

BUREAUCRATIZING CONSENT

An Analysis of Sexual Freedom Paradigms in University of California, Berkeley Sexual Harassment Policies

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This thesis examines how the University of California, Berkeley's policies on sexual harassment reflect models of conduct and sexual freedom. Drawing on a liberal choice model of sexual freedom and a theory of genuine autonomy, the thesis analyzes the evolution of the University of California, Berkeley's sexual harassment policy and grievance procedures and how these policies—or lack thereof—reflect, or fail to reflect, sexual freedom paradigms. In addition to outlining key changes in campus sexual harassment policies over time, the objective of this thesis is to provide a conceptually driven theory of policy change.

Introduction

The University of California, Berkeley (hereinafter UC Berkeley or Berkeley) is no stranger to reports of sexual harassment, and finding recent cases of sexual misconduct requires minimal effort.¹ In October 2015, Geoffrey Marcy resigned from his faculty member position in the Astronomy Department following numerous allegations of sexual harassment.² In March 2016, Tyann Sorrell sued Berkeley Law School Dean Sujit Choudhry for sexual harassment.³ In March 2017, Joanna Ong, a Berkeley alumna and former research assistant to John Searle, filed a lawsuit against the professor emeritus of philosophy and the UC Board of Regents alleging that Searle sexually assaulted and harassed her.⁴ These and similar cases call attention to not only the prevalence of sexual harassment on university campuses but also the failure of academic institutions to combat sexual violence and predation. By examining theories of consent and analyzing how models of sexual freedom guide university policy changes, I seek to explain why university sexual harassment policies often fail to address claims of sexual harassment. In particular, I aim to answer the following question: how do UC Berkeley's sexual harassment policies reflect varied models of sexual freedom? In order to analyze the extent to which current and former policy iterations

1 I use sexual harassment throughout my thesis to refer to all forms of sexual violence, including sexual assault, unless otherwise noted.

2 Zoe Kleinfeld, "Light shed on a dark matter: Campus professor Geoffrey Marcy's resignation comes after concerns about sexual harassment in sciences," *The Daily Californian*, October 15, 2015, accessed March 3, 2017, <http://www.dailycal.org/2015/10/15/light-shed-dark-matter-campus-professor-geoffrey-marcys-resignation-comes-concerns-sexual-harassment-sciences/>.

3 Alexandra Yoon-Hendricks, Katy Abbott and Suhauna Hussain, "Dean of UC Berkeley School of Law sued for sexual harassment," *The Daily Californian*, March 9, 2016, accessed March 3, 2017, <http://www.dailycal.org/2016/03/09/dean-of-uc-berkeley-school-of-law-sued-for-sexual-harassment/>.

4 "Renowned UC Berkeley philosophy professor emeritus accused of sex assault," *The Daily Californian*, March 23, 2017, accessed March 24, 2017, <http://www.dailycal.org/2017/03/23/renowned-uc-berkeley-philosophy-professor-emeritus-accused-sex-assault/>.

effectively address sexual harassment claims, I present a conceptual framework for understanding sexual freedom. Additionally, I review UC Berkeley's sexual assault policies to further assess sexual freedom paradigms and broader issues pertaining to sexual abuses of power.

Outline of Thesis

In Section One, I analyze two models of conduct and sexual freedom. First, I present a liberal choice model of sexual freedom that rests on the notion of individual choice. In examining this model, I look at an economic theory of sexuality that assigns an exchange value to sex. This model does not provide a definition of autonomy but rather is used to examine uneven power relations within the university context. Evidence drawn from national and campus newspapers illustrates the prevalence of this model. Returning to the liberal choice model, I contend that understanding sexual freedom as the ability to make sexual choices overlooks the ways in which underlying power dynamics shape relationships between individuals and limit autonomy. Hence, I present a theory of genuine autonomy that includes both the capacity for self-determination and the opportunity to make choices freely as a second model of conduct and sexual freedom. In addition to accounting for sexual choice, genuine autonomy acknowledges the role context plays in limiting sexual choice.

Sections Two through Five analyze UC Berkeley's policies on sexual harassment using the two models of conduct and sexual freedom presented in Section One. Section Two discusses the Berkeley campus climate prior to establishing a formal sexual harassment policy and grievance procedures. Section Three looks at issues of transparency and awareness concerning sexual harassment. Section Four then examines the omission of gender-specific language in sexual harassment policies and the implications of protecting harassing speech in the name of academic freedom. Lastly, Section Five discusses the University of California's adoption of an affirmative model of consent.

Methodology

Current UC Berkeley sexual harassment policies, as well as relevant University of California policies, are accessible online through the Office for the Prevention of Harassment and Discrimination (OPHD).⁵ However, locating previous iterations of sexual harassment policies requires diligent investigating. The Internet Archive's Wayback Machine has websites saved – essentially frozen in time – from the mid-1990s to present. Using this tool, I located UC Berkeley's sexual harassment policies dating back to the early 1990s.⁶ I searched for policies in five year increments, starting with 2017 and working backwards (2012, 2007, 2002, 1997) in order to assess policy changes over time. Some of the policies do not correspond to these dates because policies are not consistently updated. For example, UC Berkeley's 1997 website lists a sexual harassment policy last revised in 1993.

For policies prior to the mid-1990s, I referenced UC Berkeley's General Catalogs and campus archives. The Catalogs provide information on campus history, policies, courses, and student opportunities.⁷ While the Catalogs are not comprehensive in their presentation of campus policies, they are useful in tracking the evolution of specific policies.

The most difficult task was finding policy language prior to 1993. Despite contacting campus archivists and relevant offices, I could only access the full text of one policy prior to 1993.⁸ Previous sexual harassment policies were difficult to locate because the names of the offices that manage those policies have changed. Thus, searching for previous policies under the name of a current office may not yield any relevant results. Additionally, offices that house current policies do not necessarily know how to access previous iterations of those policies, as was my experience with OPHD.

5 "Office for the Prevention of Harassment & Discrimination," UC Berkeley: Office of the Chancellor, accessed March 11, 2017, <https://ophd.berkeley.edu/>.

6 The Internet Archive's Wayback Machine has UC Berkeley websites saved since 1996, but some of the policies listed on the websites are dated prior to 1996.

7 "UC Berkeley General Catalogue," accessed March 11, 2017, <http://digitalassets.lib.berkeley.edu/generalcatalog/>.

8 "Proposed Berkeley Campus Policy on Sexual Harassment and Complaint Resolution Procedures," University of California Berkeley, Office of the Vice Chancellor, April 20, 1989.

Therefore, in order to learn about the evolution of campus sexual harassment policies, I looked at microfilms of *The Daily Californian* dated February 3, 1976 to May 20, 1994; *The Daily Californian* Archive for articles dated 1999 to Present; national newspapers dated April 6, 1979 to October 1, 2003; reports published by university professors, students, or committees dated 1979 to 1994; and training modules for preventing sexual harassment from 1989.

Section One: Two Models of Sexual Freedom

In this chapter, I present two models of conduct and sexual freedom. First, I discuss a liberal model of sexual freedom that hinges on individual choice but does not acknowledge underlying issues of inequality, such as sex discrimination. Under this model, an individual possesses the capacity to choose, but the choice may be made in a hostile environment. Viewing sexual freedom as the capacity to make sexual choices does not account for the role context plays in limiting sexual choice. Therefore, I present a theory of genuine autonomy as a second model of sexual freedom.

I. Liberal Choice Model

The liberal choice model of sexual freedom values the capacity of individuals to make choices about their own bodies. This model views sexual freedom as the ability to either consent or not consent to sexual propositions and to pursue sexual relationships on one's own accord. The liberal choice paradigm relies solely on the capacity of the individual to choose and does not take into account conditions that inhibit the ability to choose freely and without coercion or the threat of coercion. For example, Stephen Schulhofer defines autonomy as the ability of individuals to "act freely on their own unconstrained conception of what their bodies and their sexual capacities are for."⁹ Using Schulhofer's definition, sexual freedom is the capacity to decide whether and when to participate in sexual activities; however, this definition ignores the context in which a decision may be made and consequently considers choice a sufficient condition for autonomy.

Under the liberal choice model, individuals may choose to engage in sexual relationships and positively consent to exercise sexual freedom. Yet offering consent does not necessarily stem from a desire to engage in a sexual relationship, as an individual may consent out of fear of physical, psychological, or professional harm. Lynn Henderson challenges the "liberal story" in which "the context of sexual relations doesn't matter as long as they are 'consensual' in a thin sense of the word 'consent.'"¹⁰ For Henderson, this model "fails to take into account women's subordinated status and assumes that women have equal power to act autonomously in sexual relations."¹¹ Henderson is not alone in her critique. Brande Stellings argues that sexual violence "not only harms the victim's bodily integrity, it assaults the body politic by diminishing the capacity of some of its members, on the basis of sex, from participating as autonomous equals in the public world."¹² Stellings analyzes the role sexual violence plays in preventing individuals, specifically women, from acting freely in relationships (whether intimate or not) with others. Stellings maintains:

When victimized, women's bodies become doubly embodied as both the site of domination and a bellwether of doom, bearing messages of power relations and the risk of danger. Women do not need, therefore, to be victims of assault to be induced to conform. The assaults speak for themselves: they remind women, through the medium of other women's bodies, of their own vulnerability.¹³

9 Dorothy Roberts, "Rape, Violence, and Women's Autonomy," *Chicago-Kent Law Review* 69 (1993-1994): 360.

10 Lynne Henderson, "Rape and Responsibility," *Law and Philosophy* 11 (1992): 143.

11 Henderson, 143. See also Brande Stellings, "The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship," *Harvard Civil Rights-Civil Liberties Law Review* 28 (1993): 188 ("The failure to recognize rape, and the threat of it, as a problem of sex discrimination—as a crime not just of violence but also of sex—overlooks the way it both represents and maintains a system of subordination").

12 Stellings, 188.

13 Stellings, 204.

As a result, the fear of sexual violence not only limits sexual freedom but also impacts the opportunity to engage freely in sexual relationships.

The liberal choice model provides a constricted framework through which to analyze sexual harassment and thus merits criticism. Sexual harassment involves the lack of freely given consent in addition to “the degradation of the body and spirit through objectification and dehumanization.”¹⁴ Therefore, sexual violence may be seen “as sexually invasive dehumanization,” rather than only “sexual theft or a violation of sexual autonomy.”¹⁵ The liberal choice model ignores underlying differences between the social realities of men and women. This model certainly recognizes that people should have the right to make choices about their own bodies. However, the paradigm falls short because it ignores the inability of certain populations to freely make choices about their own bodies.

Under the liberal choice model, sex may sometimes operate as an economic condition of employment or good standing at a university. But, an economic theory of sex assigns an exchange value to sex that overlooks coercive social conditions. Viewing sex as having an exchange value negates the social and economic inequalities that exist between men and women; in uneven power relationships, the individual with less authority may feel coerced into acting a certain way in order to maintain a particular standing in the workplace or university. In a professional setting, an authority figure may make sexual advances towards someone over whom he or she has power, including an employee or a student. The employee or student may give in to the advances in order to avoid dismissal or receiving a failing grade in the class. In these scenarios, sex or sexual behavior is exchanged to prevent demotion, yet the employee or student only permits the unwanted sexual advances out of fear of reprisal; therefore, the employee or student does not freely choose to engage in the sexual propositions but is rather coerced into submission. Unfortunately, examples of sex being used as a bartering tool are heavily prevalent on university campuses. A March 1978 article in *The Daily Californian* presents a scenario that captures the economic theory of sex:

Your professor has always been friendly, but one day he or she starts to get more personal, asks you out, and solicits sexual favors. You feel pressured, because you wonder if your grade depends on your reaction. You may decide to comply, thus eliminating the risk, or you may decide to refuse. If you have refused, perhaps you get a grade in the class you do not feel you have deserved.¹⁶

UC Berkeley student groups at the time defined sexual harassment as the abuse of power over an individual.¹⁷

Individuals should have the right to decide whether or not to engage in sexual relationships. However, the capacity to consent or not consent to sex represents only one component of genuine sexual freedom. Certainly, “the significance of an individual’s right to exercise his or her sexual agency” is important and should not be overlooked.¹⁸ However, placing heavy emphasis on consent without considering the context in which consent is offered undermines sexual freedom.

II. *Genuine Autonomy*

Unlike the liberal choice model of sexual freedom, the genuine autonomy paradigm takes into account the context in which consent is given. As a result, a genuine autonomy model does not treat all forms of consent equally. This model rejects consent offered under (threat of) coercion or harm. As discussed under the liberal choice model, sex may constitute an economic condition of employment even if one consents to sex or sexual advances. In uneven power relationships, the individual with less power may acquiesce to sexual propositions out of fear of reprisal. A model of genuine autonomy calls attention to the need to cultivate an environment, including on university campuses, in which consent can be freely given.

Unfortunately, systems of domination thrive within university bureaucracies. As a result, university

14 Michelle J. Anderson, “All-American Rape,” *St. John’s Law Review* 79 (2005): 643.

15 Anderson, 643.

16 Ginna Ingram, “Sexual harassment at UC Berkeley,” *The Daily Californian*, March 15, 1978.

17 John Barry, “Women to hold forum on sexual harassment,” *The Daily Californian*, February 27, 1979, 13.

18 Michal Buchhandler-Raphael, “The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power,” *Michigan Journal of Gender & Law* 18 (2011): 10-11.

bureaucracies foster institutional and professional relationships ripe for sexual abuses of power. According to Michal Buchhandler-Raphael, sexual abuses of power appear in “cases in which a person in a supervisory position exploits his or her power, authority, dominance, and influence to compel an employee’s or student’s submission to unwanted sex.”¹⁹ At universities, professors hold formal power over their students, both undergraduate and graduate, as do bosses over their employees. In the former case, I do not suggest that students and professors should hold the same power but rather that those in higher positions of power (i.e. professors) ought to be held to higher standards of behavior. Professors who abuse their position promote a hostile learning environment, and universities that fail to hold these professors accountable condone the environment that enables sexual abuses of power to continue.

Genuine sexual autonomy includes both the capacity for self-determination and the opportunity to make sexual choices in the absence of coercion. Coercion or force is not necessarily physical but may be in “the power one need not use.”²⁰ For example, knowing that his or her career is on the line, an employee may permit a supervisor’s advances as a means to avoid demotion or dismissal. The supervisor does not need to use physical force to coerce his or her employee to consent because the supervisor exploits the differential power relationship. While choice is a critical component of this model, the context in which consent may be given may limit an individual’s ability to freely offer consent. An individual may consent to sexual propositions, thus exercising his or her capacity for sexual choice, but the context and environment under which he or she consents must be scrutinized.

Section Two: A Campus Without A Policy

The university is a complex bureaucracy composed of countless power relations and thus is prone to sexual abuses of power, and in the absence of explicit policies and grievance procedures for sexual harassment, individuals without formal power lack genuine autonomy. While policies alone cannot cultivate a non-hostile environment, they represent a formal mechanism capable of holding those who abuse their power accountable. Policy serves as a critical, albeit insufficient, tool in preventing and addressing issues of sexual harassment. Before UC Berkeley established formal sexual harassment policies and grievance procedures, campus members exclusively operated within an environment that permitted sex as a bargaining tool.

Differential power relations may harm individuals with less formal power, such as university staff and students. In 1979, two UC Berkeley professors, Donna Joan Benson and Gregg E. Thomson, examined the severity and frequency of sexual harassment of students by instructors at UC Berkeley. In their report, Benson and Thomson referenced a 1978 statement by the Association of American Colleges’ Project on the Status and Education of Women on the prevalence and severity of sexual harassment on college campuses, suggesting that sexual harassment was indeed a problem that extended outside the professional workplace.²¹ Of particular interest and concern to Benson and Thomson was the interplay of sexual interest and authority relations within a gender-stratified society.²²

In 1978, Benson and Thomson ran an ad in the campus’ student newspaper,²³ encouraging students to speak in confidence with Benson over the phone or in person about any experiences with sexual harassment.²⁴ Twenty women responded to the ad, and their responses were used to create a questionnaire on sexual harassment that was then mailed to a random sample of 400 women in their senior year, of which 269 responded. 95 of the responding 269 students reported knowing at least one woman who had been sexually harassed by a male instructor while 55 students stated that one or more instructors had personally harassed them.²⁵ Additionally, respondents expressed their perceptions of the severity and frequency of sexual harassment.

19 Buchhandler-Raphael, 5.

20 Dorothy Roberts, “Rape, Violence, and Women’s Autonomy,” *Chicago-Kent Law Review* 69 (1993-1994): 374.

21 Donna Joan Benson and Gregg E. Thomson, “Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratification” (University of California, Berkeley, 1979), 1.

22 Benson and Thomson, 3.

23 The study does not state the name of the student newspaper.

24 The questionnaire defined sexual harassment as “[a]ny unwanted sexual leers, suggestions, comments, or physical contact which you find objectionable.” Benson and Thomson, 4.

25 Benson and Thomson, 4-5.

Drawing on the study's data, Benson and Thomson called attention to the harmful impact of sexual harassment in unbalanced power relationships. Benson and Thomson found that a female student harassed by a male instructor may (1) need to renegotiate her status as a student insofar as the instructor currently views her as someone of sexual interest rather than a serious student; (2) doubt her academic abilities, thinking that previous high marks stemmed from the instructor's sexual interest in her; and (3) grow to mistrust all male faculty. While Benson and Thomson did not derive statistical inferences from their data, they employed their findings to substantiate broad sociological arguments regarding gender stratification. They maintained that "Until [sexual harassment] is recognized as an institutional problem and grievance procedures are well established, sexual harassment will continue to reinforce gender inequality."²⁶ Universities that adopt and implement policies and grievance procedures acknowledge sexual harassment as a potential issue. Yet, as Section Three examines, policy alone cannot effectively counteract social structures and attitudes that permit sexual harassment.

In the late 1970s, the Equal Employment Opportunity Commission (EEOC) mandated academic institutions receiving federal assistance, such as the University of California, to comply with Title IX of the Education Amendments of 1972 (Title IX). Title IX prohibits discrimination on the basis of sex in federally funded education programs or activities.²⁷ In 1979, two years after Title IX was adopted, a Berkeley student group called Women Organized Against Sexual Harassment (WOASH) filed a Title IX complaint with the Department of Health, Education, and Welfare (HEW) against a campus professor for "attempting to barter grades for sexual favors."²⁸ WOASH filed the complaint with HEW as a result of university inaction against the professor, charging that the university lacked sexual harassment grievance procedures and a campus Title IX compliance officer. However, according to then Vice Chancellor Ira Michael Heyman, the campus did have a Title IX compliance officer – Assistant Vice Chancellor of Legal Affairs Michael Smith – and established grievance procedures. Yet, a member of the Student Advocate's Office described the compliance officer as neither "visible" nor "accessible." Regarding the grievance procedures, the student advocate claimed, "No one has any faith in the procedures – so they really do no good."²⁹ As a result of WOASH's efforts, HEW initiated an investigation after determining that coercive sexual advances may constitute sexual discrimination under Title IX, thus prompting Vice Chancellor Heyman to cooperate with WOASH to develop a new grievance procedure two months later.

The university ultimately suspended the professor whom WOASH filed a complaint against for one quarter without pay in 1980.³⁰ In reference to the suspension, then Chancellor Albert Bowker issued a statement condemning sexual harassment: "students should be able to pursue their studies at the university free of concern that faculty members may force their attentions upon them. ... The abuse of authority by faculty members to obtain sexual favors from students is fundamentally inconsistent with a free and open academic environment."³¹ Universities without sexual harassment policies and procedures leave students vulnerable to unwanted sexual advances in part because those with less formal power lack recourse to accountability mechanisms. Hence, the probability of sex being exchanged as a condition of professional standing increases as the effectiveness of policies and procedures to hold individuals accountable decreases.

A May 1981 *Daily Californian* article indicates that under the policy in place at the time, people could file complaints of sexual harassment but that "such complaints are not explicitly addressed in the campus guidelines."³² Several months prior, the Chancellor's Title IX Advisory Committee drafted a formal grievance procedure "to deal with all forms of sex discrimination, with special provisions to handle sexual harassment issues."³³ Title IX does not require universities receiving federal funds to adopt an explicit policy prohibiting sexual harassment or sexual violence, but a university's general policy prohibiting sex discrimination may be insufficient "if, because of the lack of a specific policy students are unaware of what kind of conduct constitutes sexual harassment,

26 Benson and Thomson, 23.

27 "Title IX and Sex Discrimination," last modified April 2015, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

28 Alina Tugend, "Sexual harassment charge against prof: Women's group files complaint," *The Daily Californian*, February 27, 1979, 1; Sally Lehrman, "UC Prof Will Be Suspended: Bowker Condemns Sexual Harassment," *The Daily Californian*, January 8, 1980, 1.

29 Tugend, 12.

30 Lehrman, 1.

31 Lehrman, 1.

32 Charles Burress, "UC likely to heed harassment ruling," *The Daily Californian*, May 26, 1981, 1.

33 Landa Siu, "Sexual harassment: New grievance procedure," *The Daily Californian*, March 10, 1981, 3.

including sexual violence, or that such conduct is prohibited sex discrimination.”³⁴

Formulating grievance procedures for sexual harassment requires a clear definition of sexual harassment. Yet agreeing on a definition and outlining what actions constitute harassment is not a simple task.³⁵ The absence of a standard conception of harassment creates confusion in potentially harassing instances as well as ambivalence about reporting options. A March 1985 *Los Angeles Times* article discussing specific sexual harassment cases states, “Some did not take action because they did not realize that the behavior – repeated sexual jokes, for example – constituted harassment.”³⁶ It took UC Berkeley over half a decade following the adoption of Title IX to develop a permanent grievance procedure for sexual harassment. As a result, the university failed to provide individuals lacking formal power and who experienced harassment the proper channels to hold both the offenders and campus administration accountable.

Title IX mandates that universities (1) publicly share a notice of nondiscrimination,³⁷ (2) designate at least one Title IX coordinator,³⁸ and (3) adopt and publish grievance procedures to provide “prompt and equitable” complaint resolutions.³⁹ Then Title IX coordinator Diane Clemens echoed student sentiments, stating, “Sexual harassment occurs on campus, and the standard procedure for dealing with complaints against faculty members does not provide adequate recourse.”⁴⁰ Back in 1979, Vice Chancellor Heyman expressed dissatisfaction with WOASH’s decision “to circumvent established grievance procedures” and file a complaint externally against a campus professor.⁴¹ Yet, such “established” procedures proved inadequate in holding the professor and the university accountable.

Additionally, in developing said procedures, issues surfaced over which university body – the Academic Senate or the administration charged with upholding Title IX standards – ought to possess disciplinary power in sexual harassment cases. A May 1982 *Daily Californian* article captures this debate, reporting that while the Academic Senate “accepts the rights of the administration to intervene on behalf of students alleging sexual harassment—to change a grade or switch a class for instance—it will not allow punitive action to be taken on the same evidence. A separate suit, with entirely different procedures and burdens of proof, must be brought before the senate.”⁴² Issues over disciplinary power between the Academic Senate and the administration further complicated reporting procedures and ultimately disempowered individuals from expressing grievances.⁴³

Section Three: Awareness and Transparency

In the absence of sexual harassment grievance procedures, students and university personnel with less formal power lacked recourse to hold individuals responsible for harm inflicted. Without proper channels, individuals operate within a hostile environment that consequently permits sex as a condition of good academic standing or employment. Yet even with formal policies prohibiting sexual harassment, individuals may not possess genuine autonomy, and as a result, the concern is the context in which choice is exercised. If policies exist, but are ineffective in holding those who violate them accountable, the university fails to cultivate a safe environment in which consent may be offered without the threat of coercion. Policies are necessary within the university bureaucracy, but policies alone cannot provide campus personnel the opportunity to exercise genuine autonomy. Therefore, the university must undertake actions not only to spread awareness of sexual harassment but also ensure that university policies and proceedings regarding issues of sexual harassment are transparent.

34 “Dear Colleague Letter,” U.S. Department of Education, Office for Civil Rights, April 4, 2011, 7, <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2016/06/15142202/colleague-201104.pdf>.

35 Christopher Reed, “Degrees of misconduct,” *The Guardian*, April 6, 1979, 11.

36 David G Savage, “Survey Reports Sexual Harassment in Schools,” *Los Angeles Times*, March 5, 1985, C1.

37 34 C.F.R. § 106.9

38 34 C.F.R. § 106.8(a)

39 34 C.F.R. § 106.8(b)

40 Beth Yoffie, “Sexual harassment: Grievance procedure up for approval today,” February 5, 1982, 1.

41 Alina Tugend, “Publicity of sex charges disturbs vice chancellor,” *The Daily Californian*, February 28, 1979, 1.

42 Penny Shane, “Title IX entitles none...yet,” *The Daily Californian*, May 3, 1982, 10.

43 In May 1978, the Academic Senate Committee on the Status of Woman “set up a new grievance procedure to handle problems of sexual harassment,” but, according to a student advocate, “students have not as yet come forward with complaints.” Barbara Franklin, “What can be done?: Sexual harassment,” *The Daily Californian*, March 18, 1978, 20.

UC Berkeley students have long advocated for heightened awareness regarding the prevalence and severity of sexual harassment and sexual violence on campus. In October 1977, the second annual Rape Prevention Education Forum was held on campus “to sensitize both men and women to the fears and effects of rape, with suggested safety precautions.”⁴⁴ Institutional responses to rape precede efforts to fight systemic issues of sexual harassment based on *Daily Californian* articles and UC Berkeley’s General Catalogs. However, in May 1978, a forum on sexual harassment was held in Eshleman Hall, and a student in the Student Advocate’s Office stated that Vice Chancellor Heyman revealed, in conversation, doubt about the campus’ sexual harassment problems.⁴⁵ Student pressure prompted the ASUC Senate to adopt a resolution in March 1980 demanding the UC Title IX Advisory Committee to establish a sexual harassment grievance procedure following suggestions put forward by WOASH.⁴⁶

In March 1982, campus administration revised a sexual harassment grievance procedure without student input – if approved, it would have been UC Berkeley’s first set of sexual harassment procedure guidelines.⁴⁷ After two years of deliberation, the Chancellor’s Title IX Advisory Committee initially approved the proposal. The administration made late revisions to the proposal, including:

- (1) limiting sexual harassment charges to single individuals – so as to prevent “a woman from filing charges against a department”;
- (2) removing administration responsibility for providing legal counsel to faculty members or students in harassment cases;
- (3) permitting students the opportunity to file sexual harassment charges only while enrolled;
- (4) allowing administrators to review the hearing process, even if directly involved in the case; and
- (5) prohibiting women from appealing hearing guidelines.⁴⁸

A graduate student and member of the Title IX Advisory Committee expressed dissatisfaction with the harassment grievance plan: “Under these (guidelines) I would be hesitant to complain unless some professor raped me.”⁴⁹ Additionally, a former member of the Title IX Advisory Committee maintained that the proposal “would satisfy the federal requirement to have a grievance procedure, but not the problem [of] sexual harassment.”⁵⁰ Thus, the proposed grievance plan superficially addressed sexual harassment concerns without altering campus attitudes.

Later that year, Chancellor Heyman issued an interim sexual harassment grievance procedure to comply with Title IX.⁵¹ The policy defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of *unreasonably* interfering with an individual’s performance or creating an intimidating, hostile or offensive university environment.”⁵² The policy seemed to permit sexual harassment so long as it did not impact a person’s ability to perform his or her job properly or create a coercive environment. However, individuals may not recognize certain behavior as harassment and thus are more vulnerable to otherwise unwanted propositions. In response to the policy, Catherine MacKinnon drafted a report critiquing, among others components of the report, the definition of sexual harassment. MacKinnon articulated that “there is no such thing as reasonable interference with a woman’s performance stemming from sexual harassment.”⁵³ MacKinnon’s critique calls attention to the limitations of policy in affecting attitudinal changes.

Additionally, the policy stated that “in determining whether the alleged conduct constitutes sexual harassment,

44 Patricia Wakimoto, “Rape prevention education forum to be held on campus this month,” *The Daily Californian*, October 3, 1977, 20.

45 Franklin, 20.

46 Marc Van Anda, “ASUC defines sex-harassment,” *The Daily Californian*, March 7, 1980, 1.

47 Barbara Serrano, “Uproar over late changes in harassment grievance plan,” *The Daily Californian*, March 12, 1982, 1. The grievance plan was ultimately withdrawn from consideration in the Academic Senate due to the plan’s unnecessary complexities. David Brock, “Title IX grievance plan withdrawn,” *The Daily Californian*, February 1, 1983, 1.

48 Serrano, 18.

49 Serrano, 18.

50 Barbara Serrano, “Women dissatisfied with sexual harassment grievance proposal,” *The Daily Californian*, March 17, 1982, 3.

51 David Brock, “Heyman issues sexual grievance procedure plans,” *The Daily Californian*, October 14, 1982, 1.

52 Brock on Heyman, 10.

53 Brock on Heyman, 10 (emphasis added).

consideration should be given to the record as a whole and to the totality of circumstances, including the nature of the sexual advances and the context in which the alleged incident occurred.”⁵⁴ This section of the policy seems to insulate those with greater formal power from facing serious consequences for abusing that power. Furthermore, individuals perceive sexual advances differently; thus, what someone considers harmless may intimidate or negatively impact someone else. Regardless of the “context” in which it occurs, sexual harassment ought to be treated for what it is: a sexual abuse of power.

After the 1982 grievance plan was withdrawn from consideration in the Academic Senate in February 1983, Title IX Officer Carol Christ explained the Title IX Advisory Committee’s plan to establish an informal board comprised of faculty, staff, and students to mediate sexual harassment complaints.⁵⁵ This informal board would replace the interim campus grievance procedure issued by Chancellor Heyman in March 1982. Christ stressed the importance of not only putting informal protections in place prior to the implementation of a permanent procedure but also increasing awareness of sexual harassment through an education campaign to address “general university” conditions that help produce an environment in which harassment occurs.⁵⁶ Christ went on to explain that her office was planning a “sexual harassment day” in order “to help people on campus understand that the telling of sexist jokes in class or constant reference to a woman’s appearance are also forms of discrimination.”⁵⁷ Efforts to educate the campus community on the prevalence and severity of sexual harassment recognize that sexual harassment and sexual assault are more than violations of consent. Indeed, education and awareness programs signal the need to disrupt campus climate compatible with safe learning. In April 1983, Vice Chancellor Roderic Park approved the informal grievance board, marking a major step in the university’s effort to comply with Title IX.⁵⁸ But, as of April 1983, the campus had not established a permanent procedure for handling harassment cases.

As an example of increased sexual harassment education efforts, the Office of Undergraduate Affairs approved funds in September 1987 for a sexual harassment workshop coordinator to organize workshops and recruit student interns. Reflecting on the role of the coordinator, ASUC communications officer Ethan Hutcheson told *The Daily Californian*, “I think it’s important that people learn that they don’t need to put up with harassment.”⁵⁹

Certainly, the ways in which policies are framed can critically impact campus climate since the policies govern campus actions. Technicalities aside, how policies present individual actors and community goals reflect shifting institutional values and concerns, even if expressed concerns emerged at the behest of student, faculty, or staff frustration. In 1989, Dr. Alice C. Cox, then Assistant Vice President for Student Academic Services across the University of California system, commented on the ways in which culture determines behavior and attitudes. Since UC campuses consist of students from different walks of life, it is unsurprising that behaviors and attitudes clash. Cox asserted that “[UC] policies and educational programs are an effort to [thwart] inappropriate behavior. It is much harder to help people unlearn attitudes than it is to help them learn positive attitudes, but that is also part of what we are about.”⁶⁰ Designing and requiring education programs that challenge behaviors and attitudes towards others is a critical step in reshaping campus climate. The 1991 California Advisory Committee report submitted to the United States Commission on Civil Rights, and to which Cox commented, states that “the walls of academia have not been able to shelter students from the general attitudes and discriminatory practices of the world at large” but that “this excuse overlooks a major campus function as a setting for civil exchange of ideas and a period of intellectual challenge for students, including a reassessment of attitudes toward others.”⁶¹

Berkeley offered its first course on human sexuality in the spring of 1994, which challenged attitudes towards sexual harassment. Offered through the School of Public Health and taught by Malcom Potts, “Topics in Human Sexuality” sought to educate students on “why they behave in a certain way.”⁶² Interestingly, courses on human

54 Brock on Heyman, 10.

55 Brock on Title IX, 1.

56 David Brock, “Sexual harassment board: New panel to hear complaints,” *The Daily Californian*, April 12, 1983, 8.

57 Lori Feld, “The untold story of harassment,” *The Daily Californian*, April 4, 1983, 1, 13.

58 David Brock on harassment board, 1.

59 Mona Miyasato, “ASUC seeks coordinator for workshops,” *The Daily Californian*, September 30, 1987, 1.

60 “Fair and open environment? Bigotry and violence on college campuses in California” (summary report prepared by the California Advisory Committee to the United States Commission on Civil Rights, June 14, 1991, 14).

61 California Advisory Committee Report, 25.

62 Karen Nany Lee, “Sex Class Brings UC Students Up to Date: New course fills hole in curriculum,” *The Daily Californian*, February 4, 1994, 9.

sexuality had been taught at UC Santa Barbara for over 20 years and UC Los Angeles for 18 years by the time Berkeley offered its first course on the topic.

Current University of California and campus-specific policies on sexual assault and harassment emphasize the availability of educational workshops and training programs to spread awareness of and prevent incidents of sexual assault and harassment. The 2005 Berkeley Campus Procedures for Responding to Reports of Sexual Harassment maintained the university's responsibility to provide sexual harassment training and education to all members of the University community, including employees acting in a supervisory capacity, consistent with California Code 12950.1.⁶³ Additionally, between 2002 and 2007, the University of California policy on sexual harassment included two new significant sections regarding education programs and campus climate.⁶⁴ The section on education programs stressed the necessity of publicizing the university's sexual harassment policy and local reporting procedures and of training mandated reporters of sexual harassment.

Central to genuine autonomy is the opportunity to make choices freely. In addition to possessing the capacity to consent, genuine autonomy requires the exercise of choice in the absence of coercion. Therefore, while the option to make a particular choice may exist, it is critical to consider the context in which the choice is made. Jennifer Denbow, Assistant Professor of Political Science at California Polytechnic, San Luis Obispo, questions whether the option to act in a particular way may undermine, rather than enhance, principles of self-determination. While Denbow focuses her analysis on abortion, her analysis of choice may be extended to examine the ways in which choosing to report or not report sexual harassment may undermine genuine autonomy.

Denbow arrives at the conclusion that protecting the right to do something is not the same as protecting autonomy. In other words, promoting autonomy does not necessarily equate to respecting autonomy. Drawing on theoretical frameworks formulated by Thomas Schelling and Gerald Dworkin concerning choice and consequences, Denbow writes that "when given a choice, one must then take responsibility for the consequences of whichever option is chosen. ... She must take responsibility for her action because the option was freely taken and not imposed upon her."⁶⁵ Indeed, consequences intensify following a conscious decision as one knowingly chooses Option A when given both Options A and B. Denbow suggests that having multiple options may create a greater burden because one must justify a decision to choose a particular option when given other choices.

At UC Berkeley, individuals may report cases of sexual harassment to a number of offices, including, but not limited to, the Office for the Prevention of Harassment and Discrimination, the Gender and Equity Resource Center, the Student Advocate's Office, and the University of California Police Department. The number of available resources enhances awareness of sexual harassment, and thus helps cultivate an environment in which individuals may exercise genuine autonomy. Using Denbow's framework, it is critical to remember that despite increasing access to resources and reporting mechanisms, individuals must decide whether or not they wish to consult with an office or report a case of sexual harassment; people should not feel pressured to justify to their peers or the university whether or not they choose to report.

Section Four: The "Neutered Liberal Citizen"

In this section, I discuss implications for the adoption of gender neutral language in campus sexual harassment policy and grievance procedures, as well as examine the tension between protecting academic freedom and precluding harassment speech.

Gender Neutral Language

Between 2002 and 2007, UC Berkeley omitted women-specific language from the campus' sexual assault policy. In the 2002 iteration of the policy, the campus offers, under the description of University Health Services, self-

63 "Berkeley Campus Procedures for Responding to Reports of Sexual Harassment," University of California, Berkeley, January 2005, <http://web.archive.org/web/20071105202312/http://ccac.berkeley.edu:80/procedures.shtml>.

64 "University of California Policy on Sexual Harassment," University of California, Berkeley, January 2005, <https://web.archive.org/web/20071105185353/http://ccac.berkeley.edu/policies.shtml>.

65 Jennifer Denbow, "Abortion: When Choice and Autonomy Conflict," Berkeley Journal of Gender, Law & Justice 20 (2005): 218.

defense classes structured “specifically for women.”⁶⁶ Subsequent versions of the policy discussed the availability of self-defense classes but did not signal out women as the classes’ targeted beneficiaries. Additionally, the campus replaced its Women’s Resource Center with the Gender and Equity Resource Center between 2002 and 2007. While the Women’s Resource Center did not solely serve women,⁶⁷ it functioned primarily as “a student service program that specializes in supporting the academic achievement, personal growth, professional development, and multicultural awareness of student women at Berkeley.”⁶⁸ Furthermore, in addition to the responsibility of the campus Title IX Compliance Officer as a designated Complaint Resolution Officer, the Faculty Assistant for the Status of Women served as a Complaint Resolution Officer.

The use of gender-specific language in previous iterations of campus and systemwide policies aimed to highlight the vulnerability of female bodies on university campuses. However, rather than empowering all members of the university to fight against sexual violence, conversations placed the burden on women. Campus newspapers capture the extent to which the burden to fight sexual harassment was placed on women rather than all community members:

- Marian Terrel, UCPD Special Operations Unit: “Be independent, blunt and follow your intuition, just leave if [you] have to. ... And if you follow preventative measures and you get raped don’t feel guilty, you didn’t ask for it. ... [F]ollow well-lit and well-traveled walk-ways, know where the emergency phones on campus are and ride the shuttle buses.”⁶⁹
- “If a woman must work alone on campus, she should lock the door and tell a friend, colleague or the University Police where she is. ... If a woman must walk alone at night ... being alert is one of the most important things in avoiding a rape situation.”⁷⁰
- Due to the constant threat of assault, “[w]omen are urged by police and rape counselors to cultivate an instinct about danger without being paranoid. Women are encouraged to be cautious in their houses, cars and on the street. This caution should become automatic ... not indicative of fear.”⁷¹
- Steps women can take to protect themselves according to UCPD Sergeant Maria Byron: “walking with others, being aware of their surroundings and of places to retreat to should they be followed, planning their routes across campus to stay in well-lit areas, and parking in well-lit areas.”⁷²

One of the justifications for laws that stratify is that “natural” differences exist between people, and therefore, laws should reflect these differences.⁷³ But, these gendered laws capitalize on the perceived vulnerability of women and consequently perpetuate the stereotype of the female sex as the weaker sex. Stellings discusses the gender differentiating ability of laws embodied in *Dothard v. Rawlinson*.⁷⁴ In *Dothard*, the Court affirmed that because women are vulnerable to rape as a result of their sex, the law discriminates to protect women.⁷⁵ The law reflects differences between men and women by affirming the vulnerability of women to the assumed sexual predatory capacities of men. Referencing *Dothard*, Stellings asserts that female “[v]ulnerability to rape ... becomes a legitimate way to classify women as different from men, making discrimination permissible.”⁷⁶ Laws that affirm differences between men and women, rather than protecting women, permit the differential treatment of women in society as a whole.

66 “The Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault,” University of California, Berkeley, The Undergraduate Affairs Division, August 8, 2002, <https://web.archive.org/web/20020808145738/http://www.uga.berkeley.edu/uga/sexassault.stm>.

67 The 2002 Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault states that male survivors of sexual assault may also access the Women’s Resource Center.

68 “1991-92 Berkeley General Catalog,” 23, http://digitalassets.lib.berkeley.edu/generalcatalog/text/1991_1992_intro.pdf.

69 Dorothy Houston, “Rape forum warns women against being too trusting,” *The Daily Californian*, October 6, 1977, 17.

70 John H Wiltshire, “Recent campus rape attacks bring police safety warnings,” *The Daily Californian*, November 17, 1977.

71 Anne Duggan, “‘Stinky’ provoking wide city reaction,” *The Daily Californian*, March 8, 1978, 3.

72 Christine Boyd, “Tougher UC plan against rape urged,” *The Daily Californian*, February 4, 1982, 13.

73 See *Barnes v. Costle*, 561 F.2d 983, D.C. Cir. 1977.

74 433 U.S. 321, 1977.

75 Stelling, 190-1.

76 Stelling, 190.

Yet the “systematic historic effacement of woman as subject from law and culture in favour of an ostensibly universal subject” disregards sexual harassment as an issue that disproportionately targets women (and non-gender conforming people).⁷⁷ Gender-neutral language thus presents woman as a “neutered liberal citizen.”⁷⁸

In a similar way, Lynne Henderson pushes against prominent constructions of men and women, particularly the reflection of female guilt and male innocence in rape law.⁷⁹ Henderson argues that while rape laws remove male responsibility for heterosexual conduct, they hold women responsible for not only their own conduct but also that of men.⁸⁰ In arguing that culture should reject the narrative of male innocence and female guilt, Henderson maintains, “If the law of rape held men responsible for their actions by explicitly rejecting the story of male innocence and female guilt, it might help us in the larger project of redefining cultural stories of heterosexuality and heterosexual behavior.”⁸¹ Henderson reflects on the existence of a language barrier in expressing the respective experiences of men and women. While she focuses specifically on rape, her analysis of language more generally illuminates the challenges inherent in reshaping cultural attitudes and behaviors about sexuality. Hence, Henderson writes that “[e]ven if we had the language to speak the pain [of assault], *men* would be unable to understand the pain through physical empathy, because they do not have vaginas.”⁸²

Free Speech

A second area of contention in sexual harassment policy concerns permitting harassing speech in order to protect academic freedom. The 2005 University of California Policy on Sexual Harassment states its “compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech.”⁸³ However, the policy acknowledges the limits of freedom of speech and academic freedom protections and thus does not protect conduct or speech in violation of federal or state anti-discrimination laws.

The University of California’s inclusion of a section on the protections, and limits, of free speech and academic freedom calls attention to the power of speech. The University recognizes that free speech and academic freedoms are not limitless insofar as some speech can effectively foster an unsafe and potentially hostile learning environment. The addition of a section on free speech and academic freedom seems to reflect the reality that culture itself must change in order for universities to become sites of both creative exploration and safe learning.⁸⁴ Policies that protect harassing speech fail to address the need to systematically alter campus climate around sexual assault and harassment.

While free speech protections exist to nurture creative expression, they also permit the dissemination of insensitive and sometimes crude language. Universities must protect the right to free speech, but they also must protect the rights of women and others to learn in a nonthreatening environment. If free speech is protected, we must discuss the underlying cultural norms that give rise to hostile language in order to ensure that protected speech is not speech that constricts the experiences of individuals on university campuses.

Section Five: Consent

This section examines the implications of the University of California’s affirmative model of consent in allowing

77 Yvette Russell, “Thinking Sexual Difference Through the Law of Rape,” *Law Critique* 24 (2013): 261.

78 Russell, 260.

79 However, Dripps argues: “In our society men make sexual advances to women without asking first. So long as men accept rejection, there is nothing immoral about this practice, any more than there is anything immoral about the less frequently common case in which the woman initiates the physical contact.” Donald Dripps, Linda Fairstein, Robin West and Deborah W. Denno, “Men, Women and Rape,” *Fordham Law Review* 63 (1994): 146.

80 Henderson, 130-1.

81 Henderson, 170.

82 Henderson, 158.

83 “University of California Policy on Sexual Harassment,” University of California, Berkeley, January 2005, <https://web.archive.org/web/20071105185353/http://ccac.berkeley.edu/policies.shtml>.

84 Thank you to Shep Melnick for insights on the nature of free speech and academic freedom clauses in university sexual harassment policies.

individuals to exercise genuine autonomy. First, I discuss key changes made to campus policy within the last year. Despite significant changes in policy, current policy, procedures, and practices fail to cultivate an environment in which all individuals may exercise genuine free choice.

I. Civil Rights Emphasis

In April 2016, UC Berkeley Chancellor Nicholas Dirks announced the formation of the Chancellor's Senate/Administration Committee on Sexual Violence and Sexual Harassment (hereinafter known as the Committee) for the purpose of "reviewing and making recommendations to improve all campus services, policies, and practices relating to the prevention, adjudication, and sanctioning of sexual violence, harassment and assault against students, staff and faculty."⁸⁵ In January 2017, the Committee released a "Report of Findings and Recommendations" (hereinafter known as the Chancellor's Report) specific to UC Berkeley.⁸⁶

The Chancellor's Report initially asserts that "[s]exual harassment is an abuse of power that violates the civil rights of those who are subject to it."⁸⁷ From the outset, it emphasizes that uneven power relationships in the university setting leave members of the community vulnerable to abuses of power. Indeed, the Chancellor's Report contends that women, minorities, and people with disabilities "live and labor in conditions of inequality – both formal and informal," which leaves them vulnerable to individuals and groups with higher social status and greater formal power.⁸⁸ The existence of these uneven power relationships works to produce a hostile and intimidating climate that does not allow all members of the community to benefit equally. In viewing sexual harassment as a civil rights issue that produces an unequal educational playfield, UC Berkeley's policy acknowledges the need for change that not only prevents sexual violence but also gender discrimination more broadly.

A. Limited Student Input

Despite the Committee's stated commitment to altering campus policies and practices regarding sexual harassment, it appears that students, who are affected by any recommendations suggested by the Committee, were not included in the decision-making process concerning the Report's final recommendations. While there was a student advisory committee that provided ideas for a larger committee to consider, student input was contained to an advisory role.⁸⁹ The exclusion of students from final considerations appears at odds with the Committee's civil rights claims. If students, particularly women, non-gender conforming individuals, minorities, and people with disabilities, are at heightened risk for sexual harassment, it would make sense for the Committee to include a representative group of students at all steps of the recommendation drafting process.

B. Sexual Harassment as Sex Discrimination

The Chancellor's Report outlines a key principle called "horizontal equity" – a recommendation that policies and practices should hold those with greater power, including faculty, to higher standards of behavior⁹⁰ The importance of horizontal equity should not be understated in light of the sexual harassment cases recently made public involving staff, faculty, and/or students. Overt criticism of campus policies emerged based on administrative mishandling of cases involving senior faculty and the lack of transparency and consistency in reporting procedures and outcomes. According to an April 2016 *Daily Californian* article, 19 UC Berkeley employees were found to

85 "Chancellor's Senate/Administration Committee on Sexual Violence and Sexual Harassment: Report of Findings and Recommendations," University of California, Berkeley, January 2017, 3, http://chancellor.berkeley.edu/sites/default/files/svsh_full_report_1-31-2017.pdf.

86 Chancellor's Report.

87 Chancellor's Report, 2.

88 Chancellor's Report, 2.

89 Alexandra Yoon-Hendricks and Andrea Platten, "UC Berkeley chancellor announces new committee on sexual misconduct," *The Daily Californian*, April 5, 2016, accessed March 12, 2017, <http://www.dailycal.org/2016/04/05/uc-berkeley-chancellor-announces-new-committee-on-sexual-misconduct/>.

90 Chancellor's Report, 3.

have violated UC sexual misconduct policy since 2011.⁹¹ The respondents and complainants vary across the cases, and thus the consequences vary. However, these cases illustrate the ways in which university policies and practices undermine the autonomy of individuals lacking formal power, namely students and staff. Indeed, based on documents received via a Public Records Act request filed by the *Daily Californian*, the only employees fired across the cases were campus staff members.⁹²

Current policies seem to acknowledge the ways in which sexual harassment works to create a climate adverse to safe and equitable learning. And, the Chancellor's Report explicitly calls attention to the need to address structural inequalities that allow for abuses of power in order to foster a climate of "inclusion and equal opportunity."⁹³ The prevalence of sexual harassment on university campuses is partly the result of underlying systems of discrimination that regard certain bodies as more easily exploitable than others.

The Committee is not the only university entity to address the civil rights aspect of sexual harassment. In a letter released in March 2016, select feminist faculty at UC Berkeley classify sexual harassment as "a fundamental violation of civil rights" and consequently argue that the solution for addressing sexual harassment is "a functional system for reporting harassment and removing harassers from positions of power over their victims."⁹⁴ Interestingly, the letter also questions the university's continual creation of committees to address the issue.

Stellings discusses the inability of the law to capture the threat and experience of sexual violence, arguing that the law serves as a legitimate medium through which to perpetuate sexual violence. In discussing the silencing of the female rape victim in law, Stellings asserts:

Because the law sees no sex discrimination in sexual violence, it is powerless to remedy it. The state can criminally punish the attacker for the violence, but the victim has no recourse against the rapist for the harm done to her because of her gender. The law will recognize the violence but not the sex.⁹⁵

While the law affirms differences between men and women, statutes concerning sexual violence criminalize the violence of the act of rape and not the underlying reasons for why the violence occurs in the first place.

In looking at sexual violence as an extension of sex discrimination, Stellings argues that the threat and experience of sexual violence deprives women of the ability to recognize themselves as full citizens.⁹⁶ Even if a woman has not experienced an act of sexual violence, she understands the probability of being the victim of such an act as a result of her sex. The threat of sexual predation causes women to act in ways to avoid victimization. For example, a female student at UC Berkeley, rather than studying in Gardner Main Stacks until closing at 2 a.m., may decide to head home earlier in the evening when the campus is more populated to avoid walking alone. Alternatively, a female student may attend a big party with several close friends, deciding ahead of time to stick together throughout the night to ensure that male partygoers do not take advantage of her.

Regardless of the exact scenario, women conscious of the threat of sexual violence make decisions that minimize the chances of sexual harassment or violence. The need to make these conscious choices is what prevents women from acting as citizens equal to their male counterparts. The threat of sexual harassment "not only harms the victim's bodily integrity, it assaults the body politic by diminishing the capacity of some of its members, on the basis of sex, from participating as autonomous equals in the public world."⁹⁷ Therefore, the threat and act of sexual violence harms not only the individual woman but also society as a whole insofar as it denies half of society's members full autonomy.

91 Alexandra Yoon-Hendricks, Katy Abbott and Melissa Wen, "19 campus employees violated UC sexual harassment policies in past seven years," *The Daily Californian*, April 6, 2016, accessed March 12, 2017, <http://www.dailycal.org/2016/04/06/in-past-seven-years-19-campus-employees-violated-sexual-harassment-policies/>.

92 Yoon-Hendricks, Abbott and Wen.

93 Chancellor's Report 3.

94 Andrea Platten, "Feminist UC Berkeley faculty members call for improved sexual harassment policy," *The Daily Californian*, March 28, 2016, accessed March 12, 2017, <http://www.dailycal.org/2016/03/28/feminist-uc-berkeley-faculty-members-call-for-improved-response-to-sex-harassment/>.

95 Stellings, 192.

96 Stellings, 188.

97 Stellings, 188.

Stellings' thesis challenges rape specifically as a private act that not only harms the individual woman but also women as a social group. While sexual violence does privately harm the woman, or other socially vulnerable individuals, in isolation, it also harms the "body politic" in that "the private violence of rape becomes the public violence of disenfranchisement and diminished freedom."⁹⁸ Stellings argues that when looked at as a social institution, rape, as well as sexual harassment and violence more generally, further subordinate women as a group.⁹⁹

C. Affirmative Consent

Between 2007 and 2012, UC Berkeley significantly reworked its definition of consent, as stated in the campus' policies on sexual assault. The campus' 1993 policy and procedures regarding sexual assault define consent as "positive cooperation."¹⁰⁰

In contrast to the 2007 policy, the 2012 iteration of the campus' sexual assault policy clearly outlines the conditions under which consent cannot be given:

A person who is giving consent cannot be under the influence of drugs or alcohol, unconscious, passed out, coming in and out of consciousness, under the threat of violence, bodily injury or other forms of coercion, and cannot have a mental disorder, developmental disability, or physical disability that would impair his/her understanding of the act.¹⁰¹

Former iterations of the policy, while including components of the conditions under which a person cannot consent, did not clearly name the conditions under the definition of consent. Instead, prior policies list some of the conditions under the definition of rape but not consent as an overarching idea.

Current policies, in addition to acknowledging sexual harassment as a civil rights issue, emphasize the need for affirmative consent. Current policy defines consent as active insofar as the absence of *no* does not equate to consent – silence or lack of resistance or protest does not constitute consent. Unlike previous policies, consent must be affirmative rather than positive.

Along with being affirmative, consent must be voluntary, intentional and given when in a capacitated state, and is revocable.¹⁰² Rather than requiring only one person to give affirmative consent, UC policy requires that both persons involved must consent and that each party is confident that the other person affirmatively consented prior to any sexual activity.¹⁰³ In order to give affirmative consent, someone cannot be under the influence of drugs, medication, or alcohol because consent uttered in an altered state is not necessarily conscious or voluntary. Similarly, someone is unable to consent if asleep or unconscious or if clearly communicating is not possible due to a mental or physical condition.¹⁰⁴ Furthermore, someone who is intoxicated, and thus not able to make sound judgments, might believe that someone consented when actually consent was not given.

i. Force Requirement Abandoned

UC policy distinguishes between sexual assault and aggravated sexual assault, meaning that the policy recognizes that not all forms of sexual assault are aggravated. Before separating sexual assault and aggravated sexual assault, UC policy identifies two forms of sexual assault: penetration and contact. Sexual assault involving penetration means that either genitalia or a foreign object entered a body cavity. Contact, on the other hand, includes any form

98 Stellings, 189.

99 Stellings, 197.

100 Cal. Pen. Code §§ 261.2 and 261.6 redefined consent in 1990 in terms of "positive cooperation...pursuant to an exercise of free will...freely and voluntarily given."

101 "Berkeley Campus Student Policy and Procedures Regarding Sexual Assault and Rape," University of California, Berkeley, June 2010, <https://web.archive.org/web/20111203093006/http://ccac.berkeley.edu/assault.shtml>.

102 "Sexual Violence and Sexual Harassment," University of California, November 7, 2016, 2, <http://policy.ucop.edu/doc/4000385/SVSH>.

103 UC Sexual Violence, 2.

104 UC Sexual Violence, 2-3.

of unwanted external touching. In some cases, contact might be deemed sexual harassment and not assault.

Both classifications of sexual assault have aggravated forms. In cases of aggravated sexual assault, someone “overcome(s) the will” of another person by force, menace, violence, duress, or deliberate incapacitation via drugs or alcohol.¹⁰⁵

Michelle Anderson asserts that the “classic rape narrative actually involves at least two crimes: assault and rape. The all-American rape, by contrast, involves just one – the rape itself. Both historically and at present, the law has remained obsessed with criminalizing the extrinsic, violent assault and has disregarded the rape.”¹⁰⁶ Indeed, as Anderson asserts, rape is so often characterized by the “classic rape narrative” rather than the experiences of rape victims and survivors.

In separating sexual assault from aggravated sexual assault, UC policy appears to acknowledge that sexual assault occurs in the absence of force. This distinction is critical considering that the common law originally defined rape as the “carnal knowledge of a female forcibly and against her will.”¹⁰⁷ Under this definition, both force and non-consent were necessary conditions for rape. The common law definition was first rewritten in 1927, so it is unsurprising that UC policy does not define sexual assault in terms of force *and* non-consent.

ii. Status of Relationship Trivial

Regardless of any prior or current relationship between individuals, affirmative consent must be given by both parties prior to any sexual activity. The past or present relationship status of individuals has no effect on the need for affirmative consent.

iii. Beyond Affirmative Consent

The affirmative model of consent augments the University’s positive consent model. However, while the revised definition of consent pushes sexual harassment policy in the right direction, this new version, like the positive consent model, focuses only on the immediate context (i.e. intoxication level, physical condition, etc.) in which consent may or may not be given. As a result, the affirmative model does not sufficiently challenge underlying power dynamics and inequalities that sustain the prevalence of sexual harassment. The University should not abandon the affirmative consent model, as amending policies encourages public discourse on issues germane to respective policies. Yet the University community must recognize that policy is limited in its ability to shift attitudes, and thus individuals, including University administrators, ought to take actions outside of policy discussions to fight the causes and effects of sexual harassment.

Conclusion

The objective of this thesis was to address how the University of California, Berkeley and systemwide policies on sexual harassment reflect varying models of sexual freedom and, specifically, paradigms of consent. I present conceptions of sexual freedom to analyze the extent to which current and former policy iterations effectively address sexual harassment claims.

In Section One, I analyzed two models of conduct and sexual freedom. First, I presented a liberal model of sexual freedom. Drawing on classic liberal theory, sexual autonomy may be viewed as the ability to make choices regarding one’s own body, such as saying yes or no to sexual advances or initiating sexual behavior. However, understanding sexual autonomy as the ability to make sexual choices overlooks the ways in which underlying systems of power shape relationships between individuals and opportunities for individual choice. Additionally, in critiquing the liberal model of sexual freedom, I discussed an economic theory of sexuality that assigns an exchange value to sex. In uneven power relationships, sex may constitute an economic condition of employment or good standing in a course. The individual with less authority may have the capacity to say no to

¹⁰⁵ UC Sexual Violence, 3.

¹⁰⁶ Anderson, 628.

¹⁰⁷ “An Updated Definition of Rape,” U.S. Department of Justice, January 6, 2012, accessed March 10, 2017, <https://www.justice.gov/opa/blog/updated-definition-rape>.

unwanted sexual advances but risks dismissal or receiving a lower grade as a result. Therefore, if the individual permits unwanted sexual advances out of fear of reprisal, he or she does not freely choose to engage in the sexual propositions but rather is coerced.

Therefore, as a second model of conduct and sexual freedom, I presented genuine autonomy as the capacity to make sexual choices in the absence of coercion. In addition to accounting for sexual choice, genuine autonomy acknowledges the role context plays in limiting sexual choice.

Sections Two through Five then analyzed UC Berkeley's policies and efforts to establish policies on sexual harassment using the two models of conduct and sexual freedom presented in Section One. Each chapter focused on a different dimension of sexual freedom paradigms.

Section Two discussed UC Berkeley's campus climate prior to the establishment of a formal sexual harassment policy and grievance procedures. In the absence of such a policy, individuals without formal power lacked genuine autonomy and operated within an economic theory of sexuality that permits sex as a bargaining tool. Section Three focused on issues of transparency and awareness and why policies alone cannot ensure genuine autonomy. Section Four discussed the omission of women-specific language from policies in favor of gender-neutral language, as well as the protection of harassment speech. Lastly, Section Five discussed the University of California's adoption of an affirmative model of consent, which requires all the persons involved in a sexual act to consent and be confident that the other person(s) affirmatively consented prior to any sexual activity. The affirmative consent model enhances the university's previous model of positive consent.

Theoretical frameworks provide an invaluable lens through which to analyze institutional policies, such as those on sexual harassment. In order to effectively alter policies, we must look at the theories that inform rules of conduct. Policies play a role in cultivating attitudes and behavior. However, policies alone do not change social norms insofar as they cannot effectively disrupt entrenched sex discrimination. The context in which a policy is presented determines the projected success of the policy. Thus, universities ought to ensure that programs and dialogue produce safe and productive learning environments before drafting new policies. In particular, universities should feel responsible for fostering climates that enable individuals to exercise choice without the threat of coercion. We, as members of the University of California, need to think deeply about not only the limitations of specific policies in and of themselves but also how policies derive from theories of sexual autonomy and differences, and the social environment into which policies are thrust.

Appendix I: Timeline 1964-2017

1964: Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

July 1965: Equal Employment Opportunity Commission (EEOC) officially opens

1972: Education Amendments of 1972

1974: Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99

1977: Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*; *Alexander v. Yale University*, 459 F. Supp. 1 (D. Conn. 1977), affirms sexual harassment as a form of sex discrimination

1978: Federal Office of Civil Rights deems Berkeley's sexual harassment grievance procedure insufficient

February 1978: UC Police Department's Student Aide Program offers evening escort service

June 1978: Academic Senate Committee on the Status of Woman sets up a new grievance procedure for sexual harassment complaints

February 1979: Women Organized Against Sexual Harassment (WOASH) file a Title IX complaint against assistant sociology professor Elbaki Hermassi with the Department of Health, Education, and Welfare (HEW)

July 1979: HEW initiates an investigation after determining that coercive sexual advances may constitute sexual discrimination under Title IX

September 1979: Vice Chancellor I. Michael Heyman agrees to cooperate with WOASH to develop a grievance procedure

November 1979: ASUC President Karen Westmont introduces a bill formally requesting that the university release its report on Hermassi

1980: EEOC mandates that institutions receiving federal student financial aid formally ban sexual harassment; I. Michael Heyman appoints Diane Clemens to head the Chancellor's Title IX Advisory Committee

January 1980: University decides to suspend Hermassi for one quarter without pay; Chancellor Albert Bowker intends to ask Academic Senate to review the Faculty Code of Conduct

March 1980: ASUC Senate adopts a resolution demanding UC Title IX committee establish a sexual harassment grievance procedure

August 1980: UC President David Saxon issues a statement requiring all UC campuses to have a sexual harassment grievance procedure in place by the end of 1981-82 academic year

1981: Cal State Fullerton becomes first California state school or university to formally ban sexual harassment

March 1981: Formal grievance procedure drafted by Chancellor's Title IX Advisory Committee

October 1981: Committee on Sexual Harassment Policy and Complaint Resolution Procedures formed

January 1982: Formal and informal grievance procedures up for approval

March 1982: Administration revises the policy without student input

October 1982: I. Michael Heyman issues interim sexual harassment grievance procedure

1983: Campus under investigation by federal Office for Civil Rights

January 1983: Carol Christ appointed as Title IX officer; Christ working with campus Title IX committee on a permanent policy

February 1983: Grievance procedure withdrawn from consideration in the Academic Senate

April 1983: Informal grievance board to mediate harassment complaints

May 1983: Committee on Sexual Harassment Policy and Complaint Resolution Procedures formulates systemwide sexual harassment policy and complaint resolution procedure

October 1984: UC Irvine becomes fifth university in the California statewide system to formally ban sexual harassment

November 1984: Two students join Title IX committee

January 1985: Frances Ferguson becomes new Title IX advisor

March 1986: ASUC funds Take Back the Night Week

September 1987: Office of Undergraduate Affairs approves funds for sexual harassment workshop coordinator

1989: Carmen McKines becomes new Title IX coordinator; Nancy Lemon begins work on domestic violence legislation (later SB 804)

September 1989: UC President David P. Gardner issues a policy that calls for discipline against students who use ethnic or sexual slurs (“fighting words”) against anyone on university property

1990: Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f)

1991: Civil Rights Act of 1991

August 1991: Tenured professor Michel Strickmann fired for sexual harassment

September 1991: U.S. Department of Education Office of Civil Rights investigating allegations that UC Berkeley lacks adequate procedures to investigate sexual harassment on campus

October 1991: Clarence Thomas appointed to U.S. Supreme Court

1992: Governor Wilson signs AB 2220 (marital rape) but the bill will not take effect due to action by State Senator Bill Lockyer

December 1992: UC to change harassment complaint process following U.S. Department of Education investigation concluding that complaint process against UCPD officers “confusing and misleading”

January 1994: AB 187 makes marital rape a mandatory felony in California

February 1994: Human sexuality course taught for the first time at UC Berkeley

November 1993: Campus implements Health and Sexuality Peer Education Program

December 1993: Fair Employment and Housing Commission rules that UC covered by Unruh Act

March 1997: Department of Education, Office for Civil Rights, publishes “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”

January 2001: Department of Education, Office for Civil Rights, publishes “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”

November 2002: Berkeley Law Dean John Patrick Dwyer announces resignation following sexual harassment allegations

April 2011: U.S. Department of Education’s Assistant Secretary for Civil Rights publishes “Dear Colleague” letter calling on schools to revisit sexual harassment policies

May 2013: Berkeley students file a Clery Act complaint with the U.S. Department of Education

February 2014: Berkeley students file a new Clery Act complaint and a Title IX complaint with the U.S. Department of Education

June 2014: California State Auditor releases report outlining the failure of UC Berkeley and other state campuses to sufficiently train faculty and staff on responding to and reporting student claims of sexual harassment and assault¹⁰⁸

June 2015: Berkeley students file a lawsuit against the UC Board of Regents and UC Berkeley alleging violations

¹⁰⁸ “Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents,” California State Auditor, June 2014, <https://www.auditor.ca.gov/pdfs/reports/2013-124.pdf>

of Title IX sexual assault and harassment requirements; UC Berkeley's Title IX office formally implicates Geoffrey Marcy in violation of campus sexual harassment policies

April 2016: Chancellor Nicholas Dirks announces the formation of the Chancellor's Senate/Administration Committee on Sexual Violence and Sexual Harassment

January 2017: UC announces Kathleen Salvaty as first systemwide Title IX coordinator¹⁰⁹

February 2017: The Daily Californian reports at least 124 cases over the past three years in which UC faculty, staff and contractors violated UC sexual violence and harassment policy¹¹⁰

April 2017: UC Board of Regents reaches a settlement with Sujit Choudhry and settles a sexual harassment lawsuit filed by Tyann Sorrell

Appendix II: UC Berkeley General Catalogs, 1978-2017

Berkeley General Catalogs were searched using the five terms in the blue boxes. White boxes indicate catalog years in which the terms are found. The numbers in parentheses indicate page numbers.

	Discrimination	Assault	Sex	Rape	Harass
1978-79				Rape prevention (35)	
1979-80				Rape prevention (35)	
1980-81				Rape prevention (44)	
1981-82	Term in course description (15)			Rape prevention (44)	
1983-84	Nondiscrimination policy, including sex discrimination (30)		Sex discrimination (30)	Rape prevention (32)	
1984-85	Nondiscrimination policy, including sex discrimination (41)		Sex, sexual orientation discrimination (41)	Rape prevention (44)	
1985-86	Nondiscrimination policy, including sex discrimination (1, 64)		Sex, sexual orientation discrimination (1)	Rape prevention (42)	
1986-87	Nondiscrimination (1, 59)		Sex, sexual orientation discrimination (1, 59)	Rape prevention (5, 18)	Sexual harassment (55)

¹⁰⁹ Jessica Lynn, "Kathleen Salvaty named UC's first systemwide Title IX coordinator," The Daily Californian, January 12, 2017, accessed April 20, 2017, <http://www.dailycal.org/2017/01/12/kathleen-salvaty-named-ucs-first-systemwide-title-ix-coordinator/>.

¹¹⁰ "It's rampant": Documents reveal 124 cases of UC employees' sex misconduct: California Public Records Act request sheds light on 3-year span of Title IX investigations," The Daily Californian, February 28, 2017, accessed March 1, 2017, <http://www.dailycal.org/2017/02/28/its-rampant-documents-reveal-113-uc-employees-violated-sex-misconduct-policy-in-past-3-years/>.

1988-89	Nondiscrimination policy, including sex discrimination (1)		Sex discrimination (1)	Rape prevention (5)	Sexual harassment (60, 64)
1989-90	Discrimination (67)			Rape prevention (23)	Sexual harassment (67)
1990-91	Discrimination (69)		Sex, sexual orientation discrimination (69)	Rape prevention (23)	Sexual harassment (63, 69)
1991-92	Discrimination (69)		Sex, sexual orientation discrimination (69)	Rape prevention (23)	Sexual harassment (63, 69)
1992-93	Discrimination (86)			Rape prevention (29)	Sexual harassment (81, 86)
1993-94	Discrimination (86)	Sexual assault survivors (30) Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)	Rape prevention (30)	Sexual harassment (81, 86)
1994-95	Discrimination (86)	Sexual assault survivors (30) Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)	Rape prevention (30)	Sexual harassment (81, 86)
1995-97	Discrimination (86)	Sexual assault survivors (30) Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)	Rape prevention (30)	Sexual harassment (81, 86)
1997-99	Discrimination (86)	Sexual assault services (7, 26, 29) 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)		Sexual harassment (81, 86)

2001-2003	Discrimination (86)	Sexual assault services (8, 25-6) 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)		Sexual harassment (25, 81, 86)
2003-2005	Gender discrimination (25) Discrimination (86)	Sexual assault services (8, 25-6, 30) 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86)		Sexual harassment (25, 81, 86)
2005-2007	Gender discrimination (25) Discrimination (86)	Sexual assault services (8, 25-6, 30) 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention Sexual Harassment/ Assault Advocacy and Education Program (86)	Sex, sexual orientation discrimination (86) Sexual violence (25)		Sexual harassment (25, 81, 86)

2007-2009	Discrimination (86)	<p>Sexual assault services (8, 25-6, 30)</p> <ol style="list-style-type: none"> 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention and education <p>Sexual Harassment/ Assault Advocacy and Education Program (86)</p>	*Relationship violence (25)		Sexual harassment (25, 81, 86)
2009-2011	Discrimination (82)	<p>Sexual assault services (8, 25-6, 29)</p> <ol style="list-style-type: none"> 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention and education <p>Sexual Harassment/ Assault Peer Education Program (82)</p>	<p>Sexual relationship violence (25)</p> <p>Sex, sexual orientation discrimination (82)</p>		Sexual harassment (25, 76, 82)
2011-2013	Discrimination (3, 82)	<p>Sexual assault services (8, 25-6, 29)</p> <ol style="list-style-type: none"> 1. Social services: sexual assault counseling and advocacy 2. Health promotion: sexual assault prevention and education <p>Sexual Harassment/ Assault Peer Education Program (82)</p>	<p>Sex, sexual orientation discrimination (81-2)</p> <p>Sexual, relationship violence (25)</p>		Sexual harassment (25, 76, 81-2)

2013-14 (Berkeley Bulletin ¹)	Discrimination	Sexual Harassment/ Assault Peer Education Program	Sex, sexual orientation discrimination		Sexual harassment policy
2016-2017 (Berkeley Academic Guide ²)	Discrimination	Sexual Harassment/ Assault Peer Education Program	Sex, sexual orientation discrimination		Sexual harassment policy

Appendix III: Changes to UC Berkeley's Sexual Harassment Policy, 1989-2010

The following tables list key policy changes made between the dates indicated.

Table 1: 1989 Proposed Berkeley Campus Policy on Sexual Harassment and Complaint Resolution Procedures to 1993 Berkeley Campus Policy on Sexual Harassment and Complaint Resolution

Additions	Omissions
<ul style="list-style-type: none"> Statement that supervisors and managers are responsible for (1) helping foster a campus climate free from sexual harassment and (2) participating in relevant resolutions Sworn police officers required to abide by sexual harassment policies and procedures Handling of allegations of sexual harassment against sworn police officers Reference to Title IX Compliance Officer Time limit for filing a written complaint extended from thirty (30) days to ninety (90) days from time of harassment Academic Compliance Affairs Officer replaces role of Assistant Chancellor-Affirmative Action and Special Projects List of campus resources 	<ul style="list-style-type: none"> Assistant Chancellor-Affirmative Action and Special Projects as unit in charge of deciding whether or not to extend filing, investigation, and report completion time limits

Table 2: 1993 to 2002 Berkeley Campus Policy on Sexual Harassment and Complaint Resolution

Additions	Omissions
N/A	N/A

Table 3: 2002 Berkeley Campus Policy on Sexual Harassment and Complaint Resolution to 2005 University of California Policy on Sexual Harassment

Additions	Omissions*
<ul style="list-style-type: none"> Discussion of educational programs, increasing awareness of policies, and training Brief statement that consensual relationships can become nonconsensual Consequences for filing intentionally false reports Relationship between free speech and academic freedom and sexual harassment 	<ul style="list-style-type: none"> Standards of Conduct Procedures <p>*Compares UC Berkeley policy with procedures to University of California policy sans procedures</p>

Table 4: 2002 Berkeley Campus Policy on Sexual Harassment and Complaint Resolution to 2005 Berkeley Campus Procedures for Responding to Reports of Sexual Harassment

Additions	Omissions
<ul style="list-style-type: none"> ● Inclusion of education and training language ● Making reports of retaliation for reporting or helping someone report incident of sexual harassment ● Enhanced list of campus resources ● Early Resolution procedures ● Anonymous reporting ● Protections or remedies for complainant or witnesses ● 60-day window for investigation following filing of formal investigation request ● Filing complaint or grievance instead of or in addition to report made to Title IX Compliance Coordinator ● Filing complaint or grievance that actions taken in response to report of sexual harassment did not follow University policy 	<ul style="list-style-type: none"> ● 90-day window for investigation

Table 5: 2005 University of California Policy on Sexual Harassment to 2012 University of California Policy on Sexual Harassment

Additions	Omissions
<ul style="list-style-type: none"> ● Conflicts of interest regarding consensual relationships ● Explicit section on complying with definition of sexual harassment 	<p>N/A</p>

Table 6: 2005 Berkeley Campus Procedures for Responding to Reports of Sexual Harassment to 2010 Berkeley Campus Procedures for Responding to Reports of Sexual Harassment

Additions	Omissions
<ul style="list-style-type: none"> ● Campus Climate and Compliance Office replaces Title IX & Title VI Compliance Office ● Compliance Education Manager replaces Title IX & Title VI Education Coordinator 	<ul style="list-style-type: none"> ● Title IX & Title VI Compliance Office ● Title IX & Title VI Education Coordinator

Appendix IV: Changes to UC Berkeley's Sexual Assault Policy, 1997-2012

Table 1: 1997 to 2002 Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault

Additions	Omissions
N/A	<ul style="list-style-type: none"> ● Summer Sessions, University Extension, and visiting scholars in definition of student ● Responsibility of Vice Chancellor for Undergraduate Affairs and Vice Chancellor for Business and Administrative Services to document details “at the Chancellor’s level” ● Statement regarding prosecution of students under state criminal statutes and possibility of prison sentence if found guilty of rape ● Students who violate Berkeley Campus Code of Student Conduct subject to dismissal if found guilty of sexual assault

Table 2: 2002 Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault to 2007
Berkeley Campus Student Policy and Procedures Regarding and Sexual Assault and Rape

Additions	Omissions
<ul style="list-style-type: none"> ● Gender and Equity Resource Center, including Sexual Harassment/Sexual Assault Resource Specialist at the Gender and Equity Resource Center ● Student to include those enrolled or registered in Summer Sessions, University Extension, and visiting scholars ● Responsibility of Vice Chancellor for Undergraduate Affairs and Vice Chancellor for Business and Administrative Services to document details “at the Chancellor’s level” ● Office of Student Life ● Risk reduction ● Disciplinary sanctions imposed by Dean of Students ● Ombudsman for Postdocs (already for students generally) ● Misuse replace abuse regarding alcohol and drugs ● Awareness projects ● Health care providers as mandatory reporters ● Statement regarding prosecution of students under state criminal statutes and possibility of prison sentence if found guilty of rape ● Students who violate Berkeley Campus Code of Student Conduct subject to dismissal if found guilty of sexual assault 	<ul style="list-style-type: none"> ● Women’s Resource Center ● Role of Assistant Vice Chancellor for Student Life in imposing disciplinary sanctions ● Abuse of alcohol and other drugs

Table 3: 2007 to 2012 Berkeley Campus Student Policy and Procedures Regarding and Sexual Assault and Rape

Additions	Omissions
<ul style="list-style-type: none"> ● Student replaces individual as subject ● Assault replaces misconduct ● Stranger rape, sexual battery, nonconsensual sexual intercourse ● Incident of sexual assault replaces being sexually assaulted ● Enhanced definition of positive consent ● Prevention language separate from University Health Services ● Center for Student Conduct and Community Standards 	<ul style="list-style-type: none"> ● Sexual misconduct

Bibliography

UC Berkeley General Catalogs

Accessible via <http://digitalassets.lib.berkeley.edu/generalcatalog/>. See Appendix I.

National Newspapers

DePalma, Anthony. "Rare Dismissal on California Faculty." *New York Times*, August 14, 1991, A17.

Essoyan, Susan. "Sex Harassment Disclosures an Emotional Campus Issue." *Los Angeles Times*, April 2, 1991, A5.

Gale, Mary Ellen. "Free Speech Doesn't Include Harassment." *New York Times*, July 28, 1990, 20.

Haberman, Clyde and Krebs, Albin. "Notes on People: A College Woman Loses Test on Sexual Harassment." *New York Times*, July 12, 1979, B6.

Hager, Philip. "Professor Fired for Sexual Harassment of Students." *Los Angeles Times*, January 9, 1980, B1.

"Harassment Case Puts Student Band Under Probation." *New York Times*, April 5, 1992, 40.

Japenga, Ann. "Sex Harassment From Professors: California Campuses Drawing Up Guidelines to Police Complaints." *Los Angeles Times*, October 15, 1981, H1.

Jones, Lanie. "Incidents Cited at SDSU, UCSD: Educators, Women's Groups Fight Sexual Harassment on Campuses." *Los Angeles Times*, October 21, 1984, A1.

Lee, Mitgang. "Sexual Harassment of Women Students Called Widespread." *Los Angeles Times*, May 27, 1984, B2.

Mink, Gwendolyn. "Misreading Sexual Harassment Law." *New York Times*, March 30, 1998, A17.

Nazario, Sonia. "Views of 'Women' Are as Varied as the Women." *Wall Street Journal*, October 18, 1991, B4.

Reed, Christopher. "Degrees of misconduct." *The Guardian*, April 6, 1979, 11.

- Rimer, Sara. "Love on Campus: Trying to Set Rules for the Emotions." *New York Times*, October 1, 2003, B8.
- Roark, Anne C. "Student-Teacher: Sex Curbs at UC Proposed." *Los Angeles Times*, November 24, 1983, A3.
- Rosen, Ruth. "Curb Abuse of Power, Not Sex." *Los Angeles Times*, August 17, 1993, B7.
- Savage, David G. "Survey Reports Sexual Harassment in Schools." *Los Angeles Times*, March 5, 1985, C1.
- "Sexual Harassment Accusation Prompts Dean's Resignation." *New York Times*, November 28, 2002, A32.
- Smith, Lynn. "Campus Advances: Sexual Harassment to Be Forbidden Under UCI Policy." *Los Angeles Times*, October 5, 1984, C1.
- "Students Can Sue State in Harassment Cases, Panel Rules." *Los Angeles Times*, December 8, 1993, B8.
- "UCLA Paid \$1 Million to Settle Sexual Harassment, Rape, Bias Cases." *The Washington Post*, June 5, 1994, A8.

The Daily Californian

- Abdelnour, Salma. "Scholars fight for tenure: Racism and sexism block career path." *The Daily Californian*, October 16, 1991, 1.
- Allday, Erin and Lee, Henry K. "Women's group protests rape 'whitewash': Coalition decries alleged Beta rape." *The Daily Californian*, February 8, 1993, 1.
- Anda, Marc Van. "ASUC defines sex-harassment." *The Daily Californian*, March 7, 1980, 1.
- Barnes, Claire. "Newport proclaims Women's History Week." *The Daily Californian*, March 7, 1986, 4.
- Barnes, Claire. "Women's center there in a pinch." *The Daily Californian*, March 12, 1986, 11.
- Barry, John. "Women to hold forum on sexual harassment." *The Daily Californian*, February 27, 1979, 13.
- Bartholomew, Dana. "Berkeley largely disapproves of Thomas confirmation." *The Daily Californian*, October 16, 1991, 1.
- Beccue, Deborah. "Harassment case charges regents with inaction." *The Daily Californian*, November 19, 1991, 1.
- Beccue, Deborah. "Women torch the night: Angry marchers protest sexual assault, harassment." *The Daily Californian*, March 13, 1992, 1.
- Beckerman, David. "Harassment problems addressed." *The Daily Californian*, March 24, 1989, 1.
- Benedict, Helen. "Rape: Should newspapers report the victims' names?" *The Daily Californian*, March 3, 1978, 5.
- Berger, Noah. "State Assembly passes marital rape bill: Berkeley activist a force in its approval." *The Daily Californian*, June 4, 1993, 1.

- Boyd, Christine. "Campus anti-rape group launches aggressive new education program." *The Daily Californian*, March 1, 1982, 3.
- Boyd, Christine. "Politics of rape talk on campus." *The Daily Californian*, March 12, 1981, 3.
- Boyd, Christine. "Tougher UC plan against rape urged." *The Daily Californian*, February 4, 1982, 1.
- Boyd, Christine. "'Women ask for it': Frats accused of harassment." *The Daily Californian*, April 13, 1981, 3.
- Brock, David. "Feds to investigate UC Title IX policies." *The Daily Californian*, January 19, 1983, 1.
- Brock, David. "Heyman issues sexual grievance procedure plans." *The Daily Californian*, October 14, 1982, 1.
- Brock, David. "Sexual harassment board: New panel to hear complaints." *The Daily Californian*, April 12, 1983, 1.
- Brock, David. "Title IX grievance plan withdrawn." *The Daily Californian*, February 1, 1983, 1.
- Burrell, Charles. "UC likely to heed harassment ruling." *The Daily Californian*, May 26, 1981, 1.
- Chavez, Lisa. "Sexual Assault Awareness Week: Failure to mind-read is not date rape." *The Daily Californian*, March 4, 1993, 4.
- Chen, Marie and Wedel, Jennifer. "Legitimacy of sexual harassment cases hangs in balance: Whether or not Thomas wins today, awareness has increased." *The Daily Californian*, October 15, 1991, 1.
- Clark, John. "Workshop takes on myths of rape, race." *The Daily Californian*, February 26, 1993, 4.
- "Don't turn a deaf ear to rape." *The Daily Californian*, edited by Jonathan Barnard, September 20, 1983, 4.
- Duggan, Anne. "How to guard against rape." *The Daily Californian*, March 8, 1978, 3.
- Duggan, Anne. "'Stinky' provoking wide city reaction." *The Daily Californian*, March 8, 1978, 3.
- "Editorial: Sexual Harassment." *The Daily Californian*, September 21, 1979, 5.
- "Editorial: Sexual Harassment." *The Daily Californian*, edited by Peter Maass and Larry Levitt, February 10, 1983, 4.
- Elby, Andrew. "Men and date rape." *The Daily Californian*, March 17, 1992, 4.
- Elby, Andrew. "Sexual Assault Awareness Week: Men: 'Gentle persuasion' can lead to date rape." *The Daily Californian*, March 2, 1993, 4.
- Feld, Lori. "The untold story of harassment." *The Daily Californian*, April 4, 1983, 1.
- Feld, Lori. "University women academically ignored." *The Daily Californian*, February 10, 1983, 3.
- Fiske, Elana and Lee, Wendy. "Boalt Dean Quits Under Sexual Misconduct Cloud." *The Daily Californian*, December 2, 2002. Accessed April 1, 2017. <http://archive.dailycal.org/article.php?id=10415>.

- Franklin, Barbara. "Carolyn Craven: Stinky's latest victim fights to stop rape." *The Daily Californian*, February 28, 1978, 1.
- Franklin, Barbara. "What can be done?: Sexual harassment." *The Daily Californian*, March 18, 1978, 1.
- Galm, Ruth. "Local activist propels marital rape bill: Legislation aims to equate spousal, non-marital rape." *The Daily Californian*, March 16, 1993, 1.
- Ginsburg, Marsha. "Feminist Scorns State Rape Laws." *The Daily Californian*, February 3, 1976, 7.
- Glaser, Brian. "Attorney fights to tighten domestic violence statutes." *The Daily Californian*, October 26, 1992, 2.
- Goren, Leora. "Curfew." *The Daily Californian*, September 20, 1983, 4.
- Grover, Joel. "Fraternities fingered for harassment." *The Daily Californian*, October 30, 1980, 1.
- Hanlon, Kevin. "Rape prevention: Evening escort offered." *The Daily Californian*, February 28, 1978, 20.
- Houston, Dorothy. "Rape forum warns women against being too trusting." *The Daily Californian*, October 6, 1977, 17.
- Ingram, Ginna. "Sexual harassment at UC Berkeley." *The Daily Californian*, March 15, 1978.
- Ipson, Steve. "ASUC votes funds for candlelight march." *The Daily Californian*, March 7, 1986, 6.
- Jacobsen, Richard. "BAWAR helps rape victims." *The Daily Californian*, April 12, 1983, 1.
- Jennings, Ralph. "Editorial: If you've been abused..." *The Daily Californian*, August 16, 1991, 4.
- Johnston, Donald. "Men's group helps in fight against rape." *The Daily Californian*, December 6, 1977, 3.
- Jones, Leigh Anne. "Frat charged with sexual harassment, molestation." *The Daily Californian*, September 23, 1983, 1.
- Jones, Leigh Anne. "TA workshop on classroom sex bias today." *The Daily Californian*, January 30, 1985, 3.
- Kalmuk, Ellen. "Berkeley rape increase – more women reporting?" *The Daily Californian*, February 22, 1978, 16.
- K., Dawn. "The face of harassment." *The Daily Californian*, April 10, 1986, 4.
- Kepp, Michael. "Women Say Suspension Not Enough." *The Daily Californian*, January 11, 1980, 1.
- Kettmann, Steve. "Student council limits chair's power." *The Daily Californian*, October 18, 1983, 1.
- Kleinfeld, Zoe. "Light shed on a dark matter: Campus professor Geoffrey Marcy's resignation comes after concerns about sexual harassment in sciences." *The Daily Californian*, October 15, 2015. Accessed March 3, 2017. <http://www.dailycal.org/2015/10/15/light-shed-dark-matter-campus-professor-geoffrey-marcys-resignation-comes-concerns-sexual-harassment-sciences/>.

- Ko, Claudine. "Safe sex taught on Sproul: Games, cucumbers and condoms make students' day." *The Daily Californian*, February 11, 1993, 1.
- Krueger, Chris and Spear, Peggy. "Violence in and around campus." *The Daily Californian*, April 10, 1986, 8.
- Lane, Meghan. "Unspeakable Acts." *The Daily Californian*, April 18, 2000. Accessed April 1, 2017. <http://archive.dailycal.org/article.php?id=2275>.
- Lee, Henry K. "Resource center honors Women's History Month: Events include films, talks, workshops." *The Daily Californian*, March 3, 1993, 1.
- Lee, Henry K. "Shuttles takes longer, but passengers don't mind." *The Daily Californian*, October 13, 1993, 1.
- Lee, Henry K. "UC to change harassment complaint process." *The Daily Californian*, December 3, 1992, 1.
- Lee, Karen Nany. "Sex Class Brings UC Students Up to Date: New course fills hole in curriculum." *The Daily Californian*, February 4, 1994, 1.
- Lee, Katrina J. "Senators to decide on new marital rape bill." *The Daily Californian*, June 19, 1992, 1.
- Lehrman, Sally. "Harassment Decision Protested." *The Daily Californian*, January 10, 1980, 1.
- Lehrman, Sally. "Investigation Of Sexual Harassment On Campus." *The Daily Californian*, September 19, 1979, 1.
- Lehrman, Sally. "Panel assaults UC sex bias." *The Daily Californian*, March 10, 1980, 1.
- Lehrman, Sally. "Senate Wants Disclosure of UC Sexual Harassment Report." *The Daily Californian*, November 30, 1979, 3.
- Lehrman, Sally. "UC Ignoring Sexual Harassment?" *The Daily Californian*, October 15, 1979, 3.
- Lehrman, Sally. "UC Prof Will Be Suspended: Bowker Condemns Sexual Harassment." *The Daily Californian*, January 8, 1980, 1.
- Lehrman, Sally. "Women's Day event focuses on ERA." *The Daily Californian*, March 10, 1980, 1.
- Leon, Lourdes de. "Marital rape bill passed in assembly." *The Daily Californian*, April 14, 1993, 3.
- Liss, Rebecca S. "Tough marital rape bill passes: Under new state law, offense will count as felony." *The Daily Californian*, October 13, 1993, 6.
- Loduca, James. "Greek system dispels rap on rape: Sororities host campus educational program for pledges." *The Daily Californian*, November 9, 1992, 2.
- Lye, Colleen. "Harassment? On campus?" *The Daily Californian*, March 12, 1986, 9.
- MacClarín, Wanda. "Berkeley police tell women intuition can help to prevent rape." *The Daily Californian*, March 9, 1978, 9.

- Maliawco, Bill. "Assembly takes stand on student-faculty sex." *The Daily Californian*, December 1, 1983, 1.
- Maliawco, Bill. "New board to mediate harassment grievances." *The Daily Californian*, September 20, 1983, 1.
- Maliawco, Bill. "UC committee condemns faculty-student romances." *The Daily Californian*, November 22, 1983, 1.
- Maliawco, Bill. "UC revises discrimination policy." *The Daily Californian*, September 23, 1983, 1.
- Marmion, Suzanne. "Anti-Rape Crusade Recruits Locals, Visitors." *The Daily Californian*, May 20, 1994, 5.
- Martinez, Shandra. "Sexual harassment often goes unreported at UC Berkeley." *The Daily Californian*, April 18, 1991, 8.
- McCormick, Erin and Nissenbaum, Dion. "Professor fired for sexual harassment." *The Daily Californian*, August 16, 1991, 1.
- Misailidis, John. "UC Berkeley hosts women's conference." *The Daily Californian*, June 4, 1993, 2.
- Miyasato, Mona. "ASUC seeks coordinator for workshops." *The Daily Californian*, September 30, 1987, 1.
- Morrison, Sarah. "Support for Survivors of Sexual Assault." *The Daily Californian*, April 18, 2008. Accessed April 1, 2017. <http://archive.dailycal.org/article.php?id=101356>.
- Moy, Kim. "Faculty diversity comes slowly: Minorities and women are still underrepresented." *The Daily Californian*, November 27, 1991, 1.
- Niiler, Eric. "Feminist educators call for end to discrimination in universities." *The Daily Californian*, November 5, 1984, 3.
- Nissenbaum, Dion. "Feds probe UC sex harassment: Campus complaint process assailed." *The Daily Californian*, September 25, 1991, 1.
- Oh, Alina. "Teacher confronted harassment: Professor faced obstacles as woman in male environment." *The Daily Californian*, October 16, 1991, 7.
- Pecoraro, Tom. "Boalt's minority recruitment effort lagging." *The Daily Californian*, February 28, 1978, 3.
- Platten, Andrea. "Feminist UC Berkeley faculty members call for improved sexual harassment policy." *The Daily Californian*, March 28, 2016. Accessed March 3, 2017. <http://www.dailycal.org/2016/03/28/feminist-uc-berkeley-faculty-members-call-for-improved-response-to-sex-harassment/>.
- "Renowned UC Berkeley philosophy professor emeritus accused of sex assault." *The Daily Californian*, March 23, 2017. Accessed March 24, 2017. <http://www.dailycal.org/2017/03/23/renowned-uc-berkeley-philosophy-professor-emeritus-accused-sex-assault/>.
- Rinde, Meir. "Briefs: Lecturer's rape bill near approval." *The Daily Californian*, August 19, 1992, 2.
- Rukhin, Eugenia. "Academics Tell Tales Of Sexism and School: UC math professor recalls tenure fight." *The Daily Californian*, March 8, 1994, 1.

- Sanders, Dion B. "First Amendment doesn't pertain to obscenities or 'fighting words.'" *The Daily Californian*, October 17, 1989, 4.
- Santich, Kate. "Cowell lauds court order on 'sex law.'" *The Daily Californian*, March 10, 1981, 1.
- Schifrin, Debra. "Rape group fed up with media: Sexual assault rise prompts local rally." *The Daily Californian*, April 17, 1992, 1.
- Schwartz, Mira. "Professor challenges rape expert at lecture." *The Daily Californian*, November 26, 1991, 1.
- Schwartz, Mira. "Scholar to lecture on date rape: Russell will answer Gilbert's criticisms." *The Daily Californian*, October 11, 1991, 1.
- Seline, Anita M. "Sexual harassment: UC to adopt grievance policy." *The Daily Californian*, May 9, 1983, 1.
- Serrano, Barbara. "Uproar over late changes in harassment grievance plan." *The Daily Californian*, March 12, 1982, 1.
- Serrano, Barbara. "Women dissatisfied with sexual harassment grievance proposal." *The Daily Californian*, March 17, 1982, 3.
- Shane, Penny. "Title IX entitles none...yet." *The Daily Californian*, May 3, 1982, 10.
- Shapiro, Michael. "Professor Frances Ferguson: Campus gets a new Title IX advisor." *The Daily Californian*, January 29, 1985, 1.
- Siu, Landa. "Sexual harassment: New grievance procedure." *The Daily Californian*, March 10, 1981, 3.
- Smolin, Melinda. "Title IX committee picks two students: Panel investigates sexual harassment, offers counseling." *The Daily Californian*, November 5, 1984, 3.
- Solomon, Susan. "Sproul rally today: Women tell of harassment." *The Daily Californian*, October 22, 1980, 1.
- Solomon, Susan. "Workshops proliferate: How to counter harassment." *The Daily Californian*, November 10, 1980, 14.
- Spark, Marie. "Anti-epithet rule must stand, Heyman tells students." *The Daily Californian*, October 17, 1989, 1.
- Stephens, Alexandra. "A rich history of city's women." *The Daily Californian*, March 12, 1986, 9.
- "Stop Sexual Harassment." *The Daily Californian*, November 30, 1979, 6.
- Sullivan, Deborah. "Local rape counselor campaigns on a national scale." *The Daily Californian*, November 6, 1991, 1.
- Trnka, Susanna. "Sexual assault: breaking the silence." *The Daily Californian*, March 17, 1992, 4.
- Tseng, Judy Y. "Women's conference confronts sexism head on: Workshops and dialogues focus on females in the working world." *The Daily Californian*, October 26, 1992, 3.

- Tugend, Alina. "Publicity of sex charges disturbs vice chancellor." *The Daily Californian*, February 28, 1979, 1.
- Tugend, Alina. "Sexual harassment charge against prof: Women's group files complaint." *The Daily Californian*, February 27, 1979, 1.
- Tzou, Alice. "University Boosts Outreach Programs Against Sex Crimes." *The Daily Californian*, November 30, 2004. Accessed April 1, 2017. <http://archive.dailycal.org/article.php?id=17106>.
- Wakimoto, Patricia. "Rape prevention education forum to be held on campus this month." *The Daily Californian*, October 3, 1977, 20.
- Wiltshire, John H. "Recent campus rape attacks bring police safety warnings." *The Daily Californian*, November 17, 1977.
- "Women's rights vs. safe workplace." *The Daily Californian*, October 6, 1977, 9.
- Wong, Angela. "Program gives students credit for talking about sex." *The Daily Californian*, November 23, 1993, 3.
- Yip, Randall. "Reports of harassment increase." *The Daily Californian*, November 26, 1980, 1.
- Yoffie, Beth. "Sexual harassment: Grievance procedure up for approval today." February 5, 1982, 1.
- Yoon-Hendricks, Alexandra, Abbott, Katy and Wen, Melissa. "19 campus employees violated UC sexual harassment policies in past seven years." *The Daily Californian*, April 6, 2016. Accessed March 3, 2017. <http://www.dailycal.org/2016/04/06/in-past-seven-years-19-campus-employees-violated-sexual-harassment-policies/>.
- Yoon-Hendricks, Alexandra, Abbott, Katy and Hussain, Suhauna. "Dean of UC Berkeley School of Law sued for sexual harassment." *The Daily Californian*, March 9, 2016. Accessed March 3, 2017. <http://www.dailycal.org/2016/03/09/dean-of-uc-berkeley-school-of-law-sued-for-sexual-harassment/>.
- Yoon-Hendricks, Alexandra and Platten, Andrea. "UC Berkeley chancellor announces new committee on sexual misconduct." *The Daily Californian*, April 5, 2016. Accessed March 3, 2017. <http://www.dailycal.org/2016/04/05/uc-berkeley-chancellor-announces-new-committee-on-sexual-misconduct/>.
- Ziol, Matt. "Students allege mistreatment by professors." *The Daily Californian*, April 18, 1991, 1.
- Zumhagen, Brian. "Senate to vote on spousal rape bill." *The Daily Californian*, August 14, 1992, 1.

Miscellaneous

- Benson, Donna Joan and Thomson, Gregg E. "Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratification." University of California, Berkeley, 1979.
- "Chancellor's Senate/Administration Committee on Sexual Violence and Sexual Harassment: Report of Findings and Recommendations." University of California, Berkeley, January 2017. http://chancellor.berkeley.edu/sites/default/files/svsh_full_report_1-31-2017.pdf.

“Fair and open environment? Bigotry and violence on college campuses in California.” Summary report prepared by the California Advisory Committee to the United States Commission on Civil Rights, June 14, 1991.

Levine, Amy. “Sexual Harassment As Perceived By The Complainant In The Academic and Workplace Environment.” Dissertation, University of California, Berkeley, 1994.

Theory

Anderson, Michelle J. “All-American Rape.” *St. John’s Law Review* 79 (2005): 625-644.

Archard, David. “The Wrong of Rape.” *The Philosophical Quarterly* 57 (2007): 374-393.

Buchhandler-Raphael, Michal. “The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power.” *Michigan Journal of Gender & Law* 18 (2011): 1-82.

Denbow, Jennifer. “Abortion: When Choice and Autonomy Conflict.” *Berkeley Journal of Gender, Law & Justice* 20 (2005): 216-228.

Dripps, Donald, Fairstein, Linda, West, Robin and Denno, Deborah W. “Men, Women and Rape.” *Fordham Law Review* 63 (1994): 125-173.

Dzur, Arthur W. “Restorative justice and democracy: fostering public accountability for criminal justice.” *Contemporary Justice Review* 14 (2011): 367-381.

Henderson, Lynne. “Rape and Responsibility.” *Law and Philosophy* 11 (1992): 127-178.

Kelland, Lindsay. “Conceptually situating the harm of rape: an analysis of Objectification.” *South African Journal of Philosophy* 30 (2011): 168-183.

Luker, Kristin. *When Sex Goes to School: Warring Views on Sex – and Sex Education – Since the Sixties*. New York: W. W. Norton & Company, 2006.

Posner, Richard A. “An Economic Theory of the Criminal Law.” *Columbia Law Review* 85 (1985): 1193-1231.

Roberts, Dorothy. “Rape, Violence, and Women’s Autonomy.” *Chicago-Kent Law Review* 69 (1993-1994): 359-388.

Russell, Yvette. “Thinking Sexual Difference Through the Law of Rape.” *Law Critique* 24 (2013): 255-275.

Schulhofer, Stephen J. *Unwanted Sex: The Culture of Intimidation and the Failure of Law*. Cambridge: Harvard University Press, 2000.

Stellings, Brande. “The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship.” *Harvard Civil Rights-Civil Liberties Law Review* 28 (1993):185-216.

Wasco, Sharon M. “Conceptualizing the Harm Done by Rape: Applications of Trauma Theory to Experiences of Sexual Assault.” *Trauma, Violence, & Abuse* 4 (2003): 309-322.

UC Berkeley and Systemwide Policies

- “Berkeley Campus Policy on Sexual Harassment and Complaint Resolution.” University of California, Berkeley, July 30, 1993. <https://web.archive.org/web/19990221125253/http://cois.chance.berkeley.edu/titleIX/policies.html>.
- “Berkeley Campus Policy on Sexual Harassment and Complaint Resolution.” University of California, Berkeley, April 8, 2002. <https://web.archive.org/web/20020408124759/http://uga.berkeley.edu/uga/sexualhar.stm>.
- “Berkeley Campus Procedures for Responding to Reports of Sexual Harassment.” University of California, Berkeley, January 2005. <http://web.archive.org/web/20071105202312/http://ccac.berkeley.edu:80/procedures.shtml>.
- “Berkeley Campus Procedures for Responding to Reports of Sexual Harassment.” University of California, Berkeley, January 2010. <https://web.archive.org/web/20130501075716/http://ophd.berkeley.edu/policies-procedures/complaints>.
- “Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault.” University of California, Berkeley, July 11, 1997. <https://web.archive.org/web/20000816003617/http://cois.chance.berkeley.edu/titleix/assault.html>.
- “Berkeley Campus Student Policy and Procedures Regarding Rape and Sexual Assault.” University of California, Berkeley, August 8, 2002. <https://web.archive.org/web/20020808145738/http://www.uga.berkeley.edu/uga/sexassault.stm>.
- “Berkeley Campus Student Policy and Procedures Regarding Sexual Assault and Rape.” University of California, Berkeley, November 5, 2007. <https://web.archive.org/web/20071105185343/http://ccac.berkeley.edu/assault.shtml>.
- “Berkeley Campus Student Policy and Procedures Regarding and Sexual Assault and Rape.” University of California, Berkeley, June 2010. <https://web.archive.org/web/20111203093006/http://ccac.berkeley.edu/assault.shtml>.
- “Proposed Berkeley Campus Policy on Sexual Harassment and Complaint Resolution Procedures.” University of California, Berkeley, April 20, 1989.
- “University of California Policy on Sexual Harassment.” University of California, Berkeley, January 2005. <https://web.archive.org/web/20071105185353/http://ccac.berkeley.edu/policies.shtml>.
- “University of California Policy on Sexual Harassment.” University of California, Berkeley, May 2008. <https://web.archive.org/web/20120112174836/http://ccac.berkeley.edu/policies.shtml>.

Videos

- “Power plays: sexual harassment on campus.” Directed by Mary Kay Martin. 1999. Berkeley, CA: UC Berkeley Office of Educational Television and Radio. DVD.
- “Sexual harassment modules.” Directed by Mary Kay Martin. 1989. Berkeley, CA: UC Berkeley Office of Educational Television and Radio. DVD.