(RE)WRITING SEXUAL CONSENT: AFFIRMATIVE CONSENT CULTURE IN SEXUAL

MISCONDUCT POLICIES OF HIGHER EDUCATION INSTITUTIONS

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ABSTRACT

This study primarily seeks to determine what policy language best reflects affirmative consent culture in the sexual misconduct policies of higher education institutions. It considers such policies to be important and influential documents which reflect institutional values, and as such, have the capacity to transform campus cultures. Coding categories based off of the concerns of Feminist Critical Policy Analysis were developed and applied to a corpus of eight policies, and the results of the coding were further analyzed rhetorically. The study found that policies are already reflective of affirmative consent culture, using similar language, content and structure. However, the study also found smaller interesting trends within policies, including the characterization of institutions as parental personas, and the acknowledgment of student-faculty relationships.

TABLE OF CONTENTS

LIST OF TABLES

CHAPTER ONE. INTRODUCTION

In May of 2014, the U.S. Department of Education made international headlines when it announced on its website that it was investigating a list of 55 higher education institutions for the possibility of violating Title IX through the mismanagement of sexual assault and harassment cases (U.S. Department of Education, 2014). By April 2015, over 100 institutions were under investigation (Kingkade, 2015). The list included a variety of institutions, ranging from community colleges to Ivy League universities, suggesting that the issue is not isolated or unique to certain types of institution, but a disturbing and significant pattern within the culture of American higher education. Student-led activism may be credited for spreading awareness of the current scandal through social media networks Twitter and Facebook, suggesting that some students are highly concerned with changing the status quo (Bombardieri, 2014). For example, Columbia student Emma Sulkowicz became a nationally known figure for dragging her dorm mattress around campus to protest the university's decision to not expel her rapist (Kaplan, 2014).

During this time period, affirmative sexual consent culture began making its way into sexual assault prevention efforts and campaigns on campuses (and in public discourse), in a more visible and pronounced manner. Whereas the popular and well-known slogan "no means no" was meant to encompass everything students needed to know about sexual assault and consent, "yes means yes" has become the new standard of sexual consent. *Consent is Sexy*, one of the most popular and well-known affirmative consent campaigns, includes a variety of posters that state, "Sex with consent is sexy. Sex without consent is rape" and "Respect yourself. Respect your partner" in an attempt to make affirmative consent seem both appealing and normalized (Consent is Sexy, 2015). A sex-positive slogan, "yes means yes" ensures that what transpires during

sexual relations is wanted; it encourages partners to consistently check in with each other, rather than relying on the heteronormative "gatekeeper" model, in which consent is assumed until the (typically) female partner objects to sexual activity. In *Yes Means Yes: Visions of Female Sexual Power and a World Without Rape,* Friedman and Valentini (2008) argue that transitioning from the "gatekeeper model" to the pleasure-based model of "yes means yes" is an important factor in deconstructing rape culture, as it allows women to reassert their sexual autonomy (p. 7). In affirmative consent culture, "The burden is not on the woman to say no, but on the person pursuing the sexual act to get an active yes" (Bussel, 2008, p. 49). In other words, permission is granted rather than assumed. Affirmative consent culture is also gender-neutral, meaning that it legitimizes men's sexual boundaries, and works to erase the notion of men acting as pursuers. By being gender-neutral, it is also queer inclusive.

At its core, affirmative consent culture is an ethical practice that encourages partners to communicate with each other in order to have the kind of sex that they desire. Significantly, affirmative consent culture attempts to eliminate the possibility for assailants to use linguistic, rhetorical, and situational ambiguities for defending or justifying their actions, an essential and strategic move for dismantling the discourse that both supports and pervades rape culture on campuses. Affirmative consent culture rejects the gendered cultural discourses and scripts that tell us how sex should be performed; instead, it empowers partners to communicate about sexual boundaries, desire, and pleasure.

Affirmative consent culture has also been making waves in legislation. In September 2014, California governor Jerry Brown signed Senate Bill 967 into law, which requires that schools receiving state funds adopt an affirmative consent policy into their conduct policies (Lopez, 2014). The bill defines affirmative sexual consent as an "affirmative, conscious, and

voluntary agreement to engage in sexual activity", stating that "It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity" ("Student Safety: Sexual Assault" Section 67386). New York followed with a similar law, and other bills for New Jersey, New Hampshire, and Connecticut are currently on the docket (Keenan, 2015, par. 18).

Legislation on a federal level in response to the scandal of institutions violating Title IX has included the Campus Accountability and Safety Act, and the Safe Campus Act of 2015. Proposed by Missouri Senator Claire McCaskill, the Campus Accountability and Safety Act requires that institutions enter into "memorandums of understanding with their local law enforcement agencies" in order to "clearly delineate responsibilities and share information about serious crimes, including sexual violence, occurring against students or other individuals on campus" (S. 590, "Campus Accountability and Safety Act", 114th Congress). It requires institutions receiving federal funding to establish a stronger and more rigorous campus security policy that includes (among other factors), to "an online reporting system to collect anonymous disclosures of crimes and track patterns of crime on campus" and "a uniform process (…) for student disciplinary proceedings relating to claims of sexual violence" (S. 590, "Campus Accountability and Safety Act", 114th Congress). The bill also allows institutions to be fined if they fail to comply with the requirements outlined in the bill, holding them directly responsible for changing campus culture to be victim-friendly, safety-orientated, and transparent about violent crimes.

In another approach, Representative Matt Salmon of Arizona introduced the Safe Campus Act of 2015, which would have required sexual assault victims to report their assault to local law enforcement in order for an institution to pursue action against a defendant. Additionally, the bill

would not have allowed an institution to "initiate or otherwise carry out any institutional disciplinary proceeding with respect to the allegation, except to the extent that the institution may impose interim sanctions" until law enforcement finished investigating (H.R. 3403, "Safe Campus Act of 2015", 114th Congress). The bill's proponents, which included the North American Interfraternity Conference and the National Panhellinic Council, argued that the bill would ensure the rights of defendants to due process, while other organizations and advocacy groups criticized the bill for making things harder for victims (New, 2015). While the bill was rejected, the lobbying committed by the NAIC and NPC suggests that the arrival of affirmative consent culture (and subsequent revision of sexual misconduct policies by institutions) has resulted in a disruption to campus cultural norms, including the establishment of social power that fraternities and sororities have long held. It is commonly accepted that fraternities in particular have played a role in maintaining rape culture; a well-known behavioral example includes Yale fraternity pledges chanting "No means yes, yes means anal" on campus in 2010 (Clark-Flory, 2010). If we consider that rape culture and its consequence, sexual assault, is about power, it makes sense that Greek Life organizations would resist affirmative consent culture, as accepting it would redistribute power to individuals, rather than organizations. And while due process is an important and vital factor to any judicial proceedings, the Safe Campus Act was clearly written to prevent institutions from acting in the interest of victims, and would have sheltered defendants (and organizations such as fraternities and sororities), from consequences on campus.

Encouragingly, as of October 2014, many higher education institutions have changed their sexual conduct policies to reflect the change in popular discourse concerning sexual consent (New, 2014). While the presence of sexual conduct policies in student codes of conduct and

rulebooks imply that institutions take sexual assault complaints seriously, rhetorical ambiguity within policies may also leave students and disciplinary boards to individually imagine or substitute alternative cultural discourses of how consent may operate within sexual relationships and situations. This is especially concerning when considering that the rhetoric of sexual conduct policies directly affects the lives of victims.

It is within this context that the present analysis examines a corpus of eight higher education institutions' sexual misconduct policies using Feminist Critical Policy Analysis (FCPA) and feminist rhetorical analysis to determine how we might further revise policies so that they reflect affirmative consent culture. Because policies define acceptable and unacceptable sexual behaviors, they are potential pedagogical tools for teaching students about sexual communication and consent against a backdrop of gendered expectations about sex and stereotypes of college partying. Therefore, the primary concern of this analysis is determining what policy language best reflects the values of affirmative consent culture. Secondary concerns include identifying what ideological values institutions currently demonstrate within policies, and examining how power and agency are distributed among actors within policies in order to ensure that policies are equitable and transparent. It is my hope that the results of this analysis may be used to further build and strengthen affirmative consent culture on campuses via policy. While it may be argued that it is far easier to write policy than to enforce and implement policy, we must make sure that policies are written strongly and clearly enough to successfully establish and cultivate the kind of culture desired in the first place, rather than waiting for the status quo to change.

CHAPTER TWO. THE ORIGINS OF AFFIRMATIVE CONSENT CULTURE AND POLICY

In 1991, Antioch College in Yellow Springs, Ohio adopted a new sexual conduct policy that required students to verbally ask and give sexual consent "at each new level of physical and/or sexual behavior in any given interaction, regardless of who initiates it" (qtd. in Humphreys and Herold, 2003, p. 37). Drafted by a group of students on campus known as "Womyn of Antioch" and later officially adopted by the college, the policy became known as the "Sexual Offense Prevention Policy" (Antioch, 2014, p. 42). The current version of the policy explicitly defines sexual consent as "the act of willingly and verbally agreeing to engage in specific sexual conduct" (Antioch, 2014, p. 42). Furthermore, it describes sexual consent as needing to be consistent, with partners required to ask for consent for every sexual act during every individual sexual occurrence. It also states that partners need to have "a shared understanding of the nature of the act to which they are consenting", implying that sexual consent (and sex itself), is a communicative act between partners (Antioch, 2014, p. 43). The policy is now described by Antioch as a "formal attempt at ending sexual violence while fostering a campus culture of positive, consensual sexuality" (Antioch, 2014, p. 42). This description implies that Antioch views its long-term goal of an affirmative consent based culture as a way to prevent sexual assault on its campus.

Humphreys and Herold (2003) noted that the policy was highly controversial at the time of its formal introduction, and was criticized by media outlets "as being unrealistic and unenforceable" (p.37). *Newsweek* stated that the policy "criminalize[d] the delicious unexpectedness of sex" and accused activists as "trying to take the danger out of sex" without realizing that "sex is inherently dangerous" (Chrichton and Rosenberg, 1993, p. 52). Soble (1997) charged the policy as paradoxical, citing that by requiring partners to consistently obtain

consent for each sexual act, consent becomes less meaningful and takes away the autonomy of couples to define consent for themselves. While the first criticism may be true from a purely practical perspective, it should be noted that the policy was clearly intended to change the sexual culture of Antioch's campus by encouraging students to have positive sexual relationships, and empower them to be communicative about their desires and boundaries. Antioch's president Alan Guskin "suggested that the goal of the policy was to get students actually talking about sex, to reduce sexual misinterpretations and possibly sexual coercion" (qtd. in Humphreys and Herold, 2003, p. 37). With this in mind, the policy was not so much a prescriptive rulebook as described by critics at the time, but instead an important guide for students on healthy sexual relationships. As for the second criticism by Chrichton and Rosenberg (1993), I counter that participants in the more "dangerous" kinds of sex, such as those in the BDSM community, are well known for discussing their boundaries with their partners in advance of embarking on sexual activity, and continue to practice consent consistently during sexual activity with the use of "safe words" (Barker, 2013). In response to Soble (1997), Kittay (1997) argued that rather than paradoxically removing autonomy from partners, Antioch's policy "encourages previously unassertive partners to be more assertive and to encourage overly assertive partners to reign in their overbearing behavior" resulting in a "responsible and responsive sexuality" (p. 155). This critique highlights that Antioch's policy is an ethical sexual code that students are expected to abide by, and as such, affirmative sexual consent culture is firmly enmeshed within Antioch's campus culture. Although widely mocked and criticized in the early 1990s, Antioch's policy was notably progressive for its time.

Students had varied responses to the policy. While attending a first-year student sexual consent orientation workshop at Antioch, Gross (1993) witnessed mostly male students

7

expressing resistance to the policy on the grounds that it was unnatural and unfair, a response that resembled the greater cultural response to Antioch's policy (p. 1). Upper-class students had a more positive response, and described that the policy resulted in "making women more straight-forward about what they want and men less peremptory in how they behave" (Gross, 1993, p.1), suggesting that some students were satisfied with the outcomes of the policy. In 2001, Antioch's student newspaper, *The Record*, found via interviews that student interpretation and use of the policy varied widely, with some students using it "as it was intended" and others thinking that "it was something to consider but not to be followed as if it were a rule" (Humphreys and Herold, 2003, p. 38), demonstrating that students were aware of the policy, and had thought about the policy and its application in relation to their own personal sex lives.

In a 2003 study, Humphreys and Herold had a focus group of Canadian university students read and respond to Antioch's policy. The majority of the students had a negative response to the policy, citing the practicality of enforcing the policy, the role of the university in regulating the sexual behavior of students, the possibility for abuse of the policy, and that consistently asking for sexual consent could be a turnoff (Humphreys and Herold, 2003, p. 40-41). However, most of the students were in favor of the policy being used as an educational tool, with Humphreys and Herold (2003) describing that the students stated a desire for further education on sexual consent and communication (p. 49). In this light, Antioch's policy is significant because it models for students what ethical and consensual sexual behavior looks like. While it can be argued that Antioch's policy is hard to enforce, it nevertheless encourages a culture of affirmative consent, and healthier sexual relationships; it is unfortunate that more institutions did not follow in Antioch's footsteps in the 1990s.

Now that institutions have been shifting towards adopting affirmative consent culture in their current policies, critics have used many of the same hyperbolic arguments against it that were popular in the 1990s. In *New York Magazine*, Chait (2014) argued that California's Senate Bill 976 would "deem a large proportion of sexual encounters to be rape" (par. 7). In an article alarmingly titled "YOU are a Rapist; Yes YOU!" in *The Washington Post*, Bernstein (2014) went even further to argue that affirmative consent "makes almost every adult in the U.S. (…) a perpetrator of sexual assault" (par. 2). Young (2015) argued that verbally asking for consent is not "sensual, playful, or raunchy" (para. 11). These examples demonstrate a wider cultural reluctance to imagine sex differently than the current paradigm. On the surface it may seem that Chait (2014) and Bernstein (2014) may have legitimate concerns about affirmative consent culture' contributing to an overly expanded definition of sexual assault because of its insistence on obtaining consent before pursuing *all* sexual activity. A further reading, particularly in Chait's (2014) case, suggests that their concerns are based on a fear of an increase in false rape accusations. While false rape accusations do occur, it is unlikely (and nonsensical) that affirmative consent culture will contribute to an increase of them. Young's (2015) statement referring to the possibility of awkwardness during and after asking for consent is somewhat legitimate. Admittedly, it's awkward to talk about sex, and maybe even more so during sexual activity. Perhaps though, this reflects a larger cultural reluctance to talk about sex openly.

Following up on the introduction of New York's affirmative consent law, Keenan (2015) interviewed students at the University of Albany. While one student was resistant towards the idea of consent initially, he stated in a follow up interview that he "had been practicing consent almost religiously" (Keenan, 2015, par. 54). Another student who had been raped by her partner welcomed the law, as the "new law, she believes, will help change behavior going forward"

stating that " 'there's really no excuse for people to be doing what they shouldn't be doing' "
(Keenan, 2015, par. 38). Other students were unaware of the new law until Keenan (2015)
brought it to their attention, but also voiced their receptiveness to it, suggesting the need for
further education about the university's new policy, and that students are open to the purpose of
the policy.

      The scandal of higher education institutions in the U.S. mismanaging sexual assault and
harassment cases is an alarming one. Campuses are marketed as places of learning and personal
growth for students, and the current scandal disrupts this idyllic vision. Perhaps we should find it
less surprising though, as sexual assault on campus has been a long established phenomenon.
Determining why and how this continues to be a problem has also been a long-term concern for
researchers since the initial work of Kirkpatrick and Kanin (1957) (Adams-Curtis and Forbes,
2004, p. 92).

Rape Myths, Rape Culture, and Sexual Scripts

      A well-known significant contributing factor to sexual assault on campuses is the
presence of rape myths within the general culture. Rape myths are a response to sexual assault
that place blame on the victim and their behavior, rather than the aggressor and their actions.
Rape myths "serve to legitimize violence against women" in patriarchal culture, and are present
in influential aspects of society, including religion, the legal system, and media (Edwards et.al.,
2011, p. 762). An example of a rape myth in popular culture includes the depiction of a stranger
waiting to attack a young woman in a dark alley; in reality, a woman is more likely to be
assaulted by someone she knows. Ryan (2011) described this as the "real rape script." She tries
to "physically resist the rape or she may be too afraid to resist", but afterwards, she is
"devastated by the rape" (p. 776). This myth contributes to the fact that acquaintance rape is

perceived as less serious than stranger rape, and that such cases are less likely to be prosecuted, being seen as events that resulted from miscommunication rather than rape (Lisak & Miller, 2002, p. 81). The dominant presence of this rape myth in larger culture may allow for other forms of coercion (verbal, psychological, or via the use of alcohol or drugs), to be seen as extensions of normal sexual behavior, rather than sexual assault. Troublingly, as Ryan (2011) described, this may result in a victim not being able recognize coercive strategies for what they are, or not recognize their experience as sexual assault.

In a landmark study, Burt (1980) found that rape myth beliefs in American culture are closely tied to "sex role stereotyping, distrust of the opposite sex (adversarial sexual beliefs) and acceptance of interpersonal violence" (p. 229). Predicting that dismantling rape myth beliefs would prove to be difficult, Burt (1980) argued that "Only by promoting the idea of sex as a mutually undertaken, freely chosen, conscious interaction (…) can society create an atmosphere free of the threat of rape" (p. 229). Burt's (1980) study stresses the importance of needing to change how we think and talk about sex and gender in the wider culture to defeat rape myths and culture. Encouragingly, Aronowitz, Lambert, and Davidoff (2012) found that "the more sexual knowledge the student had, the less likely he or she would be to accept the negative social norms of peers, and the less likely the student would be to accept rape myths" (p. 179), providing strong evidence for Burt's (1980) predication. Accordingly, McMahon (2010) found that students demonstrating belief in rape myths were less likely to willingly intervene in a situation, with male students particularly shown "to be more accepting of rape myths and less positive about bystander intervention" (p.9), highlighting that ingrained gender bias is an important factor in the survival of rape myths.

Rape myths contribute to rape culture on campuses. Burnett et. al. (2009) described that rape culture remains on many campuses due to rape myths, the presence of men's athletics, and fraternity culture (p. 467). All three things "influences post-rape behaviors, so as to conceal and perpetuate rape and the culture of rape" resulting in the muting of victims (476;479). Rape culture works to create a cognitive reality based in a powerful discourse that determines sexual assault and harassment as the status quo, thereby becoming the dominant hegemony as manifested in language. Therefore, the possibility for developing consent culture on campuses is often negated by rape culture. More troubling is the possibility of rape culture lurking in student conduct hearings. Ehrlich (1998) found in a case study of a sexual harassment tribunal at York University that the ideological frames of such proceedings reflect rape culture by way of board hearing members judging whether or not complainants resist "enough" from the perspective of assailants, rather than the perspective of victims (p. 167). This suggests that rape culture is inadvertently constructed in spaces that theoretically should be clear from it, and that sexual conduct policies are not strongly defined enough in some cases to protect victims, thus necessitating the need for revisiting policies to ensure that they do not inadvertently result in the maintenance or growth of rape culture.

Researchers have paid special attention to social environments of campuses, noting that gendered cultural expectations, and gendered cultural expectations of partying in particular play a key role in contributing to sexual assault and supporting rape culture (Armstrong et al, 2006). As best summarized by Adams-Curtis and Forbes (2004), the "college experience juxtaposes the powerful motives of sex and aggression in a population that is still forming a stable identity within an environment that includes strong peer pressures for sexual activity, the ritualistic abuse of alcohol, a culture that objectifies women, and a culture that frequently views sexual

intercourse as an act of masculine conquest" (92). Campus culture is intricate and multidimensional, fueled by the adherence of participants to gendered social norms. While institutions may try to prevent such an environment by banning alcohol on-campus, Armstrong et. al. (2006) found that such policies inadvertently contribute to rape culture by moving partying off-campus into risky environments such as fraternity houses, in which men work to control women and their behavior via alcohol.

Gendered cultural expectations and behaviors about sex are known as sexual scripts. According to Frith (2009), "Sexual 'scripts' refer to cultural messages which define what counts as sex, how to recognise sexual situations and what to do during sexual encounters," with partners using scripts as a cognitive guide for sexual behavior (p. 100). Scripts are also specifically gendered and heterosexual, with men being responsible for initiating sexual activity, and women responsible for acting as passive gatekeepers; the result is the belief that sexual activity follows a predetermined order (Frith, 2009). The secondary result is that rape myths and sexual scripts work hand-in-hand to discredit the experience of sexual assault victims (Ryan, 2011; Frith, 2009). If a woman is sexually assaulted, her behavior is scrutinized first—did she accept a drink from the offender, thereby expressing sexual interest? Did she willingly go to the offender's home? Frith (2009) observed that scripts have played a significant role in men's justification of sexual assault through verbal coercion or physical violence. If a woman accepts a drink, she must be sexually interested; a token refusal is merely an aspect of the gatekeeper part of the sexual script.

According to sexual scripts, men are experts in assessing sexual interest and willingness, and women are merely present for sexual experiences. Thus, the offender becomes the narrator of the victim's experience, and the victim is responsible for her assault because she failed to

communicate her own desires assertively. Littleton and Axom (2003) found that some aspects of rape and seduction scripts overlap, which may result in sexual assault being "construed as a normative sexual event" (474). Context and setting may also play a role in determining whether a victim's experience is defined as sexual assault or not. Littleton et. al. (2009) found that students did not consider hook-up contexts as "typical contexts in which rapes occur" (801). Adams-Curtis and Forbes (2004) described hook-up behavior as strongly resembling coercive behavior because of the use of alcohol in hook-up situations (p. 95).

As Frith (2009) described, miscommunication theory is often used by academics and the wider culture to explain that acquaintance rape in heterosexual relationships "results from poor communication between men and women, in which women fail to say no clearly and effectively, while men fail to understand or act upon women's refusals" (p. 99-100). In this understanding, women are socialized to be poor or incompetent communicators, and therefore men are unable to understand what they are attempting to communicate. Miscommunication theory explains that acquaintance rape is the result of gendered communication and powerful cultural forces. Acquaintance rape is an unfortunate mishap that could be prevented if women were taught to be more assertive speakers; therefore, preventative programming on campuses based on miscommunication theory has historically focused on teaching women to be more verbally assertive (Frith, 2009). "No means no" is miscommunication theory's basic approach to preventing sexual violence.

Advocates for miscommunication theory find justification in biology and cultural socialization (Frith and Kitzinger, 1997, p. 518). Ellis (1991) argued from an evolutionary standpoint that "natural selection has favored men who more readily learn forced copulatory tactics than women, and women who are more inclined than men to resist forced copulations" (p.

14

613). In this perspective, men have benefited reproductively from using coercive strategies, while natural selection has "favored" women who are resistant to such strategies. Forced copulatory tactics benefit men by allowing them to reproduce quickly without parenting commitments, while resistant women are more likely to reproduce with men that act as "prospective suppliers of resources" to ensure the survival of their offspring (Ellis, 1991, p. 633). Others point to pornography, media depictions of violence against women in media, and men's perception that "women don't tell the truth when it comes to sex" as support for miscommunication theory (Frith and Kitzinger, 1997, p. 518-519). Adding to this mix is the popular argument that women "often fail to say no clearly and unambiguously" (Frith, 2009, p. 103). In a study comparing women and men's acquaintance rape scripts, Clark and Carroll (2007) noted the presence of a "Wrong Accusation" script in the men's data. This script described that if a woman does not "escalate her resistance to his advances […] which she is expected to do if she really did not want to have sex, he assumes consent" (p. 624). This result expresses that some men may justify sexual assault through a lack of an escalating verbalized "no." Frith and Kitzinger (1997) argued that for women, miscommunication theory allows them to make sense of their experiences, and to continue their relationships with coercive men by allowing them to avoid acknowledging the "possibility that men are abusing their power in sexual relationships" (p. 524). This is obviously problematic, as they may feel at fault for their own assault, and continue an abusive relationship.

If acquaintance rape happens as a result of miscommunication, then data should demonstrate this factor. Using conversation analysis, Kitzinger and Frith (1999) found that young women who refuse to engage in sexual activity use normal refusal patterns and behavior that are recognized in other, nonsexual contexts. The problem of acquaintance rape Kitzinger and

15

Frith (1999) found, does not result from women's inability to communicate their sexual refusal, but with men ignoring the refusal. These men "are claiming not to understand perfectly normal conversational interaction, and to be ignorant of ways of expressing refusal which they themselves routinely use in other areas of their life" (p. 310). This means that acquaintance rape is not a result of gendered miscommunication, but (is simply) rape. In a follow-up study with two male focus groups, O' Bryne et. al. (2006) found similar results concerning young men's ability to hear and understand ordinary refusals and sexual refusals. Further, Jozkowski and Peterson (2013) speculated that "pretending or deceiving a partner into thinking that the[eir] behavior was unintentional is actually a way to obtain nonconsensual sex from a woman without getting caught" (p.522). This suggests that men may rely on purposeful miscommunication as a way to justify assaulting women.

Miscommunication theory is valuable for understanding how men may feel entitled to commit acquaintance rape, and for how women may explain their experiences. But by framing acquaintance rape as a result of miscommunication, the theory inadvertently contributes to rape culture by downplaying the gravity of acquaintance rape and reinforcing the gatekeeper model. However, miscommunication theory reveals the importance of shifting towards affirmative consent culture, as it empowers both partners to write and (revise as needed) their own sexual scripts within the narrow context of an individual relationship. Affirmative consent culture encourages communication to be mutual, effectively dismissing the gate-keeper model. More importantly, it allows individuals to recognize coercive behavior more effectively.

Part of dismantling rape culture and working towards a culture of affirmative consent is rewriting sexual scripts to include respectful and communicative partners involved in consensual acts. Therefore, understanding and defining sexual consent merits further discussion. As legal

documents, policies depend upon definitions and terms to establish the legality of actions. Therefore, it is important to locate how sexual conduct policies define and describe sexual consent. While previous studies proved that sexual communication is intricate, complex, subtle, and mirrors ordinary communication with verbal and non-verbal cues (Kitzinger and Frith, 1999; O'Bryne et.al. 2006), defining sexual consent is a key aspect of establishing affirmative consent culture, as rape culture thrives on discursive sexual and rape scripts that suggest consent is merely the absence of verbalized or non-verbalized refusal.

Beres (2007) noted that "consent is a concept taken for granted" in academia and wider culture, and pointed out that "scholars use it without defining it explicitly, or questioning its use, assuming a shared understanding of the concept" (p. 94). This is a serious problem, as it highlights a possible disconnect in understanding between audiences and authors. Some scholars may use what Beres (2007) characterized as the "spontaneous" understanding of consent, (or the common sense meaning), understanding consent as a "boundary" with sexual experiences being thought of arbitrarily as "good" or "bad" (p.95). This is consent on the most basic level—was an action wanted or not? Hickman and Muehlenhard (1999) noted that some definitions of rape "are based on the idea that non-consent should be assumed until someone actively consents, whether verbally or nonverbally" while others state that "consent should be assumed until someone refuses or resist—that being passive should be interpreted as consent" (p. 259). The second set fails to account for situations in which individuals may not feel able to say no, whether due to alcohol, drugs, psychological reasons, or fear of harm. In contrast, the first set of definitions rely on a positive response, rather than an assumption.

In an exhaustive review of sexual assault laws in the U.S. at the state level, Decker and Baroni (2011) argued for a "freely-given-agreement approach" to sexual consent, meaning that

"sex cannot rightly occur unless each party consents before the act takes place" noting that many sexual assault laws in the U.S. currently require victims to "vigorously assert non-consent or resist, rather than require the defendant to obtain consent before committing a sexual act" (p. 1167;1119). They concluded that a freely-given approach removes the burden of resistance from the victim, and "eliminates confusion and ambiguity as to the legal application of " 'no means no' " (p. 1167). A freely-given approach encourages more communication from both partners, and avoids relying on wider cultural scripts.

The issue of differing definitions of consent on a state level is all the more complicated by students arriving with other varying definitions of consent, along with preconceived notions of how sex works through sexual scripts and rape myths. The addition of alcohol and drugs further complicates matters, as their usage is normalized in sexual scripts and campus culture. For example, one of the most common rape myths is that if someone has been drinking or using drugs, they can't be raped. The myth implies that by being under the influence, an individual is consenting to have sex. As Wertheimer (2001) pointed out, there is a difference between what he distinguishes as "substance-affected consent" and "intoxicated consent." Intoxicated consent results in a lack of judgment and reasoning, meaning that an individual may make decisions "inconsistent with (…) higher order reflective judgments or stable preferences" (p. 378). If someone is intoxicated, they have lost the ability to make decisions for themselves— "intoxicated consent" is not actually consent. One of the challenges in establishing affirmative consent culture on campuses will be clarifying this point in policies and to student audiences.

If educators wish to provide a safe and healthy environment that allows individuals sexual agency, then policies must be revisited to ensure that wish comes into being. Returning to policies to see how institutions define consent and discuss sexual conduct will enable us to write

more effective policies that reflect the values of affirmative consent culture. While implementing

and applying policies may prove harder than writing them as some critics may suggest, policies

are important and influential documents; policies, like other texts, are constructed as a response

to social situations, not in a vacuum. Policies are in fact highly contextual documents that, like

other documents, mirror the values and ideology of the writer, or in this case, the institution.

Conflicting assumptions and beliefs about women and men in relation to sex, consent, and

assault remain present within societal and campus discourse—part of constructing better policies

is acknowledging that these assumptions and beliefs exist, working against creating a safe and

just environment for students.

In 2011, the Department of Education's Office for Civil Rights released a "Dear

Colleague" letter clarifying that acts of sexual violence are considered to be a violation of Title

IX. The letter also required three procedural requirements for institutions to follow in order to be

considered in compliance with Title IX, including "disseminating a notice of non-

discrimination", establishing a designated Title IX coordinator, and "Adopt[ing] and publish[ing]

grievance procedures providing for prompt and equitable resolution of student and employee sex

discrimination complaints" (p. 6). Although the letter goes on to describe each procedural

requirement more in depth, the most important and relevant aspect of the third requirement to

this study is the inclusion of a preponderance of evidence standard. A preponderance of evidence

standard, which is commonly used in civil litigation, asks if "it is more likely than not that sexual

harassment or violence occurred" (p. 11). According to Weizel (2012), this standard promotes

equitable procedures, as it allows "students the opportunity to participate meaningfully in a

process that takes seriously the interests at stake for both parties" (p. 1644). While a

preponderance of evidence allows for a careful deliberation of evidence, such evidence may be

filtered through the lens of rape culture on individual campuses, thus further emphasizing the importance of ensuring that policies contain clear and concise language in regards to sexual consent.

For this reason, this analysis investigates a corpus of eight sexual conduct policies of higher educational institutions to answer the following questions:

- What ideological values do institutions demonstrate within sexual conduct policies, and to what extent do they reflect the emerging ideology of affirmative consent culture?

- What policy language best reflects the values of affirmative consent culture?

By seeking out answers to these questions, I hope to identify how we might further strengthen affirmative consent culture on campuses via policies.

CHAPTER THREE. LENS AND METHOD

In order to answer my research questions, I gathered a corpus of eight sexual conduct policies available online in December 2015 from public and private institutions that were under investigation for violating Title IX by the U.S. Department of Education. As policies vary widely in length and content, I chose to closely analyze eight policies in the interest of time. I also chose to investigate policies from institutions that were under investigation because their situations seemed the direst. I was interested in seeing what language would be used across the board by different types of institutions, and so I chose to look at both private and public institutions that varied in population, location, and "prestige" value. However, in order to fully determine an answer to my first research question, I also did a more general review of five other policies from institutions not under investigation. Doing so enabled me to see and critique a wide variety of policy language, including different rhetorical strategies and deliveries. It also allowed me to see if there were any significant differences in policies from institutions not under investigation.

To conduct the analysis, I used Feminist Critical Policy Analysis (FCPA) as an instructive theoretical lens for analyzing the documents and their ramifications, and feminist rhetorical analysis as my primary method, coding and analyzing terms related to my research questions. I selected policies from the following institutions:

- Brown University

- Drake University

- Idaho State University

- Johns Hopkins University

- Knox College

- Marlboro College

- Minot State University

- University of Virginia

Brown and Johns Hopkins are private research universities. Idaho State and Virginia are public research universities. Minot State is a regional university, and Drake is a private university. Both Marlboro and Knox College are four-year private liberal arts colleges. Below, I discuss the theoretical framework of FCPA, and the assumptions of feminist rhetorical analysis.

<div align="center">**Feminist Critical Policy Analysis**</div>

FCPA is a framework developed by Marshall (1997,1999), Bensimon and Marshall (1997, 2003), and others such as Shaw (2004) and Stromquist (1993, 1995). In contrast to traditional policy analysis, FCPA is "research that conducts analyses for women while focusing on policy and politics" (Marshall, 1997, p.2). FCPA assumes that "gender inequity results from purposeful (if subconscious) choices to serve some in-group's ideology and purpose" (Marshall, 1997, p.2). Accordingly, FCPA "examines policy from women's lives, generates links with social constructions of reality, recognizes a diversity of standpoints, and emphasizes the importance of context in policy analysis" (Laible, 1997, p. 205). When using FCPA, researchers are reviewing policies for implicit gendered biases and assumptions, paying close attention to the language and ideology contained within policies. FCPA was utilized as an instructive lens for analyzing the corpus, as FCPA's concerns with policy language, gender assumptions, ideology, and policy effects are reflected within my research questions.

In Marshall's (1997) framework, traditional policy analysis is problematic because it masquerades behind the appearance of supposedly objective and neutral methods while ignoring women's issues and concerns, therefore failing to acknowledge pre-existing and inherent biases, values, and historical contexts of power and gender within institutions (p.3). In other words,

policies and policy analyses are never neutral because they are constructed according to dominant hegemonies and discourses at the time of their conception. Bensimon & Marshall (1997) have also criticized traditional policy analysis for being implicitly androcentric via its assumptions of a "Singular or universal concept of truth", of "objectivity and observer-neutrality", and by "Evaluating women on the basis of male norms" (p. 7-8). More problematically as Laible (1997) has observed, the assumption of objectivity has resulted in traditional policy analysts to also assume that "the problem is viewed in the same way by all people and that power issues and the values of the policymakers have no impact on the definition of the problem" (p. 205). When it comes to sexual assault and policies, we must scrutinize the values and power contained within policies in order to determine how they may actually affect individuals in reality.

While academia is often depicted as a bastion of progressivity, feminist scholars "depict the academy as a patriarchal organization in that male dominance is institutionalized throughout the system" (Bensimon & Marshall, 1997, p. 5). This includes the control of curriculum, the control of scholarly journals, and "Male dominance on trustee boards, non-enforcement of Title IX, the abandonment of affirmative action, and the failure to assign financial and other resources to support gender-equity initiatives" (Bensimon & Marshall, 1997, p. 13). Currently, the dominant approach to these issues is to utilize policies that work towards assimilating and accommodating women into this culture, rather than working towards a successful "strategy of transformation" via the deconstruction of patriarchal policies through FCPA (Bensimon & Marshall, 1997). A consequence of this strategy, while well-intentioned, is that men may decide how and when to distribute power to women. For example, "No means no" is a policy of

accommodation, as it focuses on safety tips and regulating the behavior of women, instead of deconstructing rape culture and myths on campus, which would be transformative.

Implementing and enforcing gender-equity policy is a difficult task. Problematically, policies in academia may be viewed as lip service in response to outside critics, including Title IX, introduced in 1972 as part of the U.S. Education Amendments, which "prohibits discrimination on the basis of sex in any federally funded education program or activity" (20 U.S.C.,1681). Marshall (1999) described that "Title IX's lack of incentives, training, or enforcement mechanisms signaled that it was only token legislation" as it addressed the symptoms of the problem, rather than its gendered origin and historical context (p. 60). In other words, it is important to remember that even in the most celebrated policies, "limited thinking and sexist assumptions go unquestioned and are built into policies" (Marshall, 1999, p. 65), and for that reason alone, we must consistently return to and evaluate policies, especially policies that specifically deal with gender and sex as sexual conduct policies do.

Feminist Rhetorical Analysis

Policies are rhetorical documents. Like other forms of discourse, they seek to enact action or change through making an argument via symbolic means (Selzer, 2004). As van Dijk (2001) described, discourse is a form of power held by social groups and institutions that have access to rare resources, such as money, status, force, knowledge, or information (p. 355). Because groups and institutions have access to these resources, they may be able to later control others via integrating their power into "laws, rules, norms, habits and […] thus take the form of what Gramsci called 'hegemony'" (van Dijk, 2001, p. 355). Policies are written with the intention of persuading their audiences (students, administrators, others), to agree and concede to the institution's moral perspective and legal procedures and power. They outline and define

24

appropriate and inappropriate behavior, effectively acting as a social contract, with administrators doling out consequences for defying policy. Institutions control large populations through a social structure of financial power, the promise of professional advancement, living spaces, and wide-scale social interactions (such as sports, fraternities, and sororities).

From a rhetorical perspective, having the most dominant discourse translates into "more chances to control the minds and actions of others" (van Dijk, 2001, p. 355). The dominant discourse (or the most prominent discourse), also becomes the most authoritative, and the one that people primarily know and trust, which shapes their cognitive perspective. As van Dijk (1993) summarized, "managing the minds of others is essentially a function of text and talk" (p. 254). This isn't to say that power can't be recaptured, or that discourses can't be challenged, but that language shapes a great deal of our cognition, and correspondingly, our perspectives. This critical observation means that establishing affirmative consent culture on campuses will require overcoming and replacing the long established discourse and ideology of rape culture; to change the way we practice sex will require changing how we talk about and represent sex in wider society.

As a type of ideological criticism, feminist rhetorical analysis seeks to "discover how rhetorical construction of identity markers such as gender are used as a justification for domination, how such domination is constructed as natural, and how that naturalness can be challenged" (Foss, 2009, p. 213). Like FCPA, feminist rhetorical analysis is concerned with unearthing and challenging gender biases and assumptions within texts, as "scholars have long held the premise that patriarchy is largely maintained by language" (Nudd & Whalen, 2009, p. 263). This particular study takes what Nudd and Whalen (2009) describe as a "*recording approach*" to the corpus, examining how "messages about gender are created and sometimes why

25

a message is packaged a particular way" (p. 266). This approach reveals the assumptions that are otherwise unexamined in texts.

After downloading policies from each institution's website in December 2015, I loosely followed the process that Foss (2009) outlined for conducting feminist rhetorical analysis. I read the documents closely, first developing a preliminary coding of individual signs and associated categories based off of the framework of FCPA and my research questions. These signs and associated categories can be seen in the table below. I then reread the documents, manually coding and noting the relationship between the signs and their associated categories, and worked towards identifying the ideology and policy language demonstrated within the documents in order to answer my research questions.

Table 1

Signs and Categories Developed from FCPA and Research Questions

Signs	Associated Categories
Actors	Types of actors (institutions, victims, survivors, assailants, administrators; enemies, supporters
Agency	Associations of agency and power
Consent	Definitions of consent (verbal, non-verbal, when)
Community	Types of community (university/college, environment, values, who is part of community)
Discipline	Types of discipline (expulsion, suspension, apology etc; who gets punished and why)
Gender	Types of gender, gendered language (female, male, transgender, aggressor, LGTB)
Hearing	Types and descriptions of judicial hearings (conduct hearing, trial, mediated)
Patriarchy	Presence of patriarchal assumptions
Process	Narratives of processes (timelines, actions, report filing)
Responsibility	Types of responsibility (personal, institutional)
Safety	Types of safety (personal, others)
Sexual acts	Types of sexual acts (kinds of intercourse, touching, etc.)
Sexual misconduct	Types of assault (kinds of intercourse, touching, etc.)
Values	Values associated with actors (explicit, implicit)

CHAPTER FOUR. ANALYSIS

While all eight policies discussed the signs and respective categories in Table 1, the signs that were most emphasized included actors, consent, responsibility, and values. By emphasized, I mean that these signs were used to great rhetorical affect across policies, resulting in several important trends that I will later address in this chapter. These trends include the presentation and definition of sexual consent in policies, and the portrayal of institutions as parental personas. Additionally, the emphasis of the above signs suggests important policy implications from an FCPA standpoint.

Notably, policies featured similar language across the board—this consistency is a good sign, as it shows that institutions are motivated to adapt their policies in accordance with wider cultural changes. For example, all of the policies included in this study used almost identical language when defining sexual harassment. However, because policies did use such similar language, it was difficult to determine in the corpus what specific policy language *best* reflected the values of affirmative consent culture. The policies that I studied varied in how they discussed sexual consent and other things related to affirmative consent culture, but not enough to present largely significant variations in meaning and interpretation. However, despite failing to fully determine the answer to my primary research question, studying a variety of policies has led me to develop some further thoughts on writing policies which I will discuss later as well. Interestingly, the policies that I reviewed on a general scale from institutions not under investigation did not show that much difference from those that are under investigation, which is a reminder that merely having an affirmative consent policy doesn't mean that campus culture has shifted in that direction.

Markedly, policies followed a similar structure of contents, and varied substantially in length, with Knox College's policy being the shortest at 7 pages, and Johns Hopkins' the longest at 32. The typical structure of policies included:

- An introduction specifying the purpose of the policy

- An acknowledgment of Title IX, the Clery Act, and state laws

- Definitions of sexual harassment, consent, assault, exploitation, and misconduct

- Definitions of stalking and domestic violence

- An explanation of the purpose of Title IX officers and their contact information

- Information on how to report sexual misconduct

- A statement of amnesty for students who witnessed misconduct while under the influence

- An explanation of the investigative and judicial processes

- The rights of victims and offenders

- A statement about confidentiality

- A description of possible interim measures

- A section on awareness and prevention efforts

- Contact information for campus and community resources

The structure and content of the policies closely follow recommendations from the White House's Task Force to Protect Students from Sexual Assault "Checklist for Campus Sexual Misconduct Policies" resulting in the standardization of policies. The policies do not explicitly refer to or inform audiences about the "Checklist", but institutions are clearly using it as a template to write policies. The pressure from the federal government to reform policies is likely the most significant contributing factor to the similarities across policies. It should be noted that not all policies explicitly list the rights of victims and offenders—some merely summarize their

28

rights in relation to the duties of the Title IX coordinator. This lack of transparency is problematic because it makes victims and offenders dependent on coordinators and administrators for information about their rights.

Institutions are also using policies as pedagogical and informative documents—this development signals that institutions are aware of the significance that policies can play in educating audiences about the topics and situations that policies address. For example, some policies include sections on what to do after being assaulted, such as preserving evidence, contacting law enforcement, and getting a medical exam. Johns Hopkins (2015) informs its audiences that a "victim should not shower, bathe, wash, douche, brush hair, drink, eat, or change clothes or bedding before a forensic medical exam" (p. 21). This passage offers much needed practical information for victims reporting sexual assault to law enforcement. Idaho State (2015) includes instructive examples of sexual assault scenarios in order to teach students and hearing boards what sexual consent and assault looks like. Drake (2015) includes a section on the warning signs of domestic abuse and stalking to educate audiences about interpersonal violence (p.14-15). Consequently, policies contain information that one might expect to find in a sex education course or in the curriculum of a health class; they assume that audiences may lack knowledge about such topics, and fulfill a role in addressing this lack of knowledge. As such, policies in the corpus play two roles—they address the behavioral expectations of campus community members and institutional processes, but also attempt to shepherd students through difficult situations by providing them with vital information. In effect, this hybridization allows policies to serve their traditional purpose, while also identifying institutions as agents that want to empower students and other campus community members. As a result, it is not surprising that

policies trend towards characterizing institutions as parental personas. Before discussing this

characterization further, I will first address sexual consent trends across policies.

Trends Related to Presenting and Defining Sexual Consent

The establishment of affirmative consent culture within policies is predicated on clear

and precise definitions of sexual consent, assault, and misconduct. Without clear and precise

definitions to instruct and guide students, Title IX investigators, judicial boards, and other

campus community members, justice cannot be served to victims and offenders. As described

previously, affirmative consent culture defines consent as voluntary, unambiguous, verbalized,

enthusiastic, ongoing, and free from coercion or incapacitation via drugs or alcohol.

During my review of the policies, I paid careful attention to how the definitions of

sexual consent were framed, discussed, and associated with other terms of interest, and how

those terms reflected, or failed to reflect affirmative consent culture. Policies consistently

demonstrated awareness of the vital importance of sexual consent, and with the exception of one

policy, defined consent affirmatively. This is a positive and noteworthy achievement, as it

suggests that affirmative consent culture has indeed reached various campuses, or at least at the

policy level. In the table below, I've included excerpts of sexual consent definitions from each

policy. In the actual policies, definitions are much longer because they define consent, and also

define what does not count as consent. Below, I've tried to take the "meat" from each definition

to demonstrate the similarity of policy language.

Table 2

Sexual Consent Definitions in Corpus Policies

Institution	Definition
Brown University	Brown University prohibits sexual misconduct, defined as non- consensual physical contact of a sexual nature (p. 3).
Drake University	The term "consent," in the context of sexual activity, means by clear, unambiguous action, agreeing, giving permission or saying "yes" to sexual activity with someone else (p. 2).
Idaho State University	Consent is sexual permission that is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity (p. 3).
Johns Hopkins University	Sexual activity of any kind requires "consent," which consists of the following: Consent means clear and voluntary agreement between participants to engage in the specific act. Consent requires a clear "yes," verbal or otherwise; it cannot be inferred from the absence of a "no." Consent cannot be obtained from someone who is unconscious, asleep, physically helpless, or incapacitated (including, but not limited to, mentally incapacitated) (p.3).
Knox College	Consent to engage in sexual activity must be informed, freely given and mutual. Consent must be ongoing, throughout each instance of sexual activity, and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact (p. 3).
Marlboro College	For purposes of this Policy, "effective consent" means a voluntary agreement to engage in a sexual act. Effective consent must be actively given—through words or actions—and it must be given freely and without coercion. The words or actions that make up effective consent should be mutually understandable to the parties involved (p. 9).
Minot State University	Consent is: 1. Words or actions showing a clear, knowing and voluntary agreement to engage in mutually agreed upon sexual act; or 2. An affirmative decision given by clear actions or words (p. 1).
University of Virginia	Affirmative Consent is: Informed (knowing) Voluntary (freely given) Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed upon sexual activity (p.12).

Affirmative consent culture considers enthusiasm to be an important component of

consent, as the presence of enthusiasm guarantees that a sexual act is truly performed willingly,

and that sexual pleasure is present. Curiously, the definitions in the corpus did not use the term

"enthusiastic" to refer to consent. It is my speculation that "enthusiastic" does not appear

because of the popular perception and media depiction of campuses as hedonistic partying

places. For what are most likely publicity reasons, institutions are not motivated to condone sex, much less pleasurable sex. Additionally, "enthusiastic" could be interpreted subjectively.

I initially expected policies to subtly mirror the greater popular culture's abundance of patriarchal assumptions and gendered scripts about sex and sexual assault. However, this expectation proved to be false, as the policies contain gender-neutral language, using terms such as "person" and "individual" to refer to actors instead of he, she, or they. For example, the University of Virginia (2015) uses the term "person" when defining sexual contact as being "performed by a person upon another person" (p. 12). Notably, the terms "person" or "individual" are also inclusive of different gender identities and sexualities. This is an encouraging factor, as it demonstrates that policies can at least attempt to re/form the larger culture outside of campuses via purposeful and thoughtful language and educating students about sexual consent. The policies of Drake (2015) and Idaho State (2015) feature specific safety tips to prevent sexual assault. Interestingly, both policies acknowledge that such tips may be presented in other contexts or wider culture to victim-blame. Drake (2015) reminds audiences that "no victim is ever to blame for being assaulted, harassed, or abuse" (p. 14). Accordingly, Idaho State (2015) says that "No one deserves to be the victim of a crime or subjected to the misconduct of others" (p. 9). Both of these policies actively refute rape culture myths with these statements.

Positively, all of the policies with the exception of Brown's (2015) include a definition of sexual consent that mostly reflected affirmative consent culture. Sexual consent can be defined across all policies as being active, unambiguous, ongoing, occurring during every sexual event, withdrawn at any time, and free from coercion, intimidation, or the influence of drugs and alcohol. For example, Johns Hopkins (2015) defines sexual consent as a "clear and voluntary

agreement between participants to engage in the specific act" that "requires a clear "yes," verbal or otherwise; it cannot be inferred from the absence of a "no" (p.4). This definition requires that consent be verbally obtained and freely given, rather than assumed from silence. The University of Virginia (2015) explicitly labels its definition of consent as "Affirmative Consent" in an attempt to signal its alliance to the ideals of affirmative consent culture. Knox (2015) tells audiences that "An individual should obtain consent before moving from one act to another" as a reminder than consent is an ongoing action (p. 3).

However, while many policies include a verbal consent standard, they also state that consent can be demonstrated by "actions that clearly indicate a willingness to engage freely in sexual activity" as Knox College (2015) describes (p.3). What actions are considered to indicate consent? Knox (2015) doesn't explain, and neither do other institutions; this lack of specificity is ambiguous, and dangerous because it doesn't provide clear guidance for students, investigators, or hearing boards. Are actions related to expectations in wider cultural scripts about sex? Are they certain gestures, movements, or responses? Minot State (2005) states that "If confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continues" (p. 1). It's interesting that Minot State (2005) emphasizes a verbal standard after stating the above, as it counts "actions showing a clear, knowing and voluntary agreement" as consent (p.1). This trend is something that institutions should address and clarify, as a policy's audiences may fail to interpret a definition like an institution desires. Additionally, actions could also be interpreted subjectively; this is not a sufficient standard for policies.

All policies focus very strongly on discussing situations and contexts in which consent is not present or able to be freely given, referring to the presence of drugs and alcohol on campus.

The University of Virginia (2015) offers very specific guidance for assessing incapacitation, stating that "One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation" further recommending that "If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity" (p.14). This statement emphasizes the responsibility of both partners to ensure that consensual sex is being practiced. Additionally, policies imply that the presence of drugs and alcohol does not absolve sexual misconduct, as "Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent" (Knox, 2015, p. 4). These kinds of statements are a valuable response to the rape myth that suggest victims are responsible for their assault if they were drinking or partaking in drugs, and the myth that assault is somehow less morally wrong if it happens when the offender and/or victim is drunk or impaired. Interestingly, when describing that consent cannot be obtained by under the influence, Johns Hopkins (2015) states that "A person can consume alcohol and/or drugs without becoming incapacitated" (p. 4). There is little context presented with this statement—audiences may be unsure of how to interpret it or what the statement is trying to clarify.

As previously mentioned, Brown's (2015) policy does not contain a definition of affirmative consent. Instead, it states that it "prohibits sexual misconduct, defined as non-consensual physical contact of a sexual nature" and "includes acts using force, threat, intimidation, or advantage gained by the offended student's mental or physical incapacity or impairment of which the offending student was aware or should have been aware" (p.3). The problem with this definition is that it fails to model what consensual sex looks like, and situations in which an individual may not be able to articulate or feel safe enough to say "no" to

their partner. An additional advantage of the affirmative consent approach is that it is preventative in nature by way of encouraging partners to express their boundaries; with Brown's approach, the importance of consent is only addressed and assessed after the fact. Further, from an FCPA standpoint, this definition echoes older patriarchal beliefs about sexual consent as assumed.

A trend that appeared in two policies is discussion of faculty-student romantic and sexual relationships. I found this very surprising, because I assumed that faculty-student relationships are not only institutional liabilities, but unethical due to the power differential between faculty and students. I found my assumption echoed in the policy of Idaho State (2015), which warns that relationships between faculty and students "may be less consensual than perceived by the individual whose position confers power" and states that "relationships in which power differentials are inherent (…) are generally discouraged" (p.3). While "generally" may be used here as in the "general rule of thumb", it could also be interpreted as in "most cases", meaning that *some* cases are an exception. While it may be countered that this analysis is reaching, it would be more rhetorically effective to simply state that such relationships are not allowed.

In comparison, Brown (2015) recommends against faculty and graduate teaching assistants having "an amorous relationship with a student who is enrolled in a course taught by the faculty member or graduate teaching assistant" and to recognize that "if a charge of sexual harassment is subsequently lodged, it may be exceedingly difficult to prove mutual consent" (p.4). The use of "amorous" in Brown's (2015) policy when referring to student-faculty relationships is a curious choice, as the policy also uses the term "sexual relationships" as well. Does Brown (2015) believe that student-faculty relationships are possibly romantic, or perceived by others, either in the relationship or outside of the relationship, as romantic? I am also curious

35

to know why the authors of both policies decided to include discussion of faculty-student relationships, while other policies did not. Perhaps other institutions have a faculty code of conduct, trainings, or they rely on implied expectations of faculty behavior. I recommend that institutions include discussion about faculty-student relationships, but make it clearer that such relationships are ethically compromised and shouldn't be pursued.

The absence of sexual consent is assault—therefore, I also examined the definitions of sexual assault within policies. When comparing definitions, I found that some policies define assault using state legal definitions, such as Brown (2015) and Drake (2015). While this isn't necessarily bad, it is important to remember as Decker and Baroni (2011) argued that some state laws still require victims to prove that they actively resisted their assailant (1119). More significantly, some state legal laws do not require that consent be obtained prior to sexual activity, either verbally or by actions. For example, below is Iowa's definition of sexual abuse, as seen in Drake's (2015) policy:

> The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other. (p. 18).

The above definition does not include for sexual abuse that occurs via coercion, intimidation, and mental status, among other factors. The importance of strong and effective definitions of sexual consent becomes clearer when reviewing state definitions of assault and abuse, as they do not offer much to go on for victims and other campus community members. Additionally, because state laws and definitions hold considerably more legal power and status than policies, hearing boards may be inclined to follow them over an institution's.

Portrayal of Institutions as Parental Personas

Through the use of tone, institutions in the policies are characterized as protectors and stern disciplinarians, identifying themselves as enforcers of safety, respect, and justice on campus. In this vision, there is no acceptance for sexual misconduct, and the role of the institution to protect the larger campus community, much like police. Additionally, they are also characterized as acting in the best interests of students and the campus community. This distinctive portrayal manages to develop an authoritative and caring persona to institutions, one that allows them to cement their credibility above other actors by becoming the ultimate sense of ethical authority within policies and on campus.

In some ways, this persona most strongly resembles a parent explaining behavioral expectations and consequences to an audience of children, and by extension, mirrors a larger cultural expectation of institutions to protect and educate students. The educational content in policies serves to further emphasize this factor, as it is the role of parents to teach children about right and wrong. Like a parent giving a stern warning, Johns Hopkins University (2015) states that "it will not tolerate" sexual misconduct (p.1). Likewise, the University of Virginia (2015) states that policy violations are "unlawful, undermine the character and purpose of the University, and will not be tolerated" and further identifies itself as "an institution built upon honor, integrity, trust, and respect" (p. 2-3). In another vein, Knox College (2015) states that "Sexual harassment is contrary to the most fundamental ethical canons of the academic community", issuing a direct value judgment about sexual harassment and instructing its audience on unacceptable behavior (p.2). Drake (2015) states that its "primary concern is the health and safety of its students" before encouraging students to come forward to report incidents of sexual assault (p.5).

37

As a result of the parental persona, institutions are specifically coded as well-intentioned actors, allowing them to be protected from charges of moral liability, and shifting all responsibility for sexual misconduct to individuals. The parental persona is also damaging in some cases because it encourages hearing boards to resolve cases as opportunities for offenders to merely learn what they did wrong, rather than focusing on justice for victims. For example, the Center for Integrity found during an investigation that administrators at Indiana University held the view that "Proceedings aren't meant to punish students, but rather to teach them" (Lombardi, 2010, par. 9). While hearing boards are obviously not a replacement to the criminal justice system (and are not meant to be), this view inherently privileges the offender by effectively dismissing the seriousness of the offender's actions.

From an FCPA standpoint, policies may end up protecting and serving the institution more than students. Because institutions are portrayed as inherently good and protective, it is difficult to question their ethical authority. If institutions fail to deliver justice for victims, victims must turn to outside sources of authority, such as the Department of Education or the media, in order to attain equitable power. It is not surprising that Emma Sulkowicz and other victims told their story in the media—by doing so, they were able to effectively counter the ethical authority and image of the institution that they attended, and challenge the decisions of hearing boards on a larger scale. It is difficult to strategize how we might write policies to avoid this issue. Part of this is because administrators use policies to make decisions that affect students and other campus community members; they may be more (unintentionally) inclined to protect the institution because they are agents of the institution. I suggest that institutions be as transparent as possible in their processes, and for administrators to continually examine how organizational and cultural biases filter through all aspects of campus culture and structures.

The distance between institutions and other actors is further widened by the use of third person to refer to institutions across policies. While this is obviously the correct grammatical choice, rhetorically it serves to adds a sense of formality to policies and a further *gravitas* to institutions. More intriguingly, referring to an institution as "it" or "the" allows for the institution to act as a bureaucratic wall for the actions of administrators, much like corporations shielding executives. Marlboro College (2015) offers an exception to this rule when it suddenly shifts from third person to first person, stating that "We want complainants to be safe" (p.15). Via a more direct and personal appeal to its audience, this example emphasizes that institutions may again present themselves as caring. In a study on the rhetoric of identification in company newsletters for employees, Cheney (1983) described that the usage of this kind of language is used by organizations to build common ground with audiences, and to emphasize the belonging of individuals (p. 50). In effect, this strategy encourages audiences to regard organizations as a reflection of the good qualities of themselves.

An institution may use empathetic language to build a further connection with their audiences, especially in sections that contain suggestions, resources, and actions for victims in the aftermath of an assault. This is the case for Idaho State University (2015), which states that "the decision to report sexual violence or misconduct can be agonizing for survivors and difficult for bystanders" (p.10). The use of "agonizing" emphasizes the very real tribulations of survivors in real life, and "difficult" describes the discomfort that a bystander may feel after witnessing an assault. This empathetic language may also persuade audience members to action, such as reporting an assault or a hostile climate. However, Idaho State is the exception to the rule; other policies in the corpus follow policy genre conventions by avoiding emotional language that may be interpreted subjectively.

39

Other actors in policies include faculty, staff, administrators, students, and at some institutions, third parties. As campus community members, these actors are portrayed as playing an integral role in supporting institutions in maintaining a safe and respectful environment. For example, at Brown University (2015) and Minot State University (2015), community members are "encouraged" to quickly report policy violations (p. 2; p.3) Community members at UVA (2015) "are expected to provide truthful information in any report or proceeding under this policy" (p.18). Other actors include judicial hearing boards, and Title IX officers, who are charged with ensuring that processes related to complaints are fair, thorough, and prompt, as per the DOE's (2014) "Dear Colleague" letter.

A variety of terms are used to describe both sexual assault victims and offenders across policies. Victims are referred to as "complainant", "survivor", "grievant", and "accuser", while offenders are labeled as "alleged harasser", "respondent", "accused", and "alleged perpetrator". This variation is intriguing, as these terms are similar, but fluctuate in meaning enough to suggest that each institution has a slightly different worldview of these two categories of actors. The connection of "alleged" to offender terms highlights the preponderance of evidence standard seen in policies, and stresses a presumed innocence. In Idaho State's (2015) policy, the term "survivor" is used for victims, but when the investigation process starts, they're referred to as the "complainant." This shift also occurs in other policies, and consistently in sections discussing the investigative process. Perhaps policy writers feel that "survivor" is a term that threatens the impartiality of an investigation by appealing too strongly to a judicial hearing board's sense of emotion, or that it presumes that the respondent is guilty. It is also interesting to note that many policies warn of consequences for making false reports, perhaps signaling an inherent distrust of the authenticity of reports, or a fear that campus community members will make reports

40

maliciously; both of these factors may possibly mirror the larger influence of rape culture, which assumes that many sexual assault reports are false.

Victims are also informed of their choices and options, giving them an apparent sense of agency in the aftermath of their assault. Drake University (2015) tells victims that it is "your choice" to make a report, and Idaho State (2015) explains that they "may choose" to make a report to law enforcement (p. 12; p. 14). Victims are told that they may choose to withdraw their complaint, change their resolution process, or in some cases, not attend judicial hearings. Offenders are also informed of their choices and options, and these are often similar to the victim's. For example, an offender may also choose not to attend a judicial hearing, or change their resolution process. Some policies contain a list of rights for both victims and offenders, and many of these rights are identical—Marlboro College (2015) states that both parties may "opt out of the process even though the process may continue" and that they have "The right to be treated with respect by all parties to the process" (p.23; p.24). It seems that institutions are concerned with ensuring that the judicial process is fair and transparent for both victims and offenders; whether that is a reality is a question for another study.

Writing Policy Remarks

Writing sexual misconduct policies is understandably complex, as they address sensitive issues and can have a significant impact on the lives of students and other campus community members. While sexual misconduct policies have become somewhat standardized, they should also be treated as the influential and transformative documents that they are by ensuring that they are rhetorically effective as possible for audiences. By rhetorically effective, I mean that they strongly engage with their intended audiences by not only providing valuable information, but by persuading audiences of the value of their content. Policies already partly do this by explaining

the sanctions that violators may face. However, I would like to recommend that policies also inform their audiences of the benefits or the policy may have on their personal life, campus community, and relationships with others. Admittedly, some policies already do this to an extent, but audiences are more likely to follow policies if they can understand the rationale behind them. Affirmative consent culture is about sexual ethics—if students do not understand this, then policies are only arbitrary documents to them.

After reviewing other policies in the corpus with FCPA in mind, it became evident that Idaho State's (2015) policy stood out against the others due to its usage of simple and precise language, and active engagement with audiences. For example, when discussing the absence of consent, the policy states that "If there are any questions or ambiguity then you DO NOT have consent" (p.8). The use of capital letters and second-person firmly grabs the audience's attention and reinforces the message of the statement. While it may seem that there is nothing explicitly feminist about these rhetorical moves, they do ensure that the policy is accessible, meaning that multiple audiences can understand, use, and apply the policy. From a traditional policy standpoint, the inclusion of educational examples in Idaho's (2015) policy may seem puzzling and better included in a training program, but I counter that this inclusion strongly benefits students and other campus community members by providing a necessary pedagogical model of affirmative consent culture against wider cultural expectations and beliefs about sex.

Policy language should match the style and vocabulary of intended audiences, as policies that resemble legalese are not helpful or noteworthy for college students. This is especially important for definitions, which should be concisely written and easy to understand by a lay person. The length of a policy does not guarantee that it's good. Policies that are excessively long are frustrating for readers, and should be trimmed down accordingly. Similarly, policy

writers should check for repetitive information, and indications of patriarchal assumptions, rape myths, and sexual scripts.

At the end of the day, policies are only as enforceable and transformative as an institution desires them to be. Unfortunately, rewriting policies doesn't mean that campus community members will follow them, or that administrators and hearing boards will use them judiciously. To reinforce policies, I suggest that institutions continue to supplement them by providing further education about affirmative consent culture through workshops and trainings; doing so sends a strong signal about campus cultural expectations and behavior. From a feminist critical policy analysis standpoint, I recommend institutions ensure that trainings and workshops explain the larger social context behind affirmative consent culture, such as how the consequences of rape culture affect female and LGBT students disproportionately. It is important to remember and understand that institutional and cultural change may proceed at a slow pace, and that affirmative consent culture is a challenge to longstanding, ingrained, and sexist beliefs about gender, sex, and consent.

CHAPTER FIVE. CONCLUSION

This study found that institutions are already utilizing affirmative consent values in their policies, which will benefit students and other campus community members by providing a guide to sexual ethics, and allowing students to articulate their own desires and boundaries with partners. However, for the sake of clarity, institutions should consider eliminating or clarifying any language referring to "gestures" or "actions" as a sign of consent, as this is a confusing and subjective standard of consent. The characterization of institutions as parental personas and inclusion of educational and informational content in policies alternatively suggests that they see affirmative consent culture as a way to enforce their moral standing, and show that they are progressive to outside audiences, such as the federal government, prospective students, and parents.

While I was able to determine some interesting trends in this study, it was also limited by the small sample size. A larger sample size might have offered a richer analysis of trends across a wider variety of institutions. The study could have also benefited from interviewing students about their knowledge and perspective of sexual conduct policies and affirmative consent culture—the text-only approach that I used does not account for the real life experiences of students and other campus community members, and it is common in policy studies to conduct ethnographic research.

For obvious reasons, it remains absolutely vital that academics continue to study the intersection of campus sexual assault and language. Now that affirmative consent culture is explicitly introduced on a larger number of campuses via policies, future studies will be able to focus on its effects. It would be particularly instructive to follow up on the studies of O'Bryne et. al. (2006) and Kitzinger and Frith (1999) to see how students will talk about sexual

miscommunication and consent in the future. Another direction of study could be related to determining what kind of language is pedagogically effective for teaching audiences about affirmative consent culture. A possible research method could include having focus groups reading and discussing example policies. It will also be interesting to see how consent is represented in popular and wider culture, and in high schools, as President Obama eliminated federal funding for abstinence-only sex education in the spring of 2016 (Zeilinger, 2016).

Since I started this study in the fall of 2014, even more institutions have been placed under investigation by the DOE for possibly mishandling sexual assault cases. The *Chronicle of Higher Education* has begun tracking the number of investigations. As of October 21, 2016, there are 281 open cases. Hauntingly, the 2015 Campus Climate Survey on Sexual Assault and Misconduct found that 23.1% of female and 5.4% of male undergraduate students are raped or sexually assaulted on campuses. While I (and others) believe that affirmative consent culture is key to reducing assault rates, and deconstructing the overbearing rape myths and sexual scripts that permeate wider culture, it remains to be seen if policy will be practiced on campus in reality. And while students can be taught about sexual consent, clearly administrators should reflect and consider how they and their institution cultivates its own version of rape culture, as they have the most power on campus, and ability to change campus culture.

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