

**“Why Don’t You Just Ask?”: Date Rape Debates and the Meaning of ‘Yes’ and ‘No’ in the Antioch College Sexual Offense Prevention Policy, 1985-1994**

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In a 1991 *Washington Post* article entitled “Surveying Rape,” Richard Cohen took stock of the “date rape crisis.”<sup>1</sup> Positioning himself as a rape reformer, who had begun writing on the problem of underreported rape over a decade ago, Cohen now expressed concern over the consequences of this much needed media attention. On one hand, feminist efforts had revealed that sexual violence did not always or even often involve what Americans typically thought of as “violence.” The social and psychological pressures often at play in date rape situations were far more difficult to quantify, leaving many victims bereft of legal and institutional support. On the other hand, it now appeared as if feminists had gone too far. It was one thing to recognize the existence non-violent pressures, but “now that pressure could mean almost anything – from another glass of wine, or an hour long lament by the fellow to win sympathy.” Of equal concern to Cohen was the new “religious” devotion to “no means no” as a way of marking the boundary line between consensual sex and rape. “As a logical statement, No Means No doesn't pass muster any better than the gun lobby's Guns Don't Kill People -- People Do,” he argued. “Of course ‘no’ can mean ‘no,’ but it can mean other things as well.”<sup>2</sup> Responses to Cohen’s article were virulent. Even if there were times when ‘no’ meant ‘yes,’ one letter to the editor argued, shouldn’t a ‘no’ always be respected? It is far better to forego veiled consent than risk committing rape. Another critiqued his assumption that a woman’s words were open for interpretation. If a man wanted to know whether a woman wanted sex or not, she argued, “Why don’t you just ask?”<sup>3</sup>

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<sup>1</sup> Richard Cohen, “Surveying Rape,” *The Washington Post Magazine*, May 19, 1991

<sup>2</sup> Ibid

<sup>3</sup> Responses to “Surveying Rape,” *The Washington Post*, July 21<sup>st</sup>, 1991

The debate played out between Cohen and his critics reveal the key fault lines of debates over date rape, a phenomenon that captured institutional and media attention from the mid to late 1980s. Cohen's article was one of thousands of similar pieces published in major publications like the *Washington Post*, reflecting the massive mobilization around date rape occurring on college campuses, in state legislatures and within courtrooms across the country. In many ways, this focus is unsurprising; feminist activism around date rape emerged within a culture already sensitive to sexual violence and came hard on the heels of an equally controversial effort to remove the marital ban from state and federal rape laws.<sup>4</sup> However, as Cohen's article reveals, debates over date rape were about far more than extending legal rights or revealing the structural causes of systemic violence; date rape presented a fundamental challenge to the definition of violence itself. The types of social and psychological pressures Cohen discussed, although rarely recognized in legal or academic discussions of date rape to quite an unsubstantiated degree, were at the very core of a movement that aimed to expand notions of violence beyond physical force and reveal the coercive structures inherent within American social and sexual practices.

Although it emerged within this longer history of anti-rape mobilization, the unique trajectory of date rape debate were deeply embedded in the cultural, political and feminist contexts of the late 1980s. Specifically, the path of date rape discourse reflects the particular peculiarities of 1980s liberalism combined with the fundamental challenges of translating feminist ideology into practice. By the time Cohen was writing, numerous institutions had begun responding to what radical feminists had termed a "rape culture" – the social and political matrix that utilized sexual violence as a mechanism of patriarchal control. As his article so clearly demonstrates, however, operationalizing these abstract notions of "intimidation" or "pressure"

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<sup>4</sup> The marital ban defined an act of rape as "sexual aggression committed by a man against a woman who is not his wife." The effort to overturn the marital ban began in the early 1970's and was one of the first concrete aspects of feminist anti-violence mobilization. By 1987 all states had removed "who is not his wife" from their rape laws.

proved problematic. Well lit parking garages, blue light networks and safe-walk services could mitigate fears of forcible stranger rape, but coercive behaviors that were embedded in and drew meaning from intimate social contexts were harder to quantify. Moreover, these new definitions of rape were highly contested and the boundary lines between legally actionable acts of violence and acceptable methods of persuasion were far from clear. Implementing policies required a strict delineation of “violent” and “non-violent” actions, but even populating those categories meant replicating older patterns of inclusion, exclusion and access.

“No Means No” emerged as one of the most controversial, yet brilliantly simplistic solutions to the problem of defining coercive behavior. Naming any act that took place in the absence of consent as coercive could, in theory, provide a foundation for sexual violence that transcended the need to enumerate the acts themselves. Moreover, ‘yes’ and ‘no’ standards posited women as equal actors within the sexual marketplace – capable and responsible for their individual choices. However, as feminist scholars like Carole Pateman, Sharon Marcus and Pamela Haag have argued, “consent” standards also reveal the limitations of choice in the context of 1980’s liberalism. Making arguments in the language of choice is tempting for feminists, Pateman argues, because the mutual recognition of individual will between two self-determinant actors is the foundation upon which freedom and equality in a liberal system are built. However, locating feminist arguments within this framework is problematic because the myth of an equal playing field is, in and of itself, a patriarchal construct. Although marketed under the name of “freedom,” all choices made within that system are refracted through the lens of patriarchy and ultimately deflect attention away from the fundamental inequalities built into the system itself.<sup>5</sup>

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<sup>5</sup> Carole Pateman *The Sexual Contract*, Stanford University Press, 1988 p 14.

Building out from Pateman's theories, Haag further argues that historical attempts to dismiss acts of sexual violence or recontextualize them as an act of *female* deviance or desire have compelled feminists to seek out rigid markers of consent and coercion that cannot be easily discarded or "talked out of view."<sup>6</sup> However, she argues, entrenching consent in the seemingly unambiguous terms of "yes" and "no" do not "in fact, tell us what 'yes' and 'no' mean."<sup>7</sup> Although these terms appear seductively self evident, they mask the wide array of coercive pressures, power dynamics, gendered hierarchies and even personal motivations inherent within any sexual encounter; consent, she argues, cannot be isolated from the social situation within which it is given, because it is a concept that invariably draws meaning from the situation itself. Attempts to create universal norms of coercion and violence therefore sidestep the social contexts that give these terms meaning, and collapses the historical particularities of these seeming self-evident words.

This paper traces the changing meanings of coercion and consent in date rape debates, culminating in the verbal consent requirement of Antioch College's Sexual Offense Prevention Policy (SOPP), passed in 1992. It argues that consent became a way to contain expanding definitions that were at risk for being "talked out of view" due to their capaciousness, abstraction, and controversial intervention into public perceptions of forcible violence. However, solutions like the Antioch SOPP, which required all students to obtain expressed, verbal consent at each stage of a sexual encounter, generated more controversy than content. "Yes means yes" was meant to be a pandemic, sex-positive solution to the problem of coercion on campus – it constructed sexual relationships as free negotiations between two continuously consenting adults; but as the controversy surrounding the policy revealed, "yes" and "no" are not self-

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<sup>6</sup> Pamela Haag *Consent: Sexual Rights and the Transformation of American Liberalism*, Ithaca: Cornell University Press, p xviii.

<sup>7</sup> *Ibid* p xix.

evident terms, nor were they understood to be. Moreover, the policy of open consent masked Antioch's own ambivalence about the nature of coercion. The school claimed to view verbal consent as a marker of genuine will, but simultaneous policies restricting sexual interactions between faculty, staff and students placed strict limits on when that will could be expressed. By removing those sexual encounters deemed inherently "coercive" from the playing field, Antioch constructed all remaining sexual encounters as "equal"; collapsing the complex power dynamics and hierarchies that existed between students. Debates over the policy within the Antioch community also reveal the inherent tensions between visions of sexual cultural tensions that were echoed in the vast media coverage of the policy. Antioch did more than advocate a way to reduce coercion, it was advocating a type of sexual experience that was not universally recognized and, in fact, deeply contested within and beyond the community.

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What came to be known as the date rape crisis began crossing the pages of major media outlets in 1985, but by the early 1990s it was in issue of overwhelming public debate. Between 1983 and 1997, the *New York Times* alone ran over 2000 articles on date rape. Appearing at the rate of almost one or two per week, feature pieces, op-eds, and special reports abounded, creating a media maelstrom so substantial that, in the facetious words of conservative journalist Norman Podhoretz, "by now that can be hardly anyone left in America who has not been alerted to the existence of a problem which, though supposedly coterminous with the human race itself, [...] was not even recognized as a problem until the practically the day before yesterday."<sup>8</sup> At stake in the extensive debates over the meaning of date rape was not the presence of dating violence – even conservative journalists like Podhoretz agreed that men sometimes raped women they were

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<sup>8</sup> Podhoretz, Norman, "Rape in Feminist Eyes." *Commentary*, October, 1991.

intimately involved with – but the definition of violence itself. Feminist and their contemporaries argued that they were revealing incidents of legally enforceable rape, the volume of which was suspicious precisely because they had remained hidden for so long. Their critics claimed that feminists were trying to reframe seduction and poor judgment as rape. At the heart of these debates was therefore a fundamental disagreement over the nature of coercion – when it was desirable, when it was acceptable, and when it became violent.

Date and acquaintance rape first began to appear in the popular press around the mid-1980's, as part of a growing effort to shift perceptions of rape away from forcible stranger assault. "Mention the word rape," noted a 1984 *Newsweek* article entitled "The Date who Rapes" "and most people picture a sinister, masked figure jumping out of an alley and breaking through a bedroom window. But in reality, circumstances are not that dramatic: a rape occurs every seven minutes and more often than not, the victim knows her assailant."<sup>9</sup> "Women are hesitant to think that someone they met in English class or a fraternity party might rape them," said a similar piece in the *New York Times*. "We tend to visualize rapists as wearing stocking masks and jumping out at women from dark alleys. Recent studies contradict that myth."<sup>10</sup>

Although they aimed to alter popular perceptions of stranger rape, these early articles did little to challenge the premise of rape as forcible violence. "The Date Who Rapes," for instance, began with the story of a woman whose "formerly" tender boyfriend tied her to the bed and raped her with her kitchen carving knife. The *New York Times* article began with the similar tale of Colleen, a college freshman who accepted a ride home from a classmate and was left brutally mauled on the side of the road. While challenging to readers perceptions of safety between intimate friends and acquaintances, these stories rested on the same basic principles as forcible

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<sup>9</sup> Jean Seligmann, "The Date Who Rapes," *Newsweek*, April 9, 1984.

<sup>10</sup> Beth Sherman, "A New Recognition of the Realities of Date Rape," *New York Times*, October 23, 1985.

rape. The incidents described were physically violent, often involved weapons, and featured rapists who had an almost Jekyll and Hyde like personality. During descriptions of the attack, the “formerly tender boyfriend” or “shy classmate” were transformed into mad men, devoid of feeling and deaf to the pleas of their lovers and friends, leaving perceptions of the rapist as criminally insane intact.

The publication of *I Never Called it Rape: The Ms. Report on Recognizing, Fighting and Surviving Acquaintance Rape* marked the first significant challenge to this definition of sexual violence and soon became one of the most polarizing emblems of the debate over sexual assault. Commissioned by *Ms. Magazine* and conducted by psychology professor Mary Koss, the *Ms. Report* was the largest scientific investigation of intimate partner violence to date, spanning three years, 32 colleges and over 6000 participants.<sup>11</sup> The results of the report were both shocking and suspicious to many readers; according to its findings, one out of every four women was the victim of a rape or attempted rape, 64% of women knew their attackers and 57% of the rapes occurred in dating situations.

The *Ms. Report* was extremely influential in shaping date rape debates. For the nascent date rape movement, the report provided a huge boon in public legitimacy. Funded by the National Institute of Mental Health and written by prominent journalist Robin Warshaw, the *Ms. Report* provided a scientifically recognized platform on which earlier studies of “hidden rape” could stand. The scope and scale of the study also galvanized media attention on the issue and provided a new set of terms for the debate. Whether it aimed to support or critique the legitimacy of date rape, nearly every article published in the issue after the release of the *Ms. Report* was grounded in its claims.

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<sup>11</sup> Robin Warshaw, *I Never Called it Rape: The Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape*. Harper and Row: New York, 1988, p. 11

Because the study was based primarily on the experiences of students, the *Ms. Report* also shifted the focus of date rape debates to college campuses. Koss's decision to sample university students came out of her earlier research on "hidden" rape, conducted at Kent State University where she was then a professor.<sup>12</sup> Although she initially surveyed students because of their availability, she soon concluded that "this 'decision' to use college students was fortuitous because the college years happen to coincide with the greatest risk for rape."<sup>13</sup> When commissioned by the NIMH, Koss therefore decided to replicate her strategy on a much larger scale. Media coverage of the date rape debates subsequently focused on universities as the primary incubator for date and acquaintance rape. This focus was reinforced in the public eye by their coverage of radical student activism like the "Magic Marker Terrorists" at Brown University, who gained national notoriety for writing the names of known date rapists on the walls of well-trafficked university buildings. Conversely, the focus on university activism compelled many student groups to stage demonstrations and acts of civil disobedience to compel university action on the issue. By the time the *New York Times* published its 1991 Special Report "Agony on Campus: What is Rape?" date rape was understood almost exclusively as a problem of and for university students.<sup>14</sup>

Although the focus on colleges provided an easily recognizable population with pre-existing significance, it framed the discussion within the unique exigencies of college life. At the most basic level, college students represented only a small, socio-economically limited percentage of the dating population and an even smaller fraction of those at risk of acquaintance

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<sup>12</sup> Koss subsequently accepted a position at the University of Arizona, where she remains a professor of Public Health.

<sup>13</sup> Robin Warshaw, *I Never Called it Rape: The Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape*, Harper and Row: New York, 1988, p. 190.

<sup>14</sup> William Celis III, "Agony on Campus: What is Rape – A Special Report. Students Trying to Draw the Line Between Sex and Assault," *New York Times* Jan 2, 1991.

rape. Secondly, universities in the 1980s were already struggling with significant changes to the traditional relationships between students, faculty and administrators. The recent demise of in loco parentis (protective codes that stood in for parental supervision), the integration of formerly single-sex dorms and the rising awareness of drug and alcohol use on campus meant that students and administrators were already in the midst of negotiating new social and sexual codes of conduct. Feminist activism around sexual harassment, particularly in light of the Clarence Thomas/Anita Hill hearings of 1991, further impacted campus norms of faculty/student interaction. Date rape therefore emerged as an issue within an environment already grappling with shifting boundaries of social and sexual control.

It was within this context of swirling debate that the *Ms. Report* introduced its controversial challenge to public perceptions of forcible rape As Koss argued

A recent article about a date rape in a national magazine began with a case history of victim's experience, which involved being raped repeatedly with a Coke bottle by her former boyfriend over the course of several hours. This incident succeeded in doing what the writer wanted: to draw readers to the article. Yet, the article was disturbing because this degree of violence is not typical and case history presents a misleading picture of date rape.”<sup>15</sup>

Of the one in four women Koss claimed had an experience that met the legal definition of rape, only 27 percent of them described their experiences as such. The gap, she argued, was the direct result of a culture that emphasized tropes of violence in rape narratives, so that women whose experiences involved other types of coercive pressures “never called it rape” let alone sought legal recourse.

Critical reception of the report was mixed. Conservative publications like *Commentary* or *The Washington Times* were among the most virulent critics of the study, painting feminist mobilization around date rape as “nothing less than the brazen attempt to redefine seduction as a

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<sup>15</sup> Ibid p. 209

form of rape and, more slyly, to identify practically all men as rapists.”<sup>16</sup> A slightly less virulent article in the *Washington Times*, entitled “Is Date Rape a Fraud” similarly challenged the definition of rape as anything other than violence. “Most people understand the act [rape] to include force or the threat of force as well as a refusal to consent. This broader definition of rape gives women a simple way of thinking about sex that externalizes guilt, remorse or conflict.”<sup>17</sup> In each of these critical articles, the Koss study came to epitomize feminism gone a little too far. In one *Washington Times* article “Rape or Seduction? Bad Manners or Harassment?” the author accused Koss of creating the very problem she aimed to solve. Because most adolescents learned about date rape in the freshman seminars gaining popularity on many campuses, he argued, they were preconditioned to view the confusing sexual experiences that characterized college life through the lens of date rape.<sup>18</sup>

Mainstream publications like *Newsweek*, *Time*, and *The Washington Post* were also critical of the *Ms. Survey* and the definitions it espoused. An *Washington Post* article by noted date rape critic Cathy Young entitled “Women, Sex and Rape: Have Some Feminists Exaggerated the Problem?” argued that most of what Koss defined as rape was more akin to regrettable actions and misread signals.<sup>19</sup> Just because a woman was initially uncertain or regretted her decision later did not mean she was forced in the moment. Young’s argument reflects a counterpoint interpretation of the “yes means yes” argument that would later be espoused by Antioch advocates, although approached from a radically different perspective.

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<sup>16</sup> Podhoretz *Rape in Feminist Eyes*

<sup>17</sup> “Is Date Rape a Fraud” *The Washington Times*, September 5, 1990.

<sup>18</sup> Eric Felton “Rape or Seduction? Harassment or Bad Manners” *The Washington Times*, January 29, 1991. NB This article was also part of a wider debate over the allocation of federal funding been given to schools to promote rape awareness education. At this time most of these debates were folded into the Violence Against Women Act, being drafted and debated in Congress. However the Higher Education Amendments of 1992 required all schools receiving Title IV funding to implement mandatory freshman seminars, particularly for fraternities and athletes.

<sup>19</sup> Cathy Young, “Women, Sex and Rape: Have Some Feminists Exaggerated the Problem?” *The Washington Post*, May 31, 1992.

From Young's perspective, seeing women as equal players in the sexual game required that their affirmations be taken as seriously as their denials. Consent in this view functioned as a contract rather than an expression of desire; even if a woman consented under less than desirable circumstances, once she said "yes" that consent held valid.<sup>20</sup>

The most vocal and controversial proponent of this argument was Young's contemporary Katie Roiphe, who along with literary critic and self-described feminist critic Camille Paglia, comprised the core of dissident feminist thought on date and acquaintance rape. Published first as a series of *New York Times* articles in 1991 and subsequently as a book *The Morning After: Sex, Fear and Feminism On Campus* in 1993, Roiphe's work soon became a counterpoint symbol of the debate over date rape in America. Her articles were reprinted in numerous publications around the world, including the *London Guardian*, the *Queensland Gazette*, the *Melbourne Age* and the *Toronto Star*. One British reporter even joked, "think you've heard a lot about date rape? Well, the coverage here has been positively miniscule compared to America where a new book has set feminist against feminist."<sup>21</sup>

Roiphe's work claimed to provide an "insider's critique" of what she felt was the unchecked paranoia of feminists and the bloated expansion of date rape to a term beyond recognition. Although her study echoed many familiar critiques of the date rape movement, her virulent attack on feminists as attention seeking, hand-wringing Victorian-era victimizers sought to dismiss the concept of "date rape" entirely. The culture of fear fostered by on campus feminist groups, she argued, was at odds with most women's experiences of sex. "I remember sitting through a workshop on date rape freshman year," she said, "thinking, this is not me. This has

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<sup>20</sup> Antioch administrator Karen Hall made a similar claim in a 1993 article *Antioch Policy is Humanizing*. Hall argued that the SOPP "also forces students to take responsibility for their words. If a student says 'yes,' their partner cannot be faulted for acting on that 'yes.'" Please see Karen Hall, "Antioch's Policy on Sex is Humanizing," *New York Times*, October 20, 1993

<sup>21</sup> Monique El-Faizy, "The Rapes of Wrath?" *The Guardian (London)*, October 25, 1993.

nothing to do with me.”<sup>22</sup> Rather, she claimed, the date rape crisis encouraged all women to live in a state of perpetual fear, to avoid male friends and acquaintances and to see each date as a potential threat. More significantly, Roiphe argued that feminist dialed back the clock of the sexual revolution, portraying women as non-sexual beings at the constant mercy of lusty men. “The assumption embedded in the movement against date rape is our grandmothers’ assumption,” she argued, “men want sex, women don’t. In emphasizing this struggle – he’s pushing, she’s resisting – the rape-crisis movement recycles and promotes an old model of sexuality.”<sup>23</sup>

With respect to the issue of date rape itself, Roiphe argued that statistics like one in four were the result of an overeager attempt to create a date rape panic. After all, “if I was really standing in the middle of an epidemic, a crisis, if 25 percent of my female friends were really being raped, wouldn’t I know it?”<sup>24</sup> Anti-rape advocates were not trafficking in facts, she argued, rather they were advertising a mood.<sup>25</sup> More insidiously, she asked, “the next question, then, is who is identifying this epidemic and why. Somebody is ‘finding’ this rape crisis and finding it for a reason.”<sup>26</sup> Roiphe’s argument was that rape was an ideal “trump card” for feminists attempting to further their agenda. Infusing an argument with rape appealed to the emotional core of the women’s liberation movement. “For many feminists,” she concluded, “rape becomes a vehicle to get from here to there. By blocking analyses with its claims to unique pandemic suffering, the rape crisis becomes a powerful source of authority.”<sup>27</sup>

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<sup>22</sup> Roiphe, Katie *The Morning After: Sex, Fear and Feminism On Campus*, Little Brown and Company, New York, 1993.

<sup>23</sup> Ibid p. 43

<sup>24</sup> Ibid p. 52

<sup>25</sup> Ibid p. 28

<sup>26</sup> Ibid p. 55

<sup>27</sup> Ibid p. 57

In essence Roiphe's work was not that dissimilar from conservative critiques of "date rape hysteria," but as a self-proclaimed feminist, Roiphe was unique; her book claimed to offer an alternative model of conceiving of feminism that escaped the increasingly heated battles over sex and returned to older, liberal feminist issues like pay equity. A *Newsweek* Special Issue on Date Rape that came out immediately following the release of Roiphe's book reflected the appeal of this new model. The cover story, revealingly entitled "Stop Whining!" argued that "feminist politics have now honed, like missiles on the twin issues of date rape and sexual harassment, and the once broad-based women's movement is splintering over the new sexual correctness."<sup>28</sup> While the movement began to address the serious issues of female economic inequality, the author argued, it had transformed into repetitive chants of "though shalt not abuse women," devoid of facts or any substantive content.<sup>29</sup> Three of the four remaining stories echoed these claims, citing Roiphe as a clear and present feminist alternative to the "date rape hysteria" they argued had reached epic proportions on campuses across the country. An article by the lone feminist respondent Susan Faludi, author of *Backlash: The Undeclared War Against American Women*, reveals that, at least in the eyes of *Newsweek*, mainstream feminism had been put very much on the defensive.

The academic standard Roiphe and many other critical responses to date rape used was a counterpoint study conducted by Neil Gilbert, professor of Social Welfare at the University of California, Berkeley. According to Gilbert's findings, rape on campus was far less common than most feminists claimed and, although the purview of any study did involve some selective reinterpretation of participant responses, a 73 percent gap between self-reports and Koss's conclusions must indicate a methodological error. In reality, Gilbert claimed, rape was a far less

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<sup>28</sup> Mary Matalin "Stop Whining!" *Newsweek* Vol 122, Issue 17, 1993.

<sup>29</sup> *Ibid*

prevalent crime than Koss and her contemporaries made it seem. Rather, what was happening on college campuses today was that poor sexual decision-making was being interpreted as sexual violence. No matter how regrettable a sexual decision may have been, he argued, giving in to a man's persuasive tactics or consuming too much alcohol at a party was not the same as legally actionable coercion.<sup>30</sup>

Gilbert's study tapped into the new feeling of anxiety over the nature of intent becoming increasingly manifest throughout media discussions of date rape. Feminist attempts to push rape into the social and psychological realm raised a disturbing question – could one be a rapist and not know it? “Agony on Campus,” for instance, attempted to parse out this tension by focusing on the confusion of adolescent sexual interactions. Men and women read sexual signals differently, it argued. A woman may believe she is telling a man to slow down or stop, but he may interpret those exact behaviors as feminine reticence or natural shyness.<sup>31</sup> Other articles expressed similar anxiety over the miscommunication inherent in adolescent sexual interactions. “Most boys are shocked to discover they have been accused of date rape,” one argued, noting that these men thought they were acting in accordance with the male-aggressor model.<sup>32</sup>

Responses from feminists to these claims were often virulent. One letter to the editor in response to “Agony on Campus” declared “While you [the author] certainly evoke the tragic confusion of some college-age men and women on the subject of date rape, I find it both offensive and harmful that you fail to point out at the same time that, regardless of popular doubt and ignorance, sexual intercourse performed against the will of one participant has always constituted rape.”<sup>33</sup> Further feminist responses to Gilbert's study and, to the critiques of date

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<sup>30</sup> Neil Gilbert, “Realities and Mythologies of Rape,” *Society* 29, May-June, 1992.

<sup>31</sup> Celis III, *Agony on Campus*.

<sup>32</sup> Sherman, *A New Recognition of the Realities of Date Rape*

<sup>33</sup> “Don't Obscure the Real Crime of Rape” *New York Times*, January 2, 1991.

rape at large argued that resistance to understanding the complex realities of date rape was precisely the reason why so few women reported their experiences. If people were more accepting, they argued, the scope of the problem would become far more apparent. According to Faludi, “date rape revisionists attack the victim-mind set. But the victimization of women is no fantasy.” The problem, she argued, was that the mainstream press was far more invested in perpetuating the myth of a “date rape hype” than it was in supporting the efforts of feminists. “What you probably missed was the media coverage that viewed acquaintance rape as legitimate,” she noted. “Not your fault; it went by in a flash.”<sup>34</sup> In reality, Faludi claimed, all of the incidents that Koss reinterpreted as rape in the *Ms. Report* met the legal definition of sexual violence, as defined by the FBI. Jokes about sweet talk and bawdy language may have been discussed as part of a culture that promoted violence against women, but they were not included in the study’s final determination of sexual violence.<sup>35</sup>

The interpretive gap between Koss and Gilbert, Roiphe and Faludi, over the definition of “real” rape represents a fundamental disagreement over the nature of this term. Different interpretations of force and consent account for some of this gap, however what seems most crucial is the way that coercion was understood to function in “normal” social situations and the power imbued consent as a binding, self-evident terms. These debates also represent what is at stake in these definitions. Unlike changes to older models of forcible rape, date rape had the power to change what many Americans perceived to be “normal” sex. It therefore stood to alter the social and sexual makeup of American youth and conscript the drunken fratboy, the pushy jock and the sexually misguided boy next door into the legion of rapists.

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<sup>34</sup> Susan Faludi, “Whose Hype?” *Newsweek* October 25, 1993

<sup>35</sup> *Ibid*

Fears over rape during this period were also deeply embedded within the rapidly changing norms of sex and safety. As the concern over AIDS moved out of the New York ghetto and into middle class lives, the “free sex” Roiphe claimed feminists were seeking to destroy was, in fact, becoming scary in and of itself. Students were now taught “safe sex” as a matter of life or death, not just as an issue of respect. Concern over sexually transmitted diseases was not new - syphilis for instance had been deemed a particularly virulent punishment for illicit sex throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. However, while 19<sup>th</sup> century dandies and World War II soldiers were warned about the dangers of sex with “bad” women, college students in the early 1990s were warned about the danger from colleagues. Unsafe sex was not necessarily sex with “dangerous” people, but “dangerous” sex with someone like you. The invention of the date rape drug, which became popular on campuses the same year Roiphe’s book was published, also altered the fundamental meaning of safe sex. Personal responsibility, which many critics argued was the alternative to “date rape hysteria,” became compromised in the presence of a mind-altering chemical that could be administered without someone’s knowledge. AIDS and Rohypnol not only altered the nature of safety and autonomy, they expanded debates over the nature and meaning of violence and consent. Failure to disclose a positive HIV status was increasingly recognized as a type of sexual offense; although considered less severe than rape or harassment, it was an act of “violence” that could exist within consensual sexual relationships.

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The controversial Sexual Offense Prevention Policy, passed by Antioch College in 1992, best exemplifies the culmination of these debates. Despite years of publicity to export its student-centered philosophy, it was the SOPP that put Antioch on the map; but by 1993 the school had crossed the pages of national and international newspapers from the *New York Times* to *Agence*

*France* to the *South China Morning Post*. The policy required that members of the Antioch community obtain expressed, verbal consent for each stage of a sexual encounter. As the policy clearly stated “asking ‘Do you want to have sex with me is not enough. The request for consent must be specific to each act.’”<sup>36</sup> [Please see Appendix A for complete text] In many ways, Antioch’s policy was in line with similar codes being passed in state courts and at universities across the country. Wisconsin, for instance, had amended its rape law in 1991 to declare that silence did not constitute consent – any sexual activity that proceeded without verbal affirmation was considered legally actionable.<sup>37</sup> However, Antioch’s policy was by far the most radical attempt to codify rules for sexual interaction in either a university setting or in a court of law.

The trajectory of the SOPP encapsulates many of the broader tensions surrounding definitions of rape and coercion. The first version of the SOPP barely addressed the meaning of consent; rather, it was more akin to an order of protection designed to expel students or faculty members who posed a sexual threat to the community. The spirit of the policy, the authors claimed, was a challenge to the legal and social culture that protected accused men over their victims. Unlike the criminal justice system, which emphasized proof and tended to put the victim on trial, the SOPP always gave the victim the benefit of the doubt and minimized his or her exposure to publicity and/or unwanted probing. The policy further aimed to challenge the hegemony of forcible rape by equating all forms of coercion, be they physical, social or emotional. However, the challenges of implementing such a policy proved staggering and within weeks of its publication, the policy fell under sharp critique. Less than a year after the initial policy was proposed, it was revised extensively from a policy that policed coercion to a pandemic code of consent. This shift reflects the difficulties inherent in placing hard boundaries

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<sup>36</sup> Antioch Sexual Offense Prevention Policy, Approved by the Academic Council, March 17<sup>th</sup>, 1992

<sup>37</sup> “Tougher Laws Mean More Cases Called Rape” *New York Times*, May 27, 1991

around abstract notions of coercion, while the broader reception of the SOPP reveals the equally fraught limits of “unambiguous” consent.

The SOPP was first drafted by a student group called “The Womyn of Antioch” in the fall of 1990, in response to two incidents of on-campus assault earlier that year. The opening statement of the policy reflected its primary aims: “A sexual offense committed by a community member will not be tolerated,” it read. “If there is reasonable cause to believe that any person has committed such an offense, that person will be removed from campus.”<sup>38</sup> The Womyn presented the policy to the school’s Academic Council (AdCil) on November 6<sup>th</sup>, threatening the school with a “Day of Action” if it was not passed within seven days.<sup>39</sup> Over the following days, AdCil held a series of emergency meetings to debate and amend the policy. The Womyn also held on-campus forums and awareness events to mobilize student support. In what College President Alan Guskin called a “show of support,” AdCil passed the policy by the November 13<sup>th</sup> deadline, however it remained open for revision until January 29<sup>th</sup>, 1991.<sup>40</sup>

The original draft of the SOPP defined a “sexual offense” in broad terms that reflected the most extreme version of feminist efforts to entrench social and psychological pressures into the definition of violence itself. Attempting to draw attention to the culture of offensive acts that led to forcible rape, The Womyn defined a “sexual offense” as

Physically abusive or improper treatment, or persistent violation of a person’s space, with any sexual intent and/or any act committed using force, the threat of force, or coercion to commit vaginal or anal intercourse, cunnilingus, fellatio, any sexual contact, and/or manual penetration that is attempted or achieved without the survivor’s consent. Force or threat of force can be defined as physical or emotional.<sup>41</sup>

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<sup>38</sup> Draft Antioch Sexual Offense Prevention Policy, presented to the Academic Council, November 6<sup>th</sup>, 1990

<sup>39</sup> The fact that the threat of such action could effectively compel the Academic Council to pass the policy reflects the broader culture of media attention to student activism around this issue.

<sup>40</sup> “Sexual Offense Policy Approved” *The Antioch Record*, November 16, 1990

<sup>41</sup> Ibid. Interviews with the Womyn of Antioch discussing their intent from “Rape Policy Formulated,” *The Antioch Record*, Volume 46 no. 5, November 9, 1990.

By the time the January version of the policy was passed, “sexual offense” was divided into “rape,” “sexual abuse” and “sexual harassment,” but because the SOPP attempted to include all forms of physical, social and psychological coercion, the Steering Committee had difficulty generating language that moved beyond a vague sense of force or imposition. Moreover, each of these offenses carried the same penalty – expulsion or dismissal – prompting criticism from the ACLU, who argued that the policy denied the accused the rights of due process.<sup>42</sup> Although the SOPP represented the most capacious definition of sexual violence on record, its broad parameters appeared to render that definition inherently meaningless. Drafts of the policy passed back and forth between the school attorney David Weaver and the Steering Committee consistently called for more and more specific language over the precise nature of rape, sexual harassment and assault, as well as a graduated system of consequences that differentiated between the severities of each act.

As Dan Shoemaker, then a student at Antioch College and now professor at Bowling Green State University recalled, discussions within the Antioch community were similarly unmoored. Ideas of “safety” and “respect” were paramount, he claimed, but what safety or feeling safe meant was unclear.<sup>43</sup> Students also disagreed about the intent of the policy itself. Some opponents, like Shoemaker argued that the policy pitted “men” against “women,” constructing all men as potential rapists. Others, like Mitchell Stamm argued that the policy was unfairly prejudicial towards men accused of rape.<sup>44</sup> And still others, like Greg Powers, argued that the SOPP was not about sexual coercion, but an attempt to change the sexual culture at the

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<sup>42</sup> Afi-Odelia E Scruggs, “Women Demand Rape Policy” *Dayton Daily News*, November 8, 1990

<sup>43</sup> Dan Shoemaker, “Historical Analysis: Sexual Offense Policy” November 2, 1990

<sup>44</sup> Memo to Community by Mitchell Stamm, distributed in student mailboxes November, 1990

college by recasting all sexual acts The Womyn found undesirable as sexual violence.<sup>45</sup> As evidenced by these diverse views, responses to the SOPP within the Antioch community were hardly unanimous; in fact, they reflected the full spectrum of debates over the meaning of sexual violence occurring within the broader community.

In light of these concerns, a second version of the SOPP was proposed nearly a year later, on January 28<sup>th</sup>, 1992. This version of the policy, approved by AdCil on March 17<sup>th</sup> of that year, began from a very different premise. The opening of this policy declared that “All sexual contact and behavior on the Antioch College Campus and/or occurring with an Antioch community member should be consensual. When a sexual offense, as defined herein, is committed by a community member, such action will not be tolerated.”<sup>46</sup> Although the end result of the policy was still the same, to remove or sanction any member of the community who committed a sexual offense, the definition of a sexual offense had changed - any sexual activity that occurred without the explicit and verbal consent of its participants was grounds for suspension or expulsion. The second SOPP was also a universal document that encompassed all Antioch students, faculty and staff. While the previous policy would only apply to students who committed an offense, the new policy applied to all students engaging in or intending to engage in sexual activity. It therefore removed sexual regulation from the realm of violence and located it in everyday practice. Even sexual interactions between long-term intimate partners, Antioch argued, still needed to meet the litmus test for consent.

Although they sought to define the term beyond contestation, the public response to Antioch’s policy reveals the limitations of verbal consent. . As *Newsweek* columnist George Will

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<sup>45</sup> Interviewed in Wendy Hundley, “Antioch: Ask Before Sex, See Porn in Secret” *Dayton Daily News*, September 8, 1993

<sup>46</sup> Second Proposed Sexual Offense Prevention Policy, Academic Council, Antioch College January 28<sup>th</sup> 1992

argued in his scathing critique of the policy “Antioch’s many dense pages setting forth procedures for prosecuting and reforming offenders will keep batteries of lawyers busy debating whether a particular request for consent was sufficiently specific. ‘May I touch that? Is a caress more than a touch? May I unbutton that? Have you consented to all the buttons?’” This parody of verbal consent was ironic within a culture that still relied on terms like “yes” and “no” to mark the boundary between rape and consensual sex, but it is perhaps these humorous treatments that best reveal profound ambivalence over their meaning. Much treatment of the policy was comedic because, as an October issue of the *New York Times* noted, “Antioch’s policy is easy to parody. The comedy routines almost write themselves.” The satirical show *Saturday Night Live* even ran a skit in October 1993 entitled “IS...IT...DATE RAPE!” that parodied the policy.<sup>47</sup> The show featured two students from Antioch College who debated whether or not certain situations were “date rape” or “not date rape.” Although designed to be little more than pure comedy, the skit personified many ongoing debates over the definition of violence. Game show categories like “I Was Drunk!” “She Led Me On!” and “I Paid for Dinner!” tapped into broader confusions over the boundary between older definitions of seduction, and newer norms of violence. The skit also parodied the problems with relying on terms like “yes” and “no” to mark genuine consent. For instance, the correct response to “‘would you mind if we had intercourse’ ‘No...’” was “Date Rape” because “No always means No!”<sup>48</sup> The callousness with which rape is treated in this skit was eventually deemed too offensive by the network, which has subsequently removed the skit from its DVD and licensed streaming vendors; however the fact that it held comedic value at the time reveals a broader cultural understanding of the limits of these words, particularly when viewed in absolute terms.

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<sup>47</sup> NB: *Saturday Night Live* has removed skit “Is It Date Rape” from its DVD and licensed online streaming vendors such as Netflix and Hulu, although the transcript is still available through its online archive.

<sup>48</sup> Transcript *Saturday Night Live*, Season 19, Episode 2, October 3 1993

On the other side of the debate, favorable responses to Antioch's verbal consent code reflected deep concerns over the prevalence of sexual violence and, more significantly, confusion over the very boundary Antioch aimed to police. One letter to the editor critiquing George Will's coverage of the policy, for instance, argued that

Most of the date rapists I've read about, herd of or met (a disturbingly large number) defended their conduct by claiming that they did not know their victim did not want their advances. Some state rape laws require proof of nonconsent (as well as factors like penetration and physical violence) before an alleged rapist can be successfully prosecuted. Many rapes, in addition, are not reported because victims simply accept that, barring signs of violence, they are not considered to have been raped. When administrations and courts act as if anything short of broken bones is consensual, then regulations like Antioch's are indeed desperately needed."<sup>49</sup>

Responses like these highlight the limitations of rape discourse in actually affecting change, something the SOPP was actually attempting to achieve. Although their solutions were deeply contested, many within and outside the Antioch community respected the impetus behind policy.

Antioch's response to the media coverage of the policy focused on the culture of consent they argued the policy reflected. "Sexual freedom in the 1990s is all about being able to have sexual relationships in the way both people would like it to be," said Antioch's President Alan Guskin in Antioch's official response - *Sex: You Just Don't Talk About It*, released in 1993.

"There is a great sense of security for each partner to know that their wishes will be honored and that they will not be accused of misinterpreting the other's sexual boundaries."<sup>50</sup> "The focus at Antioch is on consent rather than force" SOPP chair Karen Hall similarly said to the *New York Times*. " 'No' really does mean 'no' at Antioch. For many students, learning their words are supported by a university policy is very empowering."<sup>51</sup> The SOPP therefore came to stand in for what many in the community argued was a culture of consent and mutual pleasure at

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<sup>49</sup> Jylene Lovegood, "Sex and the Single Student" *Newsweek*, November 8 1993.

<sup>50</sup> Alan Guskin, *The Antioch Response: Sex – You Just Don't Talk About It*, March 21, 1994

<sup>51</sup> Hall, *Antioch's Policy on Sex is Humanizing*

Antioch. The Policy stood for an alternate way of conceiving of sexual violence – it built communication into each step of the sexual encounter, forcing students to discuss their feelings and desires openly with each other.

This defense of the policy, however, rested on several assumptions that were not necessarily inherent within the policy itself. Most significantly, the SOPP only addressed one type of sexual coercion – the kind that occurred due to confusion over sexual mixed signals rather than violent intent. After all, claimed the author of a 1993 *New Yorker* article, people who want to coerce sex from a reluctant partner will “get a yes out” no matter how unwillingly it is given; “the rules don’t get rid of the problem of unwanted sex at all, they just shift the advantage from the muscle-bound frat boy to the honey tongued French major.”<sup>52</sup> The policy did foster open communication, and for many students navigating new sexual waters it taught them not to assume they understood their partner’s desires, or that their partner’s desires matched their own. However, the policy did little to prevent those incidents of coercion that were deliberate, nor did it account for the multitude of reasons why men and women engaged in sexual activity. Although it claimed to be adding more safeguards to prevent against non-consensual sex, the Policy could not address the central problem – that sometimes a “yes” given within unequal social situations may not reflect genuine consent.

Ironically, the Antioch administration did recognize that consent was not always an indication of desire, particularly when given within a “coercive” situation. Less than a year before the SOPP was proposed, Antioch passed a policy revealingly titled “The Consensual Sex/Romantic Relations Policy” which declared, “Consenting romantic/sexual relationships between a student and an employee are unacceptable and constitute personal and professional

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<sup>52</sup> “Different Strokes,” *The New Yorker*, Volume 69, November 1993

misconduct.”<sup>53</sup> The rationale behind the policy stated “the faculty-student relationship, however warm or caring, inherently involves disproportionate power and influence on one side and is thus liable to abuse. A sexual relationship between a faculty member and a student cannot only exploit this imbalance but also distort and inhibit the learning environment.”<sup>54</sup> In and of itself this policy is not surprising; feminist mobilization around sexual harassment had prompted many universities to pass similar policies prohibiting sexual relationships between students and faculty. What makes the Antioch case so significant, however, is that the SOPP was layered on top of a policy that recognized the limits of verbal consent. The co-existence of these two policies essentially negated recognition of power differences between students themselves. Conversely, it implied that situations were only coercive if they involved an imbalance of power, or an imbalance of power manifested in clear differentials like faculty and student. By limiting the boundaries of coercion to faculty/student relationships, Antioch effectively compressed the broader meaning of social coercion the policy initially aimed to combat and divided the sexual playing field into “coercive” and “non-coercive” environments.

Because student records at Antioch remain sealed, the effect of the Policy is difficult to trace. Antioch’s Dean of Students claimed that no student or faculty member was ever charged with a sexual offense under the policy, thereby reflecting the efficacy of verbal consent standards.<sup>55</sup> However, while few records exist to document actual incidents of sexual coercion brought before the Antioch Hearing Board, anecdotal evidence suggests that at least some incidents of sexual offenses may have been dismissed or swept under the institutional rug. A memo submitted to AdCil on April 29<sup>th</sup>, 1991, for instance, discussed the alleged rape of student

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<sup>53</sup> Consensual Romantic/Sexual Relations Policy, Passed by Committee on Student Relations, May 8 1990.

<sup>54</sup> Statement on Faculty-Student Sexual Relations, May 8, 1990.

<sup>55</sup> Mark Fischer “Sex is Serious Stuff” *Dayton Daily News*, November 15, 1993

participating in Antioch's exchange program "Egyptian term." "Upon return to Antioch, the woman was given the administrative runaround," claimed the author of the memo. "Karen Hall failed to follow up on administrative disregard for the women's case. President Guskin never responded to a letter sent to him by the woman. [...] Hassan Nejad [the program leader accused of rape] admits no responsibility."<sup>56</sup> Although there is little evidence available to support these claims either way, the memo itself suggests that the culture of consent behind the Policy may not have been equally respected by all members of the Antioch community, or indeed by the administration itself.

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When Antioch College closed due to financial problems in 2008, debates over the SOPP were silenced. Although the school will reopen its doors in the fall of 2013, whether or not the policy will be reactivated remains to be seen. Moreover by the mid 1990s, debates over date rape had transitioned into concerns over drugs and alcohol, particularly the increasing popularity of Rohypnol on college campuses. Although it revolved around many of the same issues, discussions of the "date rape drug" elided the landmines of its predecessors. Because the drug diminished one's decision-making ability, parsing out when consent was genuine seemed to many to be irrelevant. Slipping a mind-altering drug into someone's drink also eliminated the need to debate what constituted an act of willful violence – like "yes" and "no," had done for consent, the act of drugging a girl's beverage could stand in for coercion. However, debates over the date rape drug ultimately proved equally slippery. Personal responsibility, the consumption of alcohol on campus and the culture of fraternity and athletic parties were all points of contention in the vast media coverage of this issue. Legal issues proved equally fraught. Many

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<sup>56</sup> Memo to AdCil, April 26 1991

accused men claimed they did not know their accuser was under the influence of a drug that they had not administered, leaving the courts to determine whether “violence” was located in the act of forced sex or in the intent behind it.

Ultimately, any debates over the meaning of consent and coercion that attempt to determine the absolute meanings of these terms have encountered similar problems precisely because these terms have no static, inherent meaning. In feminist terms, querying the “yes” and the “no” of sex has often been understood in terms of patriarchal structures of coercion and authority – a woman may say yes to an abusive husband for fear of losing his income, another may say yes to a boyfriend she fears will leave her if she declines – but these too are problematic because they strip away the complex process of sexual decision making that goes into these choices. Painting any person, male or female, who agrees to a sexual interaction for any other reason than overwhelming sexual desire a victim reduces the social world within which sex is embedded to a one-dimensional playing field. Agency in sexual situations is complex and those decisions are rarely mono-causal. Moreover, like any social situation, sexual decisions exist within a personal hierarchy that preferences different needs at different times.

From a historical standpoint, questioning the meaning of coercion and consent also means something more. As the definitions of sex roles change, so too do the meanings of coercion, violence and consent. New forms of coercion and violence are not simply unearthed, to be added to an existing, static list of sexual crimes. Rather, as history has repeatedly told us, the definition of what coercion is, the boundary between coercion and seduction and the degrees between violence and normal behavior, are constantly in flux.

## **Appendix A - Antioch Sexual Offense Prevention Policy, Passed by the Academic Council, March 17<sup>th</sup>, 1992**

### **Section on Consent**

If sexual contact and/or behavior is not mutually and simultaneously initiated, then the person who initiates a sexual contact behavior is responsible for getting the verbal consent of the other individual (s) involved.

Obtaining consent is an ongoing process in any sexual interaction. Verbal consent should be obtained with each new level of physical and/or sexual contact/behavior in any given interaction, regardless of who initiates it. Asking ‘Do you want to have sex with me?’ is not enough. The request for consent must be specific to each act.

The person with whom sexual contact/behavior is initiated is responsible to express verbally and/or physically her/his willingness or lack of willingness when reasonably possible.

If someone has initially consented but then stops consenting during a sexual interaction, she/he should communicate withdrawal verbally and/or through physical resistance. The other individual(s) involved must stop immediately.

For the purpose of this policy ‘consent’ shall be defined as follows: the act of willingly and verbally agreeing to engage in specific sexual contact or behavior.

For the purpose of this policy ‘submission’ shall be defined as follows: the act of engaging in sexual contact and/or behavior without expressing his or her own free will due to any of the circumstances stated in (a) through (e) below, then it may also be considered submission.

Sometimes an individual may consent or submit to sexual contact/behavior when it is not contact/an act in which she/he actually desires to engage. In some cases, this person may experience the contact/act as a sexual violation even though it does not constitute a violation under this policy. This policy recognizes that even if such contact/behavior does not technically constitute a violation of this policy, that person’s experience and feelings are still valid, and her or his concerns should be addressed by the Advocate or a counselor on a confidential and informal basis.

If one person submits to another person or persons initiating sexual contact/behavior, it may be considered a violation of this policy if:

- a) The person initiating is known or has demonstrated to the person submitting (to have) a recent history of violent behavior.
- b) The person submitting is under the influence of alcohol or other substances supplied to her/him by the person initiating;
- c) The person submitting is incapacitated by alcohol. Drugs and/or prescribed medications
- d) The person submitting is asleep or unconscious
- e) The person initiating has forced, threatened, coerced or intimidated the other individual(s) into engaging in sexual contact and/or sexual behavior.