

Honest False Testimony in Allegations of Sexual Offences

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## Abstract

This chapter aims to provide a general review of factors that can lead to honest false testimony by either party to cases involving disputed sexual consent. We focus on three issues. First, we review the inherently and deliberately ambiguous nature of many sexual communications. That is, sexual communication often takes place indirectly, in ways that allow for multiple interpretations of meaning (e.g., via hints, nonverbal communication, lack of resistance rather than explicit consent, etc.). Second, we discuss the vagaries of memory for consent interactions. Given the ambiguity of initial consent interactions and the context in which they are later recalled, memory can be predictably distorted such that each party honestly remembers the same interaction differently. Third, we consider the implications of the involvement of intoxication in many disputed sexual encounters. Collectively, these factors pave the way for misinterpretation, miscommunication and false "gist" (or fully fabricated) memories for what took place: a state of affairs that can lead both parties report honest, but completely different accounts of the events in question.

KEYWORDS: rape, sexual coercion, alcohol, memory, consent

### Introduction

On September 17, 2009, alleged victim Kelli Kalisiak was receiving a 1.5 hr. massage in her home from her masseuse of three years, Joshua Lewis, who Kalisiak described as like a “family friend.” As she lay naked, covered only by a sheet, the massage departed from the usual procedure. Lewis began to touch Kalisiak’s vagina and rub her clitoris. This continued for about 30 seconds, after which he continued to massage her thighs and to generally provide a more typical massage for another 15 minutes before stopping. During this time Kalisiak lay unmoving and without comment. She responded to his requests to change position without comment. When it was over, Lewis asked her if she liked the message, or if it was “too intense” and told her if it was too intense he would never do it again. Kalisiak told Lewis it was indeed too intense, and he said “Okay” and left. The next day, Kalisiak and her mother called police to file charges of sexual assault.

As often happens in cases of disputed sexual events, the two parties told stories with vastly different implications for whether there was or was not sexual consent. On the one hand, Lewis believed he had consent, and even an invitation. He reported that Kalisiak often talked to him about how lonely she was and how difficult it was for her to find a romantic companion, as she was doing on that day. She had also talked that day about how she wanted him to “be the boss,” that he was the expert. She appeared to respond enthusiastically to his touch. He moved gradually from massaging her back, to massaging her thighs and systematically moving upward toward her vagina. The sheet was clearly not fully covering her buttocks or genitals, and Lewis felt that was a signal of permission. She did nothing to indicate that he should stop as he moved toward her vagina, nor did she tell him to stop as he rubbed her clitoris. She allowed him to continue the massage for another 15 minutes or more: all the while saying nothing. She indicated

no anger after it was over, and said goodbye as usual. But when asked after the fact, she said it was too intense, and he said he would not do it again.

For her part, Kalisiak reported to police that she felt she had been involuntarily assaulted: that she had done nothing to convey consent, and that she clearly indicated that she didn't want him to touch her genitals. But how did she convey this? Kalisiak knew that the sheet was not covering her genitals, and that Lewis was moving closer and closer to her vagina. But she did nothing to protest or stop the advance. She reported that she thought Lewis was gay (though this had never been discussed), that she regarded him as a friend, and that she trusted him. Her only reaction as he touched her clitoris was to stiffen. Kalisiak believed that Lewis would interpret her abrupt tensing as her displeasure and desire for him to quit (i.e., nonconsent), even though she showed no other sign of protest and allowed the massage of other body areas to continue for more than 15 minutes until Lewis stopped voluntarily.

Though this event occurred in a professional context, where escalation to sexual intimacy might be expected to proceed differently than such contexts as dating, it reflects several failures of communication common to many cases involving disputed sexual interactions. First, there was an honest disagreement: the male thought the female was interested and had no objection, whereas she actually was not interested and the sexual advances were unwanted. Second, there was no direct explicit communication: either of what the male wanted and intended to do, or of what the female wanted or did not want him to do. Third, the male relied on indirect indications of her interest, such as talking about her loneliness and desire for a relationship while naked, assigning him the role of "boss," and the lack of expression of nonconsent. Fourth, the male relied on gradual escalation of intimacy, proceeding until when (or if) he received a clear refusal. Fifth, the female relied on nonverbal behaviour to convey her nonconsent: and, unfortunately, on

nonverbal behaviour (i.e., “stiffening”) that could possibly be interpreted as excitement rather than discomfort. And, this ambiguous indicator did not occur until after the deed was done.

Such scenarios are all too common. Though some interactions leading to first sexual contact between a couple are quite explicit, many take place in the form of hints, innuendo, mind reading (attempts to interpret the other person’s interest and intentions), testing the waters indirectly, tentative attempts and gradual escalation of intimacy toward the desired sexual outcome. Likewise attempts to forestall sexual intimacy may be explicit. And yet, many attempts to reject sexual advances are performed through hints, nonverbal signs of disinterest, ignoring advances, and other indirect signals of nonconsent.

In part, this dance of ambiguity serves to protect both parties. The initiator can try to advance the sexual agenda, but with plausible deniability that can protect the ego in case the advance is rejected. The target can accept the sexual advance without having to explicitly admit it is wanted: or can reject it without explicitly rejecting the suitor. In this way, the relationship can be more easily maintained without insult or injury to the feelings of either. But of course there is a price for this protection! Mistakes of interpretation can be made. Opportunity may be lost when desire is not made clear. Or, unwanted advances or sexual intercourse may proceed unchecked because the target’s nonconsent is never clearly conveyed.

Clearly, disputed cases of sexual assault often involve deliberate and knowing violations of the victim’s unambiguous nonconsent. But determining sexual consent is not always an easy task (see Wertheimer, 2003 for review), though it is nonetheless usually the defining factor in legal allegations of sexual harassment and assault (Cook, Gidycz, Koss, & Murphy, 2011). Here, we explore the problems of communication leading to the subset of cases in which there is honest disagreement about whether (non)consent was or was not conveyed. To do this, we first

review evidence of how communication of sexual (non)consent tends to be conveyed and interpreted. We then consider how the ambiguity in communications of sexual consent can be reflected in inaccurate “gist” memories for the consent interactions, particularly in the context of subsequent disputes. Throughout, we consider the role alcohol can play in shaping both initial interactions and later memory for consent communications.

### The Nature and Vagaries of Consent Interactions

A great deal of research has addressed the issue of how sexual consent interactions unfold: and has converged on the conclusion that most sexual encounters (particularly those involving first progression to intercourse) involve few explicit verbal statements, let alone explicit requests or denials. Instead, sexual interest and intentions, and sexual consent or refusal tend to take place via hints, indirect verbal statements, nonverbal behaviors, and, crucially, failures to act (Davis & Villalobos, in press). Such indirect statements and behaviors are inherently, and by design, ambiguous, and therefore easily misinterpreted. Moreover, they take place in a social context that directs their interpretation. This may be personal social context involving the parties involved: such as their previous dating history and history of intimacy, general knowledge and expectations of one another, and so on. But the many indirect and nonverbal behaviors involved in sexual interactions are also interpreted in light of cultural sexual scripts (e.g., Byers, 1996) specifying how people are expected to behave in sexual situations. Some such scripts directly promote misunderstanding: such as the idea that women conceal their actual interest in sex, and often engage in initial refusals that are merely “token” gestures, in order to avoid being perceived as promiscuous (e.g., Muehlenhard & Hollabaugh, 1988; Osman, 2003). Finally, many behaviors with implications for sexual interest have multiple meanings. They are the same as those reflecting liking or other kinds of interest in the other person, and/or

the same as those designed to attract the romantic interest of the other party (rather than to invite an immediate sexual interaction). These triple issues of indirect communication, misleading sexual scripts and multiple meaning contribute to honest discrepancies in understanding of sexual consent interactions.

*I. The Ambiguities of Nonverbal and Indirect Communication*

Despite the obvious risks of misunderstandings, the sexual consent process usually takes place through nonverbal and indirect cues, rarely relying on explicit verbal assertions. Initial communication of sexual desire often occurs through nonverbal cues such as eye contact, escalating physical proximity, suggestive movements, or nonsexual touching, which then may progress to more explicitly sexual touch, passionate kissing, undressing and so on: whereas explicit verbal requests to engage in sexual activity are much less common, as are verbal requests for clarification or refusal of sexual advances (e.g., Byers & Heinlein, 1989; Hickman, & Muehlenhard, 1999; Humphreys, 1994; Lim & Roloff, 1999; O'Sullivan & Byers, 1992; Perper & Weis, 1987).

Sexual communication is further complicated by the tendency to communicate refusal through indirect means: one of the most common being failure to resist (e.g., Hickman & Muehlenhard, 1999; Perper & Weis, 1987; Woodhams, Hollin, Bull, & Cooke, 2012). Jordan (2005) argued that women tend to be socialized to be indirect and submissive when interacting with men and to avoid aggressive responses during confrontations, which is reflected in part in the tendency to rely on indirect means to communicate their refusal to engage in sexual activities. Indeed, in a series of interviews of women aged 18-22, Fantasia (2011) found that even when the women really did not want to engage in sexual activities most respondents considered not resisting their partners' sexual advances as a form of consenting (e.g., "he never

asked but I never said no, so I guess he thought it was okay...”, p. 125). Similarly, Hickman and Muehlenhard (1999) found that the most commonly reported signal to indicate consent, used roughly equally by both men and women, was simply not resisting the sexual advances of the other person (i.e., expressing no response). Nevertheless, as illustrated by the experience of Kalisiak, lack of resistance to sexual advances could have very different meanings for the two interacting individuals. It might be reflect reactions such as shock, confusion, shame, fear of repercussions of refusal, and others (e.g., Muehlenhard, Powch, Phelps, & Giusti, 1992).

Woodhams and colleagues (2012) found that many victims’ accounts of their own behaviors during sexual assaults did not adhere to the stereotypical myth of the “resisting rape victim”. Some reported more subtle forms of resistance, such as simply not responding to specific orders (e.g., removing her clothes) and choosing to remain stationary instead. Such weak signals of resistance are more ambiguous and more subject to misinterpretation as consent. Davis and Villalobos (in press) identified other ambiguous strategies such as distancing herself from the subject through nonverbal means (e.g., stepping a few inches back, facing away from the subject), offering pretexts as to why she is unable to accept such invitations, or simply by pretending not to notice the subject’s advances or hints. Given such indirect behaviors, it is entirely possible that a man may believe that a woman has consented to engage in sexual activities, even when she believes that she is making her refusal to do so very clear.

In addition to ambiguous behaviors, sexual communications often entail ambiguous indirect statements. Lee and Pinker (2010) suggested that individuals are particularly likely to utilize indirect language to convey messages involving social risk. In their theory of the “strategic speaker”, the authors described *off-record indirect speech acts* (Brown & Levinson, 1987) as statements for which the hearer must infer the true meaning through contextual cues



and other circumstantial subtleties. Lee and Pinker argued that speakers use off-record indirect speech primarily because such statements can be interpreted in more than one way, thereby providing plausible deniability of the intended message.

The authors further suggested that speakers are more likely to use indirect statements when the intended message would suggest a substantial change in the nature of the relationship between speaker and hearer (e.g., from a platonic to a sexual relationship). Indeed, indirect speech is prevalent when the speaker attempts to avoid unambiguously stating illegal or potentially embarrassing intentions, such as sexual come-ons that may be rejected or interpreted as harassment. The speaker can retain some protection against legal or social consequences, as the message *can be* understood as the speaker originally intended, but it does not necessarily *have to be* interpreted that way. In this way, the speaker can maintain plausible deniability of his intentions, not only in case of rejection by the hearer, but also in case his message is scrutinized by a third party, or is used to provide the basis of legal sanctions (e.g., Tiersma & Solan, 2012).

Arguably, most indirect speech is understood as intended by hearers (e.g., Berger & Grodner, 2012; Garrod & Pickering, 2004; Lee & Pinker, 2010). Indeed, when one party to an interaction uses indirect speech, the other tends to “line up pragmatically” and use indirect language as well (e.g., Roche, Dale, & Caucci, 2012). Use of indirect verbal and nonverbal behaviors is likely to be understood by both, and each is likely to actively interpret the indirect sexual meanings. Given that indirect verbal and nonverbal communication seems to be normative when initiating sexual advances, the mechanisms leading to misunderstandings and failures to interpret sexual cues adequately merit further investigation. In subsequent sections, we explore the roles of misleading sexual scripts, motivational biases, and multiple meanings in producing such misunderstandings.

## *II. Multiple Meaning: General Interest, Liking, and Romantic Interest vs. Sexual Intent*

It is clear that both women and men deliberately use indirect verbal and nonverbal indirect means of sexual communication. However, many behaviors that are perceived as reflections of sexual intentions are not necessarily intended as sexual communication, but may occur for other related and unrelated reasons. Attractive or sexually attractive attire, for example, may simply reflect a desire to appear attractive in general, to attract the interest of a potential partner, to compete with same-sex others, or to promote sexual activity, among other intentions. Similarly, verbal and nonverbal behaviors such as smiling, touch, expressions of liking, intimate disclosures and many others may simply reflect the actor's liking of the target, may be intended to may the other person like oneself, and may reflect interest in the conversation or other goals.

These ambiguities in meaning open the door to misinterpretation of sexual intentions, a problem that can be exacerbated by sexual motivation. Likely due to their relatively greater sexual motivation, for example, men have been shown to perceive more sexual interest in women than women themselves intend to convey (through social clues such as friendliness, eye contact, smiling): a phenomenon known as the "overperception bias" (Abbey et. al, 1998; 2011; Farris, Treat, Viken, & McFall, 2008: see La France, Henningssen, Oates, & Shaw, 2009 for a meta-analysis and review). "Error Management Theory" (EMT; Haselton & Buss, 2000) suggests an explanation for this phenomenon based on the notion that cognitive errors of inference are the result of adaptive biases that benefit reproductive goals. From an evolutionary perspective, it was in men's best interest to not miss any opportunities for reproduction with any available woman, thus leading to an adaptive overperception of women's levels of sexual interest. However, though the bias is more prominent among men generally, sexual over-perception tends to be more prominent among people with high sociosexuality—those who report high interest in short-

term and casual relationships—regardless of gender (Howell, Etchells, & Penton Voak, 2012).

Regardless of gender, people tend to project their own desires for sex or commitment onto people they are interacting with (Henningsen & Henningsen, 2010).

Nevertheless, the gender bias in imputed sexual meaning tends to occur reliably. Thus, Davis, Follette, and Merlino (1999) attempted to identify behaviors that might be interpreted most differently by the two genders. Men and women were presented with 72 behaviors and asked to make two ratings: whether women are more likely, equally likely, or less likely to engage in the behavior when willing to have intercourse; and whether women never, sometimes, or often engage in the behavior when not willing to have intercourse. Women answered for themselves personally and men answered with regard to women in general. Several results stood out. First, women reported that they were more likely to engage in many behaviors when willing to have intercourse than when not willing. Second, however, many women also reported they sometimes or often engaged in those same behaviors when not willing to have intercourse. For example, 70% of women reported they were more likely to dress in a sexually provocative manner when willing to have intercourse, but 55% also reported that they sometimes or often do so when not willing. Third, women reported they were equally likely to engage in many behaviors commonly viewed as reflecting sexual intentions regardless of whether they were willing to have intercourse or not (such as drinking or doing drugs with the male, hugging him, going to his residence alone with him, or smiling at him a lot).

Davis, Follette, and Merlino (1999) also found considerable correspondence between womens' reports of the meaning of their own behaviors and men's perceptions of that meaning. However, for a subset of the behaviors there was a notable discrepancy between genders. The authors proposed the term *rapeseed quotient* to define behaviors that women report they are

likely to do even when not willing (or equally likely whether willing or not), but which men think women either *only* do when willing, or are much more likely to do when willing than when not willing to have intercourse. Some behaviors found to have the higher rapeseed quotients included dressing very sexily, allowing the man to touch her breasts or genitalia, and talking about sexual topics. Some were quite startling. For example, 40% of men believed women will perform oral sex if and only if willing to have intercourse, whereas 40% of women said they did so sometimes or often when not willing. These behaviors are some of those most likely to result in honest disagreements about consent, and those which men are most likely to over-perceive as reflecting consent.

### *III. Misleading Sexual Scripts*

A variety of “scripts” for sexual interactions exist within cultures: specifying such details as how sexual interactions are to be initiated and by whom, the circumstances under which sex is expected to occur (such as at what point in the relationship, and between what partners), expected behaviors for the two parties, how the interaction is to unfold over time, the meaning of various behaviors, and much more. These scripts indicate how people ought to think and react in situations that could be considered sexual in nature, and shape expectations and behaviors in sexual situations (Gagnon, 1990; Simon & Gagnon, 1986).

Many such scripts concern expected roles and behaviors of males versus females. Despite increasingly egalitarian gender roles and expectations in our culture, media continue to portray sexual interactions predominantly in accord with traditional gender roles (e.g., Hust, Brown, & L’Engle, 2008; Hust et al., 2014), and most men and women continue to adhere to traditional gender roles when engaging in sexual activities (Jozkowski & Peterson, 2013; Masters Casey, Wells, & Morrison, 2013). Prominent among these roles are those of males as the initiators of

sex and women as the gatekeepers who determine whether sex will or will not take place (e.g., Jozkowski & Peterson, 2013). Other scripts address the meaning of specific behaviors in consent interactions.

Among the most troubling of such scripts concerns the behavior known as *token resistance* to sex: that is, the expectation that a person would initially refuse sexual advances even if there is an actual desire to engage in sexual activities (Muehlenhard, 2011). Since women who consent too easily to sexual activity might be regarded as promiscuous, a woman may resist at first solely to manage impressions of her virtue, rather than because she truly does not want to engage in sex. Males believe women engage in token resistance, and a third to half of females report doing so (e.g., Muehlenhard & Hollabaugh, 1988; Sprecher, Hatfield, Cortese, Potapova, & Levitskaya, 1994). However, both men and women actually engage in such behaviors at similar rates and for a wide variety of reasons (e.g., appearing “hard to get”, thinking that it is what “was expected”, shame; Muehlenhard & Rodgers, 1998). This widespread belief in and practice of token resistance complicates the interpretation of even explicit refusals to engage in sex. The man might interpret rejection as the woman “being a tease” or “playing hard to get” and further pursue his sexual objectives, even in an aggressive manner (Murnen, Wright, & Kaluzny, 2002), often interpreting his sexual coercion as welcomed seduction (Farris et al., 2008). The notion that even women who explicitly reject a sexual advance are sometimes actually receptive to sexual advances is troubling. There can be genuine ambiguity in the meaning of the woman’s rejection, particularly when other behaviors are consistent with consent. But if the rejection is real, the woman may still be thought to have indicated consent. Such judgments may promote rape, as well as contribute to vindication of her rapist. Cultural scripts and

predispositions often outweigh legal definitions of sexual consent when individuals make assessments of whether consent has been granted (see Kahan, 2010 for a review).

#### *IV. The Role of Alcohol in Negotiating Sexual Consent*

The process of communicating and understanding sexual consent can be substantially affected by use of alcohol (or other drugs). A substantial number of cases involving alleged sexual assault or non-consensual sex involve the consumption of alcohol by one or both parties (Abbey, 2011; Fantasia, 2011; Davis & Loftus, 2004; Ward, Matthews, Weiner, Hogan, & Popson, 2012). In part, this may occur because the use of alcohol in sexual encounters can significantly impair interpretation and negotiation of sexual consent. That is, intoxicated men are less likely to interpret nonconsent messages accurately. Similarly, intoxicated women tend to convey less emphatic signs of refusal of consent (and tend to do so at a later time during the sexual encounter), compared to their non-intoxicated counterparts (e.g., Abbey, 2011; Davis & Loftus, 2004).

Both men and women perceive intoxicated others as more sexually aroused, easier to seduce and more willing to consent (e.g., George, Lehman, Cue, Martinez, Lopez, & Norris, 1997); a belief that is prominent even among professionals (Lee & Cheung, 1991). Moreover, mutual alcohol consumption is viewed as a sign of sexual intent or consent (e.g., Abbey & Harnish, 1995; Leigh, Arumburu, & Norris, 1992). Overall, these results suggest that intoxicated parties are likely to overperceive sexual interest and intent, and to less effectively recognize indicators of nonconsent: whereas when one party does not wish to engage in sex, efforts to convey nonconsent will occur later in the sexual interaction, and be less clear and effective. Accordingly, the potential for both nonconsensual sex as well as for honest disagreements concerning whether consent did or did not occur will be greater among intoxicated parties.

### Memory for Consent Interactions

When sexual assault is alleged, both parties are asked to recount a wealth of detail: such as details of the relationship and interactions leading up to the event in question; specific behaviors and statements made during the event; emotions, reactions to and interpretations of the others' behaviors and statements; his/her own intentions, subjective thoughts, and much more. Many such details become important only in hindsight, may not have been attended to at the time and therefore may never be encoded into memory. Moreover, though the exact manner in which consent or refusal was conveyed is crucial in legal contexts, memory tends to be for the gist of what happened, rather than the exact details: and this is particularly true for memory for conversation. What is most likely to be remembered is each party's version of the gist of the events, and their general reactions to and interpretations of their own and the other's actions. Thus, the victim may report such gist characterizations as "it was clear I didn't want to" whereas the accused may report his own gist summary as "she obviously wanted it" or "she didn't do anything to tell me to stop" (see Davis & Friedman, 2007; Davis & Villalobos, in press).

To complicate matters further, human memory is reconstructive in nature, and not only fallible, but malleable and susceptible to suggestion and bias (Loftus, 2005). It is possible, for example, to "remember" saying things that one only thought about or intended to say at the time (Davis & Friedman, 2007). As a result, the woman might falsely remember saying things that she thought about (but did not say) to stop the situation, and for the man to falsely remember doing things that he did not do to verify the woman's consent. Furthermore, memories of past events also tend to be distorted so they line up with one's beliefs about oneself, others, or how things work in general (Brainerd & Reyna, 2005). Indeed, both parties might forget some details

believe they *would not have* done and falsely remember things that they believe they “would have done in that situation”, but did not. For example, a man might falsely remember explicitly asking the woman for consent because, in his mind, he would never engage in sexual activities with a woman without her consent. Likewise, the woman might remember explicitly telling the man that she did not want to have sex, as she believes that she would never reciprocate the sexual advances of a near-stranger.

Such false memories can be easily created through simple processes, such as continuous mental reenactment of the contested events, the introduction of new information by witnesses, or suggestive questioning by investigative authorities (Loftus & Davis, 2006). Davis and Loftus (2004) further argued that alcohol-related cognitive impairments affecting memory encoding and retrieval can make such processes more likely. Alcohol tends to impair memory encoding processes, making recollections of the disputed event poorer and more susceptible to external influences (e.g., recently-learned information about the events, suggestive questioning, etc.; Soraci, Carlin, Read, Pogoda, Wakeford, Cavanagh, & Shin, 2007). If alcohol-induced memory loss is sufficiently severe, alleged rape victims or perpetrators with sketchy or almost no memories of the event may “remember” details about how they behaved, based on what they believe they *would have done* in that situation under normal circumstances.

It is important to note that once an accusation is made the pressures of interviewers’ quest for details can both promote the tendency to answer based on assumptions about what the witness would have done, and simultaneously to influence answers through suggestion. Witnesses will often try to answer even when they don’t remember clearly: and may, in effect, guess based on suggestive questions or comments of the interviewer, or on assumptions about what probably happened.



Reconstructive processes of memory can also be fueled by motivation and emotions. Shame, for example, may prompt either party to reconstruct events to minimize shameful feelings: such as when a victim may remember a sexual interaction with a disreputable man as less voluntary to minimize the shame of having sex with such an undesirable character. Negative beliefs and emotions concerning the other party can lead to deliberate false reports, but can also lead to honest errors of memory. Original interpretations of, as well as memory for, others' actions tend to be distorted toward consistency with other relevant beliefs (see Davis & Loftus, 2007 for review). In this way, changes in relationship status (such as a breakup) or relationship conflict can prompt reconstructive memories of sexual interactions with a partner one now dislikes or feels great anger toward.

*From Voluntary Unwanted Sex to Rape*

Before leaving the issue of memory for consent interactions it is important to consider influences that may trigger the relabeling of sexual interactions after the fact. The issue of what constitutes consent has been widely discussed, is deeply complicated, and, not surprisingly, has not yet been clearly settled (see Wertheimer, 2003 for detailed review of the issues involved in defining and determining sexual consent). Among the difficult distinctions entailed in assessment of consent is the dimension of the desirability of a sexual interaction versus the voluntariness of the decision to engage in sex. Women widely report, for example, that they engage in voluntary unwanted sex (e.g., Davis, Follette, & Vernon, 2001; Impett, & Peplau, 2002; Sprecher et al., 1994). That is, the woman may have no actual desire to engage in sexual activity, and may prefer strongly not to do so, but nevertheless voluntarily do so. This may occur for a variety of reasons: such as to please a partner, out of a sense of obligation, fear of losing the partner if sex is refused, fear of repercussions of refusal (though no threats or overt coercion has occurred) and

others. But, in hindsight, the woman may accurately remember that she didn't like the interaction, but falsely assume that the accused knew she didn't want to have sex. She may base such an assumption on simple assumptions (such as that he would have "just known" or that how she felt would clearly show) or on true or false memories of her own verbal or nonverbal behaviors varying in subtlety and directness in their communication of nonconsent.

Some women feel that consent is implied once a certain point is reached (such as when the woman has agreed to go to the man's apartment, or has started to make out, or has talked about sexual topics) and will have unwanted sex because they feel they have given up the right to refuse by such behaviors (e.g., Fantasia, 2011). Most women in Fantasia's study reported having engaged in sexual intercourse without expressing clear consent, expressing reasoning such as "if you start making out, you know it will lead to sex" or "I just went along with it." More troubling, the women in Fantasia's study reported seeing nonconsensual sex as normal; that is, they believed that having to engage in sexual activities once a certain threshold is reached (e.g., after accepting to make out with a man at his apartment), or when a committed partner demands it, is something that happens regularly to other women they know. Others report engaging in sex for fear they will be raped if they don't participate voluntarily (Jensen, 2014). Perhaps for such reasons, Humphreys (2007) found that women perceived a series of scenarios involving potential sexual coercion as less consensual and unclear than men.

Such findings have made clear that much unwanted sex takes place in the absence of what would clearly constitute coercive behaviors such as verbal threats or physical force. We suggest that this situation provides fertile ground for honest disagreements regarding whether sex was or was not consensual. Particularly if the woman resisted at all and the man tried to persuade her to have sex (even if without threats or force), the woman may report that she did not consent (or did

not want to have sex) while the man believes she did. In circumstances encouraging poor memory (such as intoxication) a woman's vague gist memories ("I didn't want to." "I didn't like it.") might be quite accurate and suggest nonconsent, even though the man's gist memories ("She seemed to want to" "She seemed to like it." "She didn't say no.") might also be accurate and suggest consent.

The broad continuum of situations in which women engage in unwanted sex has prompted some to suggest that there is rarely a bright line distinction between "rape" or "not rape," but rather a continuum of sexual intrusion (Jensen, 2014). The ambiguity of when sexual behavior crosses the line between consensual and nonconsensual, along with the tendency for women to engage in unwanted sex, creates circumstances where women may well decide in hindsight that what they originally thought was voluntary but unwanted was actually rape.

## V. Conclusions

Sexual communication is a wonderfully and yet terrifyingly complex process, proceeding through multiple verbal and nonverbal channels, and filled with intentional and unintentional misdirection and ambiguity. Even without external influence, interpretation of these communications is further complicated by the expectations, motivational biases, personal and relationship histories, and acute states of arousal or intoxication of the involved parties. The potential for honest differences in perception between the involved parties is already high. But when sexual interactions become subject to legal disputes, the memories of those involved become subject to both internal motivations and external sources of suggestion that can magnify the honest differences between them. Each party can report honestly, and yet falsely, what originally occurred. Involvement in the legal system tends to cast the parties into opposing camps as either innocent victim--knowing perpetrator or knowing false accuser--falsely accused.

The research reviewed here suggests that a third possibility may be more common than previously recognized: that of genuine miscommunication and disagreements of memory between two honestly reporting parties.

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