.

The policies that define consent rightfully do not define it as nonconsent. Instead of focusing on the idea of “no means no”, they assert that consent whether in words or action must be positive and show willingness to participate. This is vital since some argue that in social and sexual relationships, no does not always mean no. Many women are taught to say no in order to show reluctance and to not seem too willing for intimacy. This confuses the sexual arena for both men and women; men believe that when women say no they are really just playing hard to get, and women sometimes do say no when they are unsure but are leaning to yes but other times want their no to be taken seriously. This is why the conduct aspect of the definition of consent in the policy is so important. It allows the hearing committee to consider not only the words of the victim but what actions she is taking. This plays out well for both the victim and the accused, if the victim had said no and was pushing away the perpetrator then her no is clear, meanwhile if the victim says no but then proceeds to kiss the accused, the committee could see that words are more than their face value. Policies rightly acknowledge that consent is organic and changing, that a defendant could be accused of rape in a variety of situations: when consent is withdrawn, when the defendant mistakenly believes she consents, when the defendant unreasonably believes she consents, and when the defendant is aware that she may not consent but goes on with the sexual contact in spite of the insecurity.¹³³ In the college environment especially, this ambiguity is reinforced by binge drinking and male peer support groups such as fraternities and athletic

¹³³ Duncan, “Sex Crimes and Sexual Miscues,” 1118.

groups.¹³⁴ However, committees must be careful not to return to old standards of nonconsent and making the victim show they physically resisted in order for the act to be rape.¹³⁵

If someone engages in sexual activity but then withdraws consent, and the defendant stops, this defendant should not be convicted of rape, as had happened in the past¹³⁶. If someone wishes to stop they must vocalize their change in consent, and it is their responsibility to make this clear. Someone cannot just change their mind about the event but not vocalize this change. "Like the post penetration scenario, it is unfair to prosecute an individual for rape absent proof that the defendant was aware of the lack of consent or even aware of the risk that the victim did not consent. If he mistakenly believed she did consent and his belief was reasonable, it is not forcible rape. However, it was certainly sex that was against her will, or nonconsensual sex."¹³⁷ Duncan establishes that there can be nonconsensual sex that is not rape. She argues that "the actual awareness of the actual awareness of the perpetrator should serve as the defining line between rape and nonconsensual sex."¹³⁸

While some argue that the mistaken belief in consent defense allows stereotypes of women's sexuality to persist¹³⁹, it is a standard that cannot be abandoned because of its importance for protecting defendants. It represents the reality of the situation in that consent is not just predicated on what a victim thinks, but also on what they express and how the defendant views that expression in the context of the situation. Mistake of fact defense must be coupled by reasonable requirement rules¹⁴⁰ and should be outlined for the accused. This idea builds on previous explanations of alcohol/drug use that the comparison of the person under the influence is to what a reasonable person would have done in the situation. This allows the hearing committee to consider the possibility of the defendant's

¹³⁴ Michelle S. Jacobs, "Invisible Criminality: Male Peer-Support Groups, Alcohol, and the Risk of Aggressive Sexual Behavior" in *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case* ed. by Michael L. Seigel. (Durham, North Carolina: Carolina Academic Press, 2009), 111, 113.

¹³⁵ Carol Bohmer, "Acquaintance Rape and the Law" in *Acquaintance Rape: the Hidden Crime* ed. by Andrea Parrot and Laurie Bechhofer. (New York: A Wiley-Interscience Publication, John Wiley and Sons, Inc., 1991), 322.

¹³⁶ Duncan, "Sex Crimes and Sexual Miscues," 1119.

¹³⁷ Duncan, "Sex Crimes and Sexual Miscues," 1120.

¹³⁸ Duncan, "Sex Crimes and Sexual Miscues 1121

¹³⁹ Kramer. "Rule by Myth."

¹⁴⁰ Oku, "Unveiling the Cloak of Deception," 218.

mistake, but have a measure that protects against the abuse of this excuse and still protect the victim. Any definition of consent must also consider that consent is connected to perspective.

d. Definition of Sexual Assault.

The universities analyzed here all use different terms and different explanation of those terms for the definition of sexual assault. (For a full replication of each definition of sexual assault see Appendix D). This amount of difference for universities shows a great problem, as Johnson and Sigler contend, “the inability to describe the nature of the phenomena accurately reduces the ability to effectively address what is clearly a contemporary social problem.”¹⁴¹

American University uses the terms ‘rape’ and ‘sexual assault’. It basically defines rape as any act of sexual intercourse without consent or accompanied by coercion/threat of bodily harm. Georgetown University uses two categories as well, it uses the terms ‘sexual misconduct’ and ‘sexual assault.’ It defines sexual misconduct basically engaging in or attempting to engage in indecent actions or sexually explicit touching without obtaining consent. It defines sexual assault as engaging in or attempting to engage in sexual penetration without consent, or sexually explicit touching/sexual penetration through coercion or where the person is incapable of giving consent. Howard University uses the terms ‘sexual abuse’ and ‘sexual misconduct’. It defines ‘sexual abuse’ as an act that is intentional and is committed by violence or threat, ignoring objection, causing another’s intoxication or taking advantage of another person’s inability to give consent or helplessness. It defines sexual misconduct as an act that is committed without intent to harm another and where “a person believes unreasonably that effective consent was given without having met his/her responsibility to gain effective consent.”

Catholic University uses the term ‘sexual assault’ and defines this as “sexual contact without meaningful, explicit, ongoing consent.” George Washington University uses the term ‘sexual assault’ and defines this as inflicting any sexual invasion on someone without their consent. The University of

¹⁴¹ Ida M. Johnson, and Robert T. Sigler. *Forced Sexual Intercourse in Intimate Relationships*. (Dartmouth: Ashgate, 1997), 118.

the District of Columbia uses the term 'sexual assault/sexual misconduct' and defines this as any unwanted touching or physical contact of a sexual nature.

Each of the policy definitions provided by the different universities is based on different conceptions of rape and has benefits and drawbacks. American University's definition uses consent and coercion as the basis for its definition, which is why understanding the definition of consent was so important. With our previous understanding of these issues, we know that American University tends to protect the victim with their definitions because it places their perspective of the situation as priority and if alcohol use is involved removes their ability to consent at all in order to protect them.

Georgetown University creates two categories based on the act being committed, one reflecting touching the other reflecting sexual penetration or touching/penetration through coercion. While this has the positive effect of differentiating between different kinds of misconduct, it does not go far enough. There are many more complexities that should affect the definition of sexual assault. Georgetown University's policy also bases its policy on coercion and consent definitions.

Catholic University also bases its policy on consent, and seems to fall toward the spectrum of aspiring toward communicative consent like Antioch College. Explicit and ongoing consent could be a useful standard for students to aspire to, but as discussed previously there is little reality to this standard. Of course it is noted that Catholic University's policy explicitly states that sexual relationships are designed by God for between a husband and a wife, so it is reasonable to say that having a high standard is their priority rather than reflecting reality.

Howard University also has two categories, but separates them based on whether or not the defendant's actions were intentional. This university more than any of the others advocates a policy to protect the defendant. If a defendant made a mistake of consent, then the university will find him/her guilty under a lesser sentence. This policy represent an interesting contrast to the criticism that rape

laws should not be based on consent since this makes the act focused on the victim's conduct, when it is the offender's conduct that is under investigation.¹⁴²

George Washington University's policy does not reflect any of the complexities discussed surrounding sexual assault. Similarly, the University of the District of Columbia has the least descriptive policy that does not even discuss consent, coercion or alcohol/drug use. George Washington and the University of the District of Columbia do not detail on how they plan to deal with he says/she says situations where the victim needs to be protected so that their violation does not go unpunished, but at the same time one cannot just air on the side of the victim because the accusation of rape is one that is so severe that it could permanently damage someone's life, so the perspective of the defendant is also important.

All of the policies need to have specific definitions to help students and to help committees for hearings on violations of school policy. The expansion of concepts of rape due to state and federal law reform creates confusion for both students and faculty. The change from emphasizing violence to emphasizing women's sexual autonomy has drastically changed the way people understand sexual assault, and I believe it has caused confusion all around. The idea of complete sexual autonomy went from an ideal to something that is expected, when we know that "no human interactions are free from pressure"¹⁴³ including sex. Although Roiphe is extreme in many of her views in a kind of feminist backlash, she accurately describes how "Everywhere we look there are signs of sexual puritanism, but there are also signs of sexual abandon adding to the mixed messages are signs of sexual danger."¹⁴⁴

As rape law became codified, two central elements of rape statutes became apparent. Rape occurred when a man compelled a woman to engage in sexual intercourse by means of force, without her consent. The law saw the two as separate elements, each requiring independent proof.¹⁴⁵ Force, however, was the hardest to prove. "The advantage of this definition is that rape is clearly identifiable.

¹⁴² Kramer, "Rule by Myth."

¹⁴³ Dorothy E. Roberts, "Rape, Violence, and Women's Autonomy" in *Chicago-Kent Law Review* (1993), 387.

¹⁴⁴ Roiphe, 12.

¹⁴⁵ Little, 1328-1329

If tangible evidence of force and resistance exists, then the judicial system can safely assume that the crime of rape has occurred without attempting the more difficult inquiry into the intentions of the actors.”¹⁴⁶ It is important to have a definition that removes any vagueness about what actually is sexual assault and incorporates the range of behavior it intends to prohibit or range of conducts it intends to uphold.¹⁴⁷ “Given this serious concern and the ability of colleges to develop regulations proscribing all types of conduct, the definition of sexual assault should only include the most serious types of inappropriate sexual acts, specifically excluding activities that do not involve physical contact between the perpetrator and the survivor, and specifically identifying what type of contact is prohibited. A regulation that includes too broad of a range of behaviors will “cast a large, tightly-woven net that snares the minnows with the sharks. [...] This will ensure that the full negative weight of a sexual assault violation is counter-balanced by the equally, if not greater, morally culpable behavior.”¹⁴⁸

Kramer argues that sexual assault is better defined by a lack of the complainant's consent rather than the presence of force and resistance. This does not entirely remove the issues of force and resistance from sexual assault trials because where force and resistance are present; they will be used to prove lack of consent and lack of reasonableness of a belief in consent.¹⁴⁹ Kramer also believes that “the solution is to require actors to request and receive a verbal expression of permission before engaging in sexual intercourse. Such a requirement would eliminate the discrepancy between perception of consent and actual consent.”¹⁵⁰

Similar to the way that homicides are differentiated based on context¹⁵¹, it would be helpful for victims to identify with and for the accused to not be labeled under the same harsh category. Kramer advocates for a different category of sexual assault that would carry a less severe penalty and be based

¹⁴⁶ Kramer, “Rule by Myth.” 179

¹⁴⁷ Neidig, “Sex, Booze, and Clarity.”

¹⁴⁸ Neidig, “Sex, Booze, and Clarity.”

¹⁴⁹ Kramer, “Rule by Myth.” 179.

¹⁵⁰ Kramer, “Rule by Myth.”

¹⁵¹ Duncan, 1113

on the act of nonconsensual penetration.¹⁵² Roiphe's ideas that one person's rape could be another person's bad night is misrepresenting the situation slightly, but the basic idea that a too-large-rape law can envelope things that most women would not consider to be rape is accurate. Different categories of rapes would not only help victims to better identify their situation, it would also give a kind of labeling to the accused.

States, as well, have gone in the direction of making degrees of rape, for example in the state of Washington first degree rape is sexual intercourse by forcible compulsion under aggravated circumstances, second degree rape is sexual intercourse by forcible compulsion and third degree rape is sexual intercourse without consent or with threat of substantial harm to property rights.¹⁵³ In Washington, at least, this step was taken to increase the rate of convictions, because juries were wary of convicting someone to the harsh crime of rape if the accused did not fit their idea of a forcible rape criminal.

Rape happens in different ways, it is wrong to treat them the same way for victims and defendants.¹⁵⁴ Things that are defined as 'date rape' include a wider range of activities for some of the policies. There is no doubt that they both involve forced sexual intercourse and are devastating to victims not just in body but in spirit as well.¹⁵⁵ Gavey shows how equating all types of rape does a disservice to victims as well, explaining that feminist accounts of rape need to be able to take account of such women's experiences without, in effect, dismissing them as the result of false consciousness. Carefully listening to and theorizing such ambivalent and confusing experiences may illuminate the complex relationship between heterosexuality and rape. Moreover, it may produce feminist analyses of

¹⁵² Kramer, "Rule by Myth." 157.

¹⁵³ Julie A. Allison, and Lawrence S. Wrightsman, *Rape: The Misunderstood Crime* (Newbury Park: Sage Publications, 1993).

¹⁵⁴ Johnson & Sigler, 118

¹⁵⁵ Laurie Bechhofer, and Andrea Parrot. "What is Acquaintance Rape?" in *Acquaintance Rape: the Hidden Crime* ed. by Andrea Parrot and Laurie Bechhofer (New York: A Wiley-Interscience Publication, John Wiley and Sons, Inc., 1991), 11, 14.

rape that are sympathetic to all women who are raped, no matter how they experience it.¹⁵⁶ While some experiences of sexual coercion (and presumably most, if not all, experiences of sexual coercion that fit a narrow definition of rape), are surely victims, some possibly are not. Is it possible that our framework for conceptualizing *all* instances of sexual assault and many instances of unwanted sex, as victimization actually helps constitute some of these experiences as victimization, when they might otherwise have had effects that were less disabling? Although this question shares the anxiety typical of the backlash positions; it is an important question for feminists. In particular, are experiences of attempted rape and attempted sexual assault *sometimes* very different from actual experiences of attempted rape and sexual assault?¹⁵⁷

Feminists and other activists try to use the single definition of rape as a way to change society. Roberts argues that “even more important than jailing more minor sexual violators is the task of developing a vision of liberation from sexual oppression that accounts for these complexities of power, sexuality, and violence.”¹⁵⁸ Klein contradicts this saying, “but is it fair to convict any single individual and deprive him of his liberty in what may be an unjust and unfair proceeding in order to “create a new cultural understanding of female sexuality?”¹⁵⁹ There is a difference in using sex as a violent tool, and violating someone’s sexual autonomy.¹⁶⁰ While we as a society have tried to adapt all rape laws to fit the latter category, I believe this does not do justice to either type.

The different categories of sexual assault should be based on the ideas of consent, coercion and alcohol/drug use as described above. They should have an understanding that consent is different for different kinds of contexts, and that the perspective of both the victim and the defendant matter. Using criminal law doctrine, it is clear that the defendant’s state of mind in the rape is just as important as the

¹⁵⁶ Nicola Gavey, “I Wasn’t Raped, but..”: Revisiting Definitional Problems in Sexual Victimization” in *New Versions of Victims; Feminists Struggle with the Concept* ed. by Sharon Lamb (New York University Press, 1999), 69

¹⁵⁷ Gavey, I Wasn’t Raped, but..” 70.

¹⁵⁸ Roberts, “Rape, Violence, and Women’s Autonomy,” 388.

¹⁵⁹ Klein, “An Analysis of Thirty-Five Years of Rape Reform,” 981.

¹⁶⁰ Duncan, “ Crimes and Sexual Miscues,” 1109.

victim's state of mind because of common law doctrines of mens rea.¹⁶¹ Farrel argues that "anyone who works with both sexes knows it is possible for a man to feel he's just made love and for a women to feel she's been raped it's also possible for a women to feel she's made love in the evening when she's high, and feel raped n the morning when she's sober-without the man being a rapist. Or for a woman to feel she's been made love to one evening if the man said, I love you, but feel raped the next evening if he hasn't called back. But again, that doesn't mean the man raped her."¹⁶²

VI. "Best Practice" Policy for Universities

Sexual assault is an incident of sexual misconduct that can be classified as rape, sexual assault, or sexual misconduct. Each type of assault is a gross violation of a person's sexual autonomy.

A special note on Alcohol/Drug Use:

- Students should use caution when engaging in sexual activities with a background of alcohol or drug use. Alcohol impairs the senses, causes violent behavior, and creates confusion over consent following any activity. Students will still be held responsible for any behavior that occurs if they were using alcohol or any other drug.
- Students brought that bring charges or are charged with sexual assault shall not be investigated for violating any school policy on alcohol/drug use. Priority will be made to the charges of sexual assault.

Definition of Coercion: Coercion can be any of the following:

- physical coercion: attempted or completed physical force used to cause or attempt to cause the person to engage in or submit to certain activities.
- verbal coercion: use of threat of immediate or future harm to cause or attempt to cause the person to engage in or submit to certain activities.
- emotional coercion: use of pervasive emotional intimidation to cause or attempt to cause the person to engage in or submit to certain activities.
- facilitated alcohol/drug coercion: taking advantage of someone else's voluntary use of alcohol or drugs to cause or attempt to cause the person to engage in or submit to certain activities.
- forced alcohol/drug coercion: the administration of alcohol or other drugs to cause or attempt to cause the person to engage in or submit to certain activities.

Definition of Consent: Consent is words or conduct that indicate an informed and freely given agreement to have sexual intercourse or to participate in sexual activates. Students must take into account the following issues with consent:

- consent must be affirmed through clear verbal or nonverbal action
- consent cannot be assumed based on a previous or current sexual relationship with the person who initiates the sexual activity

¹⁶¹ Duncan, "Sex Crimes and Sexual Miscues," 1087.

¹⁶² Farrell, *The Myth of Male Power*, 311.

- if at any time during the sexual interaction any confusion or ambiguity should arise on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify, verbally, the other's willingness to continue
- it is expected that, after consent has been established, a person who changes his/her mind during the sexual activity will communicate through words or actions, his/her decisions to no longer proceed
- a verbal "no" even if it may sound indecisive or insincere, constitutes lack of consent
- when consent is requested verbally, absence of any explicit verbal response constitutes lack of consent
- a student's use of alcohol does not diminish their responsibility to obtain consent

Definition of Sexual Assault:

Rape: any act of sexual intercourse or sexual penetration of any orifice of the body with a body part or other object with intent to harm that takes place:

- against a person's will or
- without consent or
- with consent that is accompanied by physical coercion
- with consent that is accompanied by forced alcohol/drug coercion

Rape also includes sexual activity with a person who has been intoxicated due to alcohol/drug use whether or not the substance was consumed willingly. Intoxication could be demonstrated by any of the following behaviors:

- Inability to walk
- inability to speak
- memory loss,
- unconsciousness
- vomiting due to alcohol/drug use

Sexual Assault: Sexual contact including sexual intercourse or sexually explicit touching with another person without consent or with consent accompanied by verbal coercion, emotional coercion, or facilitated drug/alcohol coercion.

Sexual Misconduct: Sexual misconduct includes sexual intercourse or sexually explicit touching without intent to harm another and where, by failing to correctly assess the circumstances a person believes unreasonably that effective consent was given without having met his/her responsibility to gain effective consent

VII. Use of the Policy for the Future

While college campuses bring up a variety of complicated issues because of date rape, acquaintance rape and alcohol/drug use, colleges and universities have a unique responsibility to deal

with these that allows their policies to not only be rules for potential punishment but also standards to which students should conform. Universities can create the best policies, but if the students don't know about the policies and in this case don't understand the complexities of the definitions given, then they not living up to their responsibility as facilitators and setting up their students for failure. There are several ways that schools can educate students about sexual assault and specifically about the policy at their school. They can require sections on the subject in student orientation or formal 1-credit requirements that help students to not only prevent being victims of rape or perpetrators of rape, but also to participate in equal healthy sexual relationships where communication is paramount¹⁶³. While there is concern that this kind of education may be too little too late since college students may have already learned their dating and sexual behavior before reaching college¹⁶⁴, a good policy will work with the students' understanding of dating and sexual relationships, and universities will still be able to set standards for conduct. Additionally students will need to be better educated on the symptoms and results of alcohol/drug use¹⁶⁵ and its connection to rape/sexual assault.

Additionally there needs to be more publication of sexual assaults at schools and the results of hearings. While this should never be done to punish the victim or the accused, information could be effectively distributed through the use of anonymous names. Universities need to educate their students about the procedures following the accusation of sexual assault, and the possible punishments. It is the unclear waters that lead students to not report incidents, and lead to unfair circumstances against the accused because they have no understanding of university process or whether their experience against the university is typical.

¹⁶³ Bohmer, & Parrot, *Sexual Assault on Campus*, 201.

¹⁶⁴ Carol Withey, "Rape and Sexual Assault Education: Where is the Law?" in *University of California Law Review* (2010).

¹⁶⁵ Deborah R. Richardson, and Georgina S. Hammock. "Alcohol and Acquaintance Rape?" in *Acquaintance Rape: the Hidden Crime* ed. By Andrea Parrot and Laurie Bechhofer. (New York: A Wiley-Interscience Publication, John Wiley and Sons, Inc., 1991), 83-95.

VIII. Conclusion

Following the recommendations of the proposed policy and educating students about this policy will enable universities such as American University to avoid the extreme attitudes like the ones expressed by students and media in spring of 2010 on American University's campus. Universities will be able to use a policy that expresses a clear standard to students, but also deals with the realities of campus life. The policy also deals with the discourse on rape, from popular discussions as the one sparked by Alex Knepper to academic discussions by feminist and anti-feminist literature to legal scholarship on rights of the accused, and victim's rights. Additionally, the policy I developed takes careful consideration of the special role that colleges and universities occupy as facilitator, where each school must protect students from harm, protect the rights of every student, and teach students standards of behavior. Universities will need to expand the definitions provided and find ways to build on how to approach each sexual assault violation, but at least they can have this basis of a fair balance in the definitions of alcohol/drug use and sexual assault, coercion, consent and sexual assault. Although it seems improbable to make concessions or compromises from either side when you are trying to protect a student from victimization or a potential defendant from being wrongly accused, these concessions must be made so as to allow all students a fair experience in their sexual relationships and before the university in any potential misconduct.

IX. Appendices

Appendix A. Related Alcohol/Drug Use

1. American University: Under “consent” section: “consent is not achievable if a partner is or appears to be under the influence of a controlled or intoxicating substance, whether or not that substance was consumed willingly.”¹⁶⁶
2. Catholic University: does not address alcohol or drug use related to sexual assault
3. Georgetown University: Under Definition of Sexual Misconduct-Category B and Definition of Sexual Assault-Category C sections: “a student’s use of alcohol and/or other drugs shall not diminish a student’s responsibility to obtain consent”

Under “Communication” section: “Students are urged to exercise caution if they choose to use alcohol or drugs. The consumption of alcohol and/or the use of drugs often lowers inhibitions, causes some people to become more aggressive, and always impairs judgment. Sexual activity with someone who has consumed alcohol or drugs creates the potential for later confusion over questions of consent. Sexual activity with a person who is thus impaired may be considered a violation of the Student Code of Conduct.”

Under “Coercion” section: “Coercion also includes the administration of a drug, intoxicant or similar substance that impairs the faculties of a person.”¹⁶⁷

4. George Washington University: in definition of sexual assault: “the degree of impairment of a person’s ability to give or withhold consent (including but not limited to incapacity or helplessness caused by alcohol or other drugs) may be introduced as pertinent information at any University disciplinary hearing.”¹⁶⁸

5. Howard: in definition of sexual abuse: “Sexual abuse occurs when the act is intentional and is committed either by:

[...]

- C. Causing another’s intoxication or impairment through the use of drugs or alcohol;

- D. Taking advantage of another person’s incapacitation, state of intimidation, helplessness, or other inability to consent.”¹⁶⁹

¹⁶⁶ American University. “Sexual Assault Procedures.” University Codes, Policies and Guidelines.
http://www.american.edu/ocl/upload/student_handbook.pdf

¹⁶⁷ Georgetown University. “Georgetown University Sexual Misconduct and Sexual Assault Policy. Student Affairs and Related Policies.

<http://studentaffairs.georgetown.edu/policies.html#SexualMisconductandSexualAssault>

¹⁶⁸ George Washington University. Sexual Assault Policy. Student Code of Conduct

<http://gwired.gwu.edu/osjs/merlin-cgi/p/downloadFile/d/24733/n/off/other/1/name/2010-2011CodeofStudentConductpdf/>

¹⁶⁹ Howard University. “Sexual Abuse”. Student Code of Conduct.

6. University of the District of Columbia: does not address alcohol use

Appendix B. Definition of Coercion

1. Georgetown University: “Coercion is the use of force, or the threat of force, the use of a threat of immediate or future harm, or the use of physical or severe and/or pervasive emotional intimidation to cause or attempt to cause another person to engage in or submit to certain activities. Coercion also includes the administration of a drug, intoxicant or similar substance that impairs the faculties of a person.”

2. American University, Catholic University, George Washington University, Howard University, University of the District of Columbia: No definition of coercion given.

Appendix C. Definition of Consent

1. American University: “The Student Conduct Code also defines “consent” as ‘words or conduct that indicates a freely given agreement to have sexual intercourse or to participate in sexual activities. Sexual contact will be considered ‘without consent’ if no clear consent, verbal or nonverbal, is given; if inflicted through force, threat of force, or coercion; or if inflicted upon a person who is unconscious or who otherwise reasonably appears to be without the mental or physical capacity to consent.’

Things to think about. Consent takes different forms in different relationships. Some attributes generally associated with consent follow. They may help you think about your own and your partner’s behavior in intimate situations or situations that might become intimate. What they have in common is that they are grounded in an attitude of respect.

- Consent is informed and clear. Parties must be able to communicate effectively and agree on the type of sexual activities that will be shared. If a person has a sexually transmittable disease, that should be disclosed to a partner before engaging in sexual activity.
- Consent is essential each time sexual activity occurs and/or escalates. During or prior to any sexual activity, each partner has the right to withdraw consent at any time. Consent to one type of sexual activity does not imply consent to other forms of sexual activities.
- Consent is a free choice only if it has been granted without the use of force—real or perceived, threats, intimidation, or coercion.
- Consent cannot be construed from a partner’s silence.
- Consent cannot be assumed based on a previous or current sexual relationship with the person who initiates the sexual activity.
- Consent is not implicit in a person’s manner of dress or physical appearance.
- Consent is not implicit in acceptance of an invitation for a meal or date

- Consent is not achievable if a partner is or appears to be under the influence of a controlled or intoxicating substance, whether or not that substance was consumed willingly.”¹⁷⁰

2. Catholic University: consent must be “meaningful, explicit and ongoing”¹⁷¹.

3. Georgetown University: under Definition of Sexual Misconduct-Category B and Definition of Sexual Assault-Category C: “Consent is an understandable exchange of affirmative words or actions that indicate a willingness to participate in mutually agreed upon sexually explicit touching or sexual penetration. Consent must be informed, and freely and actively given. It is incumbent upon each individual involved in the activity to either obtain or give consent prior to any sexual activity, and again, prior to sexual penetration. If at anytime during the sexual interaction any confusion or ambiguity should arise on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify, verbally, the other’s willingness to continue.

- A verbal “no,” even if it may sound indecisive or insincere, constitutes lack of consent.

- When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent.

- It is expected that, after consent has been established, a person who changes his/her mind during the sexual activity will communicate through words or actions, his/her decision to no longer proceed.

- Past consent to sexual activity does not imply future ongoing consent, and the fact that two persons are in an on-going relationship shall not preclude the possibility that sexual misconduct or sexual assault might occur within that relationship.

- A student’s use of alcohol and/or other drugs shall not diminish a student’s responsibility to obtain consent.”¹⁷²

4. George Washington University: in section on the definition of “sexual assault”: “‘Consent’ requires actual words or conduct indicating a freely given agreement to have sexual intercourse, or to participate in sexual activities. The University community should be aware that, depending on the particular circumstances, previous sexual relationships, the current relationship between the persons involved, or silence or lack of protest do not necessarily constitute consent.”

5. Howard University: No definition of consent.

6. University of the District of Columbia: No definition of consent.

Appendix D: Definition of Sexual Assault

¹⁷⁰ American University. “Sexual Assault Procedures.”

¹⁷¹ Catholic University. Catholic University of America Sexual Assault Policy.

¹⁷² Georgetown University. “Georgetown University Sexual Misconduct and Sexual Assault Policy.”

1. American University: “‘Rape’ – any act of sexual intercourse or sexual penetration of any orifice of the body with a body part or other object that takes place against a person’s will or without consent or that is accompanied by coercion or the threat of bodily harm.”

“‘Sexual assault’ – “conduct of a sexual nature, including, but not limited to, sexual contact or physical exposure directed at another person without consent.”¹⁷³

2. Catholic University: in “Definition” section: “Sexual Assault: [...] sexual assault is defined as sexual contact without meaningful, explicit, ongoing consent. This includes forcing, threatening or coercing an individual into sexual contact under duress and/or against his or her free will.”¹⁷⁴

3. Georgetown University:

Definition of Sexual Misconduct – Category B

“Sexual Misconduct is engaging in, or attempting to engage in, any one or more of the following sexual or offensive acts with or directed at another person without obtaining his or her consent:

a. Intentionally indecent and/or offensive actions that are of a sexual nature including, but not limited to voyeurism, exposure, sexually explicit communication (i.e., electronic and voice messages, photos, pictures, graphics, etc.)

b. Sexually explicit touching, or attempt of such touching”

Definition of Sexual Assault – Category C

“Sexual Assault is engaging, or attempting to engage in, any one or more of the following sexual acts with or directed against another person:

a. sexual penetration without the consent of the other person;

b. sexually explicit touching through the use of coercion or where the person is incapable of giving consent because of her/his temporary or permanent mental or physical incapacity;

c. sexual penetration through the use of coercion or where the person is incapable of giving consent because of her/his temporary or permanent mental or physical incapacity;”¹⁷⁵

4. George Washington University: “Sexual Assault - Inflicting any sexual invasion (including but not limited to sexual intercourse) upon any person without that person’s consent.” ¹⁷⁶

5. Howard University: “Sexual abuse occurs when the act is intentional and is committed either by:

A. Physical force, violence, threat, or intimidation;

B. Ignoring the objections of another person;

¹⁷³ American University. “Sexual Assault Procedures.”

¹⁷⁴ Catholic University. Catholic University of America Sexual Assault Policy.

¹⁷⁵ Georgetown University. “Georgetown University Sexual Misconduct and Sexual Assault Policy.”

¹⁷⁶ George Washington University. Sexual Assault Policy.

C. Causing another's intoxication or impairment through the use of drugs or alcohol;

D. Taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.

Sexual Misconduct

Sexual misconduct occurs when the act is committed without intent to harm another and where, by failing to correctly assess the circumstances, a person believes unreasonably that effective consent was given without having met his/her responsibility to gain effective consent."¹⁷⁷

6. University of the District of Columbia: Under section of Non-Academic Misconduct: Definition of Assault/Sexual Misconduct: "Refers to any unwanted touching or physical contact, directly or indirectly, of a sexual nature. In addition, this includes verbal or explicit verbal attacks such as lewd comments towards the victim in a sexual nature. Sexual misconduct may occur without regard to the gender of the actor or the victim. Violations of the University sexual harassment policy may also be considered misconduct under this section."¹⁷⁸

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