



7-19-2019

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Recommended Citation

Addis, Kiley, "Considering Consent: A Philosophy of One Word's Impact" (2019). *Philosophy Summer Fellows*. 14.
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Considering Consent:
A Philosophy of One Word's Impact

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Summer Fellows 2019
July 19, 2019

Abstract

When considering the topic of consent in reference to sexual relations, one might view the definition as straightforward. In this project, I demonstrate that no clear, singular definition of consent exists, but rather, focus on compiling differing definitions typically used. The main definitions focused on within the research are that of how the United States legal system defines consent, how higher education institutions define consent within their policies, and how our country defines consent culturally. Using the vast differences in the definitions as the prime example, I demonstrate that no clear, singular definition of consent exists; without a concise definition of the concept, consent cannot be used as a basis for understanding sexual relations. Thus, my argument holds that within sexual assault investigations on college campuses, consent cannot be used to make a decision as there is no clear definition of what it means to consent to a sexual relationship. After presenting this argument, I offer suggestions for how to address these issues on college campuses, focusing primarily on the understanding of consent that students have within college today.

The United States is currently at a time where sexual assault and rape have come to the forefront of conversations; these issues are being discussed in ways they never were before. The rise of the #MeToo movement in relation to the current Secretary of Education, Betsy DeVos, rolling back the Dear Colleague Letter of 2011, have brought about questions of how the United States can do better for those affected by sexual assault and rape, while also paying attention to those accused.¹ All of these changes and movements coming to the forefront of American culture are intertwined in some way. An article from *The Atlantic* describes this idea in saying that “similar to the Obama-era Title IX protocols, #MeToo has provided a platform for women to come forward,” sparking conversation of what is happening with sexual assault on college campuses.² Further on in this essay I will examine how the most recent changes to Title IX affect our understanding of campus sexual assault as well as our tendency to believe victims.

Rather than questioning in what ways the United States can do better, we must first examine our own beliefs and understandings of the problems we face. When it comes to considering the larger picture of sexual assault on college campus I believe we should be asking: how does our understanding of what lies at the core of sexual assault affect how we are treating this issue? Our own understanding and interpretation of the issues of sexual assault and rape stem from what we know and what we believe about sexual interactions. At the core of our country’s understanding of sexual assault and rape is the concept that determines whether a sexual relation is just that, or if it falls into the category of rape or sexual assault: consent.

¹ Sarah Brown and Katherine Mangan, “What You Need to Know About the Proposed Title IX Regulations,” *The Chronicle of Higher Education*, November 16, 2018, <https://www.chronicle.com/article/What-You-Need-to-Know-About/245118#>.

² Lena Felton, “How Colleges Foretold the #MeToo Movement,” *The Atlantic*, January 17, 2018, <https://www.theatlantic.com/education/archive/2018/01/how-colleges-foretold-the-metoo-movement/550613/>.

When one first thinks of sexual assault and the validity of a case, their mind will immediately ask the question: was it consensual? This one word has become what our country uses as a justification for whether or not sex is permissible or impermissible. All too often, when that question is asked, there are different interpretations of what consensual means and what it means if the sexual interaction was in fact not consensual. Without having a clear definition of consent it is impossible to know how one may be defining consent when questioning if a sexual relation was consensual or not. In a case that will be discussed further in another section of this paper, *Commonwealth v. Mlinarich*, the judge of the case questions what kind of force was used within this case of sexual assault, but finds himself at odds when discovering that Webster's Dictionary provides eleven different definitions of the word 'force.'³ The term 'consent' contains similar difficulties, but in addition to multiple definitions, in English consent is both a noun and a verb, used as both in circumstances of sexual assault, leading to additional confusion and lack of clarity in attempts to define it.

In looking at the definitions of consent that can be found within dictionaries, one might also see the discrepancies between different dictionaries as well.⁴ If considering consent a verb, as something one would be actively doing, Webster's Dictionary gives this definition of consent: "to give consent or approval; to agree."⁵ Already, one might note the difficulty in deciphering this definition, seeing as the word itself is used within the definition. In contrast to this definition, the Oxford English Dictionary gives the two following definitions: "to agree together" and "to come to agreement upon a matter or as to a course of action."⁶ The immediate

³ "*Commonwealth v. Mlinarich*," in *Sex, Morality, and the Law*, ed. Lori Gruen and George E. Panichas (New York: Routledge, 1997), 406.

⁴ Note that the definitions given within this paper do not include definitions marked as archaic or obsolete.

⁵ "Consent," *Merriam-Webster's Dictionary*, <https://www.merriam-webster.com/dictionary/consent>.

⁶ "Consent," *Oxford English Dictionary*, <https://oed.com/view/Entry/39518?rskey=S1oGQW&result=2&isAdvanced=false#eid>.

differences seen between Webster's Dictionary and the Oxford English Dictionary are that Webster's defines consent as something one single person is giving, whereas the Oxford English Dictionary defines consent as something multiple people do together. This discrepancy already throws a wrench in gaining an understanding of consent seeing as these definitions themselves differ in explaining who exactly is expected to do the consenting. Similar discrepancies will arise when examining the legal versus higher education definitions and who is expected by these institutions to do the act of consenting.

In comparison to these definitions of consent given as verbs, it is important to note the way these definitions change when considering consent as a noun. If viewing consent as a noun, the understanding of the word as a whole happens to change, seeing as consent is no longer an action someone is taking, but becomes the notion of the consent itself. There are, again, distinct differences between the Webster's Dictionary definition of consent as a noun and the Oxford English Dictionary definition. Webster's Dictionary gives two definitions of consent as a noun which include: "compliance in approval of what is done or proposed by another; acquiescence" and "agreement as to an action."⁷ The Oxford English Dictionary gives the following definition: "voluntary agreement to or acquiescence in what another proposes or desires; compliance, concurrence, permission."⁸ These definitions are more similar than those of the verbs in that they both use similar phrasing; both view consent as agreeing to what another wants, rather than wanting it oneself. One difference that will become even more important later in this discussion is the use of the word 'voluntary' within the Oxford English Dictionary's definition. Use of these adjectives is a similar tactic used within higher education to define consent -- a tactic that makes defining the word even more difficult.

⁷ "Consent," *Merriam Webster's Dictionary*.

⁸ "Consent," *Oxford English Dictionary*.

The definitions given by Webster's Dictionary and the Oxford English Dictionary are only the beginning of the multitudes of definitions of consent one might find. There are specific places within the United States where one will more commonly find the concept of consent being defined. The first of these is the legal system; the United States criminal justice system has seen and tried many cases of rape in which consent has more recently become a deciding factor as to the validity of the accusation. Another space where rape as well as sexual assault would be tried is on college campuses. College campuses have more recently been given the ability to determine their own ruling on whether accusations made by students are valid or not. This notion will be discussed further in another section of this paper as Title IX has become what dictates how universities go about holding these judicial hearings. Hearings held on college campuses typically put more weight on the value of consent seen by the way universities define consent. Where the legal system uses a more mechanical way of defining consent and determining fault in cases of rape, higher education finds itself necessitating different understandings of consent. These differences will also be described in further detail later on in the paper, but a large factor of what creates these differences are the scenarios where sexual assault on campuses take place.

While the criminal justice system and higher education are less individual, the idea of consent can be understood on an individual level too. All people have an understanding of consent that shapes how they view sexual assault cases. In general, there is a belief among people and communities that their understandings of consent are clear, but the varied and multiple definitions of consent that are produced demonstrate that its singular definition remains a grey area. Without having a concise definition of consent overall, the understanding of consent that the average person has is manipulated, and consent becomes an idea that is hard to grasp. As a result, college campuses often struggle to address acts of sexual violence on campus, as their

own students are not sure what it means to consent. Overall, there need to be large-scale changes in how the United States begins to understand the term consent in order for that one word to be what determines whether a sexual relation can be considered legally permissible or not.

When understanding definitions of words, one can be sure to find many variances in what a word is intended to mean. This holds particularly true for words that are often the subject of legal debate or legal cases seeing as the definitions in accordance with actions are crucial to the outcomes of these cases. In trials determining whether or not a defendant has committed rape, the term of rape itself is one which is thoroughly debated in its definition. The FBI's original definition of rape, formulated in 1927, was "carnal knowledge of a female forcibly and against her will."⁹ This word's definition has changed as society's understanding of what constitutes rape has changed. This definition has since been expanded to rather lay out what actions constitute a person committing the felony of rape. A typical definition found today considers rape to be "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."¹⁰ The trickiness of defining this term, and the room this definition leaves for confusion and error, goes to show the difficulty courts face in defining what most consider to be the basis of sexual relations: consent. Historically, "the phrase 'against her will' was held by the courts to be synonymous with the absence of consent," seeing as the main consideration for deciding whether or not someone was raped was whether or not force was used.¹¹ The definition of rape still revolves around use of force, but also considers other factors which has in turn expanded the definition of consent used within the courts. Within legal contexts, the definition of consent is

⁹ Vanessa Grigoriadis, *Blurred Lines: Rethinking Sex, Power, & Consent On Campus*, (Boston: Mariner, 2018), 66.

¹⁰ Grigoriadis, 66-67.

¹¹ "Commonwealth v. Mlinarich," 399.

one which seems to be determined based on the definition of rape and an understanding of what consent is not.

There are many court cases in which one can examine the way the definition of consent has been warped to be understood within the case. To gain a better understanding of how the legal system defines rape, one can refer back to the previously mentioned *Commonwealth v. Mlinarich* case. This case determined the fault of one Joseph Mlinarich for attempted rape of a fourteen-year-old girl who was originally Mlinarich's neighbor, but who Mlinarich and his wife assumed custody of after the girl was released from a juvenile detention center. The main point of this case fell in that Mlinarich would threaten the young girl by telling her he would send her back to the detention center if she did not comply with his sexual requests.¹²

The judge within this case begins in defining what constitutes rape. This definition thus defines the court's understanding of what it means to consent to a sexual relation. At the time of this case being argued, 1984, Judge Wieand outlined the definition of rape in Pennsylvania as:

A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

1. By forcible compulsion
2. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
3. Who is unconscious; or
4. Who is so mentally deranged or deficient that such a person is incapable of consent¹³

Since 1984 this definition of rape used within Pennsylvania has changed for the better to include more than what Judge Wieand was working with at the time of the *Commonwealth v. Mlinarich* case. As of 2019 this law defines rape as:

A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

1. By forcible compulsion.

¹² "*Commonwealth v. Mlinarich*," 397-398.

¹³ "*Commonwealth v. Mlinarich*," 398.

2. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
3. Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
4. Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
5. Who suffers from a mental disability which renders the complainant incapable of consent.¹⁴

The additions to the definition have changed how rape and consent are viewed within the court, but in examining what Judge Wieand was using for an understanding of rape, one might notice the difficulty anyone would have in proving fault in cases of rape. The importance in analyzing this case comes from seeing the drastic changes made over time as definitions and understandings are constantly evolving, particularly when it comes to sexual offenses. Within the context of the legal system, part of the definition of consent comes from being the opposite of the definition of rape. The ability to consent lies in the necessity that the one making the accusation was not in fact forced, threatened with force, unconscious or unaware, mentally incapable of consenting, or purposefully intoxicated by the accused.

In framing consent, the language used within the legal system focuses more specifically on what consent is not. This is especially so if one takes into consideration that consent becomes framed as what rape is not as well. Within courts today, nonconsensual is defined as one or a combination of the following: the victim being in an incompetent state, whether this be by intoxication, mental disability, or age; the victim was threatened by the accused with a weapon or potential physical injury; the victim withheld consent which was either ignored by the accused

¹⁴ "Title 18," Pennsylvania General Assembly, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=31&sctn=21&subctn=0>.

or overcome through use of physical force.¹⁵ Consent comes to be defined by its opposite, and its definition is framed in technical, transactional language. At the same time, this language is also malleable enough for legal advisors to formulate consent in a way that benefits what they are trying to prove, a tactic that is used beyond the word consent.

The malleability of the words' definitions within the legal system can be seen in many cases. A popular case that one may recognize is that of *Clinton v. Jones*, where, in a deposition, Clinton's "legal advisors asserted that the relevant legal definition of 'sex' did not extend to the behavior of the passive partner in an act of oral sex."¹⁶ While not directly related to the definition of consent used within the legal system, this example shows how definitions can be twisted to what they need to or do not need to be during a case. The definition of consent the courts give is one which is mechanically constructed, but can be shaped into what a case may necessitate.

The legal system began to see more cases revolving around sexual assault and rape on college campuses following the institution of the Jeanne Clery Act in 1990. This act came to be following the murder of Jeanne Clery, a student at Lehigh University in 1986.¹⁷ Students began to sue "postsecondary institutions for damages resulting from injuries incurred during the commission of criminal incident," which forced these cases into the public sphere.¹⁸ Institutions began to find themselves liable for foreseeable crime on campus, which forced colleges to begin dealing with cases of rape and sexual assault in similar ways to the legal system. While these issues were affecting college campuses long before the institution of the Clery Act, higher education now found itself needing to clean up its act in how it handled these issues and the

¹⁵ Laurie J. Shrage and Robert Scott Stewart, *Philosophizing About Sex* (Canada: Broadview 2015), 52.

¹⁶ Shrage and Stewart, 2.

¹⁷ Bonnie S. Fisher and John J. Sloan, III, "Campus Crime Policy: Legal, Social, and Security Contexts," in *Campus Crime: Legal, Social, and Policy Perspectives*, ed. Bonnie S. Fisher and John J. Sloan, III (Springfield: Charles C. Thomas, 2007), 3.

¹⁸ Fisher and Sloan, 3,5.

conversations surrounding them. As the Clery Act came to be, it was decided that “all institutions, both public and private, eligible to participate in any federal student aid program under Title IV of the *Higher Education Act of 1965*, are subject to these reporting requirements in the *Clery Act*.”¹⁹ The requirements of the Clery Act as of 2007 included:

1. Disclosure of an annual security report with crime statistics and security policy
2. Disclosure of timely information through a public crime log and warnings issued about ongoing threats
3. Insuring the protection of certain basic rights for both the accuser and the accused in sexual assault cases dealt with on campus
4. Devise an emergency response policy
5. Compile and report fire data
6. Enact policies and procedures to handle reports of missing students²⁰

Alongside these requirements, additional guidance was given to help ensure that universities were not just disclosing the reports their campus police received, but were also coordinating with other offices on campus which could have potentially been taking reports in order to get the most accurate number; the only offices exempted from reporting were those which held mental health professionals or religious advisors.²¹ All of these requirements sought to ensure the creation of a safer campus environment for all of those within campus communities.

The necessity of the Clery Act, or laws like it, does not just come from the fact that there is crime on college campuses. Colleges campuses in themselves are not necessarily unsafe spaces, but create environments that tend to make students feel less safe. A sign of this lack of feeling of safety is the ever present lack of willingness for many students who are victims of rape on campus to go to the police. A survey from 2000 showed that 95% of campus rapes were not

¹⁹ S. Daniel Carter and Catherine Bath, “The Evolution and Components of the *Jeanne Clery Act*: Implications for Higher Education,” in *Campus Crime: Legal, Social, and Policy Perspectives*, ed. Bonnie S. Fisher and John J. Sloan, III (Springfield: Charles C. Thomas, 2007), 30.

²⁰ Carter and Bath, 30.

²¹ Carter and Bath, 32.

reported to the police, thus keeping any knowledge of these instances of rape from the rest of a campus community.²² Having the Clery Act creates a way for colleges to disclose this information to students; whether or not this information is ever actually looked at by those students makes no difference in the necessity of it being provided. The act of providing this information at all holds colleges accountable in some way.

Even with these new measures being taken due to the Clery Act, along with changes to it from its initial passage in 1990 to now, there is “limited scientific research on the Clery Act and on its impact on campus crime.”²³ There is no solid understanding as to whether or not the Clery Act has improved anything on college campuses. Furthermore, colleges do not have to evaluate the effectiveness of their crime prevention; colleges are only required to publish the statistics they have without having to evaluate their reporting systems or determine if the number of reports they receive seems accurate.²⁴ These downfalls in understanding the effectiveness of the Jeanna Clery Act do not undermine the necessity there is in having this system which allows for a greater potential for safety; these downfalls should lead to our questioning: why do these institutions not have to evaluate the effectiveness of their crime prevention? If the goal of the Clery Act is to create a safer space on college campuses, then colleges should be held accountable for making the necessary motions to do so. While the Clery Act may not focus as much on the actions taken on college campuses, there is Title IX which has been used to attempt at preventing crime on college campuses differently than the Clery Act. However, prior to the “Dear Colleague Letter” of 2011, Title IX was not impacting sexual assault on college campuses.

²² Fisher and Sloan, 9.

²³ Dennis E. Gregory and Steven M. Janosik, “Research on the *Clery Act* and its Impact on Higher Education and Administrative Practice,” in *Campus Crime: Legal, Social, and Policy Perspectives*, ed. Bonnie S. Fisher and John J. Sloan, III (Springfield: Charles C. Thomas, 2007), 48

²⁴ Fisher and Sloan, 10.

Instead, its primary focus was on combatting discrimination in the form of gender-related incidents.

Understanding of what Title IX requires has changed over the years, but the origins of this statute called for something seemingly simple. Senator Edith Green received a letter from Bernice “Bunny” Sandler stating the discrimination Sandler was receiving as a woman in the academy; Green thus introduced the legislation which eventually became Title IX, and it was slipped into the Education Amendments.²⁵ The statute of Title IX was signed under Nixon’s legislation and originally did not persuade colleges to make any changes to their handling of sexual assault on campuses. The statute that passed in 1972 read: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”²⁶ The legal system continued to update Title IX as cases presented themselves, clarifying and questioning what truly fell under Title IX legislation. In 1980, the legal system found “that a professor’s offer of a sexual quid pro quo to a specific student was considered a violation of *all* female students’ rights to an equal education free from discrimination,” and following this change, in 1999 the Supreme Court ruled on a case between two fifth-grade students, making “student-on-student abuse...a violation of Title IX.”²⁷ These changes affected education at all levels and began to formulate Title IX into more than a law allowing for the equality of women within sports.

Those two changes made to Title IX were not what began to impact the sexual safety of students on college campuses. The push for college campuses to use Title IX to change how they

²⁵ Grigoriadis, 72.

²⁶ Grigoriadis, 72-73.

²⁷ Grigoraidis, 74,76.

handled reports of sexual abuse on campus came from the Obama administration in 2011, where the “Dear Colleague Letter” was “the first time in history the American government called sexual assault a civil rights issue.”²⁸ Bringing sexual assault into the spotlight as a civil rights issue forced colleges to make changes to the way they handled reports made by student and the actions taken against students accused. The “Dear Colleague Letter” of 2011 brought the problems college campuses were facing as it pertained to sexual assault into the national media. Through this letter the Obama administration listed out the expectations of colleges when it came to adhering to Title IX. These expectations included:

1. Having a process for resolving sexual assault cases brought to universities by students;
2. Cases should be resolved within 60 days;
3. All universities must have a Title IX coordinator;
4. Disciplinary processes must be published and widely distributed;
5. When a student makes a report, the student must immediately be able to move dorms and receive academic accommodations;
6. Disciplinary hearings must use preponderance of the evidence rather than the criminal standard of beyond a reasonable doubt.²⁹

These changes forced colleges and universities to start taking the problems of sexual assault on their campuses more seriously.

The main reason for colleges and universities to make this push came from the consequences they would face in not doing so. Not adhering to Title IX the way the “Dear Colleague Letter” of 2011 made clear justified a penalty of the “denial of federal funding for the entire university.”³⁰ While no college has ever lost all federal funding as a consequence of not adhering to Title IX, the fear is what struck colleges the most. Rather than focusing on protecting their students for the sake of a safe community, the threat of loss of funding pushed much needed

²⁸ Grigoriadis, 78.

²⁹ Grigoriadis, 78-79.

³⁰ Grigoriadis, 79.

change. As a result, college campuses began to make changes to their handling of cases of sexual assault and rape, and the idea of consent and what that meant on a college campus began to be examined.

In allowing for college campuses to have their own system for trying sexual assault and rape cases, the United States allowed for more students to make reports and see something happen with them. As stated previously, many students do not file their reports with the police; “The Rape, Abuse, and Incest National Network (RAINN), America’s largest anti-sexual violence organization, estimates that out of one thousand rapes, only three hundred and ten are reported to the police.”³¹ Further, studies demonstrate that even cases that do go to the police never see much of any consequence. According to The Rape, Abuse, and Incest National Network’s website, out of those three hundred and ten rapes, only fifty-seven will lead to arrest, eleven will go to court, seven will be convicted of a felony, and six will serve time in prison.³² When it comes to rape and college campuses, students could now find solace in the fact that whoever they are accusing might actually face consequences if they were to report to their campus rather than the police. Due to these changes in the understanding of Title IX, consent on college campuses became something individual in comparison to how consent was defined with the legal system.

More recently, the understanding of Title IX that was pushed upon higher education in 2011 has changed under a new presidency within the United States. In 2017, early in Donald Trump’s Presidency, Secretary of Education Betsy DeVos released a document through “the Office of Civil Rights at the Department of Education (under DeVos) [which] allows schools to

³¹ Grigoriadis, 80.

³² “Perpetrators of Sexual Violence: Statistics,” *the Rape, Abuse, and Incest National Network*, <https://www.rainn.org/statistics/perpetrators-sexual-violence>.

choose either standard;” this means that institutions as of this date could now choose to either use preponderance of the evidence, what has been used since 2011, or beyond a reasonable doubt,³³ what the United States legal system uses.³⁴ This change was one which still gave a choice to institutions, but allowed for a less strict understanding of Title IX than what the Obama administration hoped for in their “Dear Colleague Letter” of 2011. DeVos’ stated reasoning for administering this change was “that for all other adjudication procedures, schools require a higher burden of proof, so they should not treat sexual assault as an exception to this burden and require a lower burden only for these situations.”³⁵ This argument then begs the question of: *is* sexual assault on campus different from other crimes? One might tend to believe so in analyzing the guidelines to consent and sexual assault that college campuses have.

The decision to roll back the “Dear Colleague Letter” of 2011 did not just affect how colleges and universities could go about adjudicating their sexual assault and rape hearings; the changes made under Betsy DeVos affected our country’s understanding of consent as a whole as well as our willingness to believe survivors. While many still see the issue that is sexual assault on college campuses, this push against Title IX as well as arguments against the #MeToo movement have forced more to question the legitimacy of survivors’ testaments. With the changes made by the Trump Administration there has been more of a tendency to create a discourse surrounding the accused students and their rights rather than discussing what can be done to better help student survivors and to prevent campus sexual assaults. In an interview with the *New York Times* following the changes made to Title IX, the head of the Education

³³ Preponderance of the evidence means that in order for someone to be found guilty of a crime, more than half of those making the determination must believe the accused to be guilty. In contrast, beyond a reasonable doubt means that those making the determination must be unanimous in believing an accused to be guilty.

³⁴ Donna Freitas, *Consent on Campus: A Manifesto* (New York: Oxford University 2018), 33.

³⁵ Freitas, 33.

Department's Office for Civil Rights, Candice E. Jackson, discussed her beliefs surrounding the tendency to overlook the rights of students who have been accused of sexual assault or rape.

Within Jackson's conversation on this subject, she uses victim-blaming rhetoric and creates question around what consent truly is. She is quoted in this interview saying, "...the accusations – 90% of them – fall into the category of 'we were both drunk,' 'we broke up, and six months later I found myself under a Title IX investigation because she just decided that our last sleeping together was not quite right.'"³⁶ While Jackson later apologized for the comment, the damage had already been done. In attempting to make Title IX more 'fair,' the Trump administration has created confusion around testimonies of survivors and has our society questioning if consent is truly genuine or necessary. The idea that the accused deserve more consideration due to false accusations is one which is questionable as well. In looking at a 2010 study of how many accusations made are truly false, one will see that only between 2% and 10% of accusations made are false.³⁷ While there is little research done on false accusations, if the highest percentage given in this study were to be accepted as the percentage of false allegations, that would mean 90% of allegations made were true. This insinuates the exact opposite of the comment made by Jackson. Creating a discourse around sexual assault on college campuses in this way frames consent as unnecessary and leads to belief that campus sexual assault is not as important of an issue as it is.

Due to the changes being made to how colleges and universities were expected to adhere to Title IX and continuing confusion rising around the idea of consent, I decided to research my

³⁶ Erica L. Green and Sheryl Gay Stolberg, "Campus Rape Policies Get a New Look as the Accused Get DeVos's Ear," *The New York Times*, July 12, 2017. <https://www.nytimes.com/2017/07/12/us/politics/campus-rape-betsy-devos-title-iv-education-trump-candice-jackson.html>.

³⁷ David Lisak, Lori Gardinier, Sarah C. Nicksa, and Ashley M. Cote, "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases," abstract, *Sage 16*, 12 (December 16, 2010), doi: 10.1177/1077801210387747.

own college and other similar institutions. In looking at these institutions, I was intent on finding how they defined consent and aimed to see how this definition led them to discuss ways to prevent sexual assault on their campuses. Several trends became clear when it came to how the schools were defining consent, while at the same time there were many differences as well. While some institutions retained definitions similar to the legal system, others strayed farther from what would be commonly accepted. In respect to this research, I chose to examine institutions in Ursinus College's own Centennial Conference as a way to understand how institutions like Ursinus in particular navigate this confusion around consent. The goal in doing so was to see what similarities and differences presented themselves among the colleges and universities themselves, and to see how these definitions compared to that which the legal system uses. In order to understand the way each college defines consent, I attempted to find where on their website their definitions could be found and noted the adjectives used to describe consent on each of their websites.

The Centennial Conference schools include: Dickinson College, Franklin and Marshall College, Gettysburg College, Johns Hopkins University, Muhlenberg College, Swarthmore College, McDaniel College, and Ursinus College. Of the eight colleges within the Centennial Conference, all of them had a definition for consent somewhere on their institution's website. Half of the institutions, four of the eight, had their definition of consent on PDFs separate from their webpage. Each of these PDF's was some form of a sexual assault and harassment policy, though each institution named this policy something different. Dickinson College titled this their "Sexual Harassment and Misconduct Policy," similarly, Franklin and Marshall College titles their policy, "Sexual Misconduct/Discrimination/Harassment," Muhlenberg College entitled their policy "Equal Opportunity and Nondiscrimination," and McDaniel College has theirs

entitled, “Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence.”³⁸ Gettysburg College and Ursinus College both have their definitions within their student handbooks; Ursinus’ definition, however, was much easier to find on their website than Gettysburg’s.³⁹ Johns Hopkins University and Swarthmore College both had their definitions in some form of a school sexual assault and harassment policy as well, but these policies had their own pages on the school’s website.⁴⁰ Of the eight colleges, it should be noted that it was easiest to find Johns Hopkins’ definition and Ursinus’ definition.

Once the information on the way these institutions define consent was found, I first took note of the way each school described what consent is. There is a tendency to add qualifiers to the word consent in order to make an attempt at understanding its meaning. This way of defining consent is one frequented by colleges and universities in the United States. In all but one of the definitions used by the colleges, before defining what consent entailed, they each described consent as necessitating some adjective. It should be noted that the college which did not use a qualifier to describe consent was Gettysburg College who used Pennsylvania’s legal definition of consent as their own.⁴¹

³⁸ “Dickinson College Sexual Harassment and Misconduct Policy,” *Dickinson College*, https://www.dickinson.edu/download/downloads/id/9911/sexual_harassment_and_misconduct_policy_121218.pdf; “Sexual Misconduct/Discrimination/Harassment Policy,” *Franklin and Marshall College*, <https://www.fandm.edu/uploads/files/559877178185919680-smpolicy-updates-8-27-2018.pdf>; “Equal Opportunity and Nondiscrimination Policy,” *Muhlenberg College*, <https://www.muhlenberg.edu/media/contentassets/pdf/about/deanst/studentguide/EqualOpportunityNondiscriminationPolicy.pdf>; “McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence,” *McDaniel College*, https://formsandpolicies.mcdaniel.edu/sites/default/files/2018-08/Policy%20Against%20Sexual%20and%20Gender-Based%20Misconduct%20and%20Other%20Forms%20of%20Interpersonal%20Violence%202018-08-15_0.pdf.

³⁹ “Sexual Misconduct and Relationship Violence Policy and Procedures,” *Gettysburg College*, <https://www.gettysburg.edu/offices/student-rights-responsibilities/student-handbook/policy-details?id=23480e21-2c9a-4b12-8a71-7b7800121587>; “Additional Definitions,” *Ursinus College*, <https://www.ursinus.edu/student-life/handbook/sexual-and-gender-based-misconduct/additional-definitions/>.

⁴⁰ “Policies and Laws,” *Johns Hopkins University*, <https://sexualassault.jhu.edu/policies-laws/index.html#Section%20III%20-%20Definitions>; “Swarthmore College Sexual Assault & Harassment Policy,” *Swarthmore College*, <https://www.swarthmore.edu/share/swarthmore-college-sexual-assault-harassment-policy>.

⁴¹ “Sexual Misconduct and Relationship Violence Policy and Procedures.”

By far the most frequently used adjectives to describe consent were ‘voluntary,’ ‘willingly,’ or expressing ‘willingness,’ and ‘freely,’ as in ‘freely given;’ each of these words was used by at least five of the eight schools to describe consent.⁴² Not far behind was use of the word ‘knowing’ which was used by half of the schools.⁴³ Besides these four words, the only other words that occurred more than once were ‘informed,’ used by three institutions, and ‘clear,’ used by two institutions.⁴⁴ ‘Enthusiastically’ was only used by Franklin and Marshall College to describe consent.⁴⁵ Despite the fact that none of the schools defined any of their qualifying descriptors, one could deduce the meaning from the thorough definitions of consent given after these original definitions.

In order to fully understand two of the main adjectives used, voluntary and willingly, I found it necessary to have firm definitions of these words, in order to see how the words could be understood in respect to the rest of the definitions the institutions gave. The Oxford English Dictionary defines voluntary as “characterized by free will or choice; freely done or bestowed.”⁴⁶ In reference to consent, one can understand this to mean that consent must be given by both participants in such a way that force was not at play and in such a way that they both wanted to be giving consent. In respect to the term willingly, the Oxford English Dictionary defines this term as “intentionally, deliberately, willfully.”⁴⁷ Another definition given by the Oxford English

⁴² “Dickinson College Sexual Harassment and Misconduct Policy;” “Policies and Laws;” “Sexual Misconduct/Discrimination/Harassment Policy;” “Equal Opportunity and Nondiscrimination Policy;” “Swarthmore College Sexual Assault & Harassment Policy;” “McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence;” “Additional Definitions.”

⁴³ “Dickinson College Sexual Harassment and Misconduct Policy;” “Equal Opportunity and Nondiscrimination Policy;” “Swarthmore College Sexual Assault & Harassment Policy;” “Additional Definitions.”

⁴⁴ “Dickinson College Sexual Harassment and Misconduct Policy;” “McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence;” “Additional Definitions;” “Policies and Laws;” “Equal Opportunity and Nondiscrimination Policy.”

⁴⁵ “Sexual Misconduct/Discrimination/Harassment Policy.”

⁴⁶ “Voluntary,” *Oxford English Dictionary*, <https://oed.com/view/Entry/224561?redirectedFrom=voluntary#eid>.

⁴⁷ “Willingly,” *Oxford English Dictionary*. <https://oed.com/view/Entry/229078?redirectedFrom=willingly#eid>.

Dictionary even used the word ‘voluntarily’ within the definition of willingly, which shows the way these two words practically describe the same concept.⁴⁸ One can see from the definition of willingly that one chose to consent and knew what they were doing when making that choice.

With use of these adjectives, the institutions attempt to make their definitions easier for those reading them to understand, despite the fact many of the words used are very similar to each other. Following the use of qualifiers to describe consent, each college goes on to provide in-depth examples and what consent should look like. These definitions state exactly what cannot constitute consent, similar to the legal system; despite the similarity, what goes into these definitions is far different than what one might find in a legal definition of consent. Using the Centennial Conference schools, I again took note of the similarities in the definitions each of the institutions gave.⁴⁹ One point made in seven out of the eight schools was some variation of the idea that absence of ‘no’ does not constitute consent. This phrasing is not found in any form of law regarding around rape or sexual assault within the United States. Thus, it indicates one of the major differences between the way higher education defines consent versus the legal system.

Alongside the point that absence of no is not consent, there are other points commonly found within the consent policies of the Centennial Conference institutions. Six of the eight schools had some variation of the following four remarks:

1. Consent must be given with each new activity
2. The use of force does not constitute consent
3. A previous or current relationship does not constitute consent
4. Consent must be within the individual’s capacity (whether this means they are intoxicated, under the age of consent, or have a mental disability preventing them from being able to give consent)

⁴⁸ “Willingly.”

⁴⁹ The citations for each of these college’s policies will be given at the end of this section of the essay as seven out of the eight schools will be cited for each of these examples of their policies. The only institutions who will not be cited because their policy does not include any of the following information is Gettysburg College.

Five of the eight schools outlined that consent to a previous sexual encounter or a previous sexual activity does not constitute current consent. Five of the eight also noted that consent can be given verbally or through actions. Three of the eight schools noted that consent can be withdrawn at any time, and that consent which is withdrawn must be withdrawn through words or actions, along with the well-known statement: ‘no means no.’ Two institutions noted that the one initiating the sexual encounter must be the one gaining the consent. Finally, there were three statements individual to certain schools. The first is that both parties must consent to a sexual encounter, the second is that coercion is not consent, and the third is that a disparity in power does not constitute consent.⁵⁰ One can see through analyzing these statements that some refer to the United States’ own laws on rape and consent; other policies seem to be singular to higher education. These differences create a confused understanding of what consent truly means to the United States as whole.

While each institution lays out their policy for what consent is in regards to the school, only seven out of the eight schools have a specific section of their website dedicated to sexual assault prevention. In analyzing each of these pages of these college’s websites, I have found that some institutions have prevention strategies that are seemingly more beneficial than others. In doing this research, I will make suggestions for changes that Ursinus College can make to their own prevention tips found on the college’s website. Within Ursinus’ student handbook section of their website, under “Sexual and Gender-Based Misconduct,” one will find a section entitled “Sexual Violence Risk Reduction Tips” which can be found in Appendix A. Ursinus makes note within this page that “risk reduction tips can often take a tone of blaming a reporting party, even

⁵⁰ “Dickinson College Sexual Harassment and Misconduct Policy;” “Policies and Laws;” “Sexual Misconduct/Discrimination/Harassment Policy;” “Equal Opportunity and Nondiscrimination Policy;” “Swarthmore College Sexual Assault & Harassment Policy;” “McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence;” “Additional Definitions.”

unintentionally” and later on within the same paragraph notes that the institution “offer[s] the tips below solely to help you reduce your risk of experiencing a non-consensual sexual act.”⁵¹ On an ethical level, higher education should be providing readily available resources for students to help them maintain sexual safety on college campuses. These risk reduction tips, however, could better serve the Ursinus community if the tips focused on something more likely to help students: bystander intervention. I believe Ursinus should consider either replacing this page with, or adding an additional page on, bystander intervention tips.

Two of the eight colleges in the Centennial Conference, Dickinson College and Muhlenberg College, have bystander intervention as sections of their sexual assault prevention websites. Dickinson College’s bystander intervention section can be found in Appendix B. Within this section, the institution notes that “preventing sexual and gender-based misconduct requires a commitment from all members of the campus community,” the wording of which takes away from victim-blaming culture and notes the role the whole campus has in creating a safe environment.⁵² Following their explanation of what bystander intervention is and when someone should intervene, this website also gives examples of how students can intervene through use of “indirect action” or “direct action.”⁵³ Rather than creating a culture where everyone needs to look out for themselves when it comes to sexual misconduct, Dickinson College’s website creates a culture where everyone should be looking out for each other.

Similarly to Dickinson College, Muhlenberg College also has a section of their website focused on bystander intervention; this section of the website is found under their Department of

⁵¹ “Sexual Violence Risk Reduction Tips,” *Ursinus College*, <https://www.ursinus.edu/student-life/handbook/sexual-and-gender-based-misconduct/sexual-violence-risk-reduction-tips/>.

⁵² “Title IX: Education and Prevention,” *Dickinson College*, https://www.dickinson.edu/homepage/1243/title_ix_education_and_prevention.

⁵³ “Title IX: Education and Prevention.”

Prevention Education website and can be found in Appendix C. This institution's "Bystander Intervention Tips" page is laid out similarly to Ursinus' "Sexual Risk Reduction Tips" page through use of a numbered list. Prior to their list they urge their campus community members to "be an active bystander around issues of consent, sexual violence, intimate partner and dating violence, stalking, and sexual harassment."⁵⁴ Similarly to Dickinson, their tips revolve around both direct and indirect action. I believe Ursinus could take note from both of these college's websites in order to create a page in the student handbook noting how members of our own community could intervene as bystanders in situations in order to better reduce the risk of sexual violence on our campus; our own tips could relate to Ursinus' ideals, goals, and values, and would go a long way in helping create a safer campus community.

In analyzing the differences between how the legal system understands and defines consent versus higher education, one can see that consent is a concept not well explained in either context. Where the law focuses on what consent is not to define it, higher education focuses on what it needs to be. At times these understandings conflict with one another, which could give a better understanding as to why the Obama administration decided to have adjudications be determined by preponderance of the evidence rather than beyond a reasonable doubt. With the differences in definitions of consent, college-aged students attend their universities without a clear understanding of what consent should mean to them. In further research, I will examine how Ursinus students specifically understand the definition of consent. If one is to view the definition as a spectrum where the legal definition and the higher education definition are on opposite sides, where will Ursinus students fall in their beliefs on consent?

⁵⁴ "Bystander Intervention Tips," *Muhlenberg College*, <https://www.muhlenberg.edu/offices/preventioneducation/bystanderinterventiontips/>.

Through use of a campus wide survey along with further cultural research I will attempt to understand how consent is defined societally

Despite the necessity in defining what consent means within a society such as Ursinus College's, there are still problems with the term consent overall. Because of these unclear and multiple definitions of consent, there is no expectation for how consent should be understood by the average person. When students first step foot into their universities, they are taught the definition of consent their university follows. This definition may differ from that of the legal system or other higher education institutions. There is not only a problem in the fact that the definitions differ, but in the fact that our education system in the United States is attempting to teach consent to adults who already have their own ethical beliefs. In order to make consent education more beneficial, it is my belief that this education must begin earlier in a person's life, as young as five years old. Joseph J. Fischel, author of *Screw Consent*, notes the reasoning behind why we are not teaching children what consent and bodily autonomy mean. Fischel notes that "the modern notion of the 'child' presupposed adult superintendence, precisely because children are not creatures who are capable of consent" in the eyes of adults.⁵⁵ Once children begin to be able to speak and have their own understandings of their bodies, they begin to attempt to consent or not consent to things, without an understanding of that notion. Despite this "we refuse children's expressions of willingness and unwillingness as indices of meaningful consent" because of what has been stated before: adults do not view children as having the ability to consent.⁵⁶ If this idea were to be combatted and children were to be taught about consent and bodily autonomy at younger ages, there would be less of a necessity to attempt at teaching college level adults what consent should mean to them. If everyone went into college

⁵⁵ Joseph J. Fischel, *Screw Consent: A Better Politics of Sexual Justice* (Oakland: University of California 2019), 25.

⁵⁶ Fischel, 128.

with an understanding of what consent should mean to them, where would that leave sexual assault?

Appendix

A. Sexual Violence Risk Reduction Tips⁵⁷

- Risk reduction tips can often take a tone of blaming a reporting party, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below solely to help you reduce your risk of experiencing a non-consensual sexual act.
- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:
- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- Do not make assumptions about consent; about someone’s sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner’s consent should be affirmative and continuous. If there are any questions or ambiguity, then you do not have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Do not take advantage of someone’s drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Do not abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.

⁵⁷ This language is taken directly from the following source: “Sexual Violence Risk Reduction Tips,” Ursinus College.

- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

B. ⁵⁸

<h3 style="color: #c00000; text-align: center;">Bystander Intervention</h3> <p>Dickinson College is committed to providing initial and ongoing education about bystander intervention. Preventing sexual and gender-based misconduct requires a commitment from all members of the college campus community. We can work together to uphold the values of civility, respect and accountability through intervening early in a situation that may evolve into sexual misconduct, harassment or relationship violence. Below are some tips on how to intervene and support the college community:</p> <ul style="list-style-type: none"> • Be aware of your environment: Notice when someone is crossing a line. Pay attention to the verbal and physical signals between people. • Assess the situation: Remember, your personal safety and the safety of others is the No. 1 priority. If you or others are not safe, you should call authorities immediately. 	<h3 style="color: #c00000; text-align: center;">Options for Intervening</h3> <p>Indirect Action</p> <ul style="list-style-type: none"> • Tell another friend, host or bartender that someone has had too much to drink and ask for help in stopping the situation. • Call authorities. <p>Direct Action</p> <ul style="list-style-type: none"> • Check in with your friend by asking if everything is okay; this simple interruption may change the course of the situation. • Talk to the person directly about any problematic behavior and try to de-escalate the situation. • Intervene with the support of additional friends.
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C. Be an active bystander around issues of consent, sexual violence, intimate partner and dating violence, stalking, and sexual harrassment

1. Talk to Friends and Family openly and honestly about sexual assault.
2. Be engaged- intervene in any way you can
3. Recognize that non-consensual sexual contact is sexual assault.
4. Reach out to your supports and your resources.
5. Don't be a bystander- intervene if someone is in danger or is being targeted.
6. Understand that if someone does not or cannot consent to sex, it's rape.
7. Never blame or shame the victim.

⁵⁸ This screen capture is taken directly from the source: "Title IX: Education and Prevention," Dickinson College.

8. Seek immediate medical attention at a local hospital if you are a victim or survivor of sexual assault.
9. Preserve physical evidence such as clothing or beddings.
10. Seek emotional support. Know your resources on and off campus.
11. Don't be afraid to report the incident to Campus Safety, Dean of Students, Title IX Coordinator, or any trusted faculty/staff member on campus.
12. Know that unwelcomed sexual –or gender-based verbal, written, online, and/or physical conduct is sexual harassment.
13. Know that an unwelcomed course of conduct directed at a specific individual that causes fear and emotional distress is stalking.
14. Know where and how to report an incident.
15. Know that there is strength in numbers, but one person can make a difference.
16. Stand by a friend, stand up to an offender, and stand for no more bystanders.
17. Stand for consent, choice, integrity, honesty, safety, well-being.....⁵⁹

⁵⁹ This language is taken directly from the following source: "Bystander Intervention Tips," Muhlenberg College.

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