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<http://dx.doi.org/10.1007/s10979-006-9050-z>

PUBLISHER

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VERSION

AM (Accepted Manuscript)

PUBLISHER STATEMENT

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REPOSITORY RECORD

Flowe, Heather D., Ebbe B. Ebbesen, and Anila Putcha-Bhagavatula. 2019. "Rape Shield Laws and Sexual Behavior Evidence: Effects of Consent Level and Women's Sexual History on Rape Allegations.". figshare. <https://hdl.handle.net/2134/20168>.

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Rape Shield Laws and Sexual Behavior Evidence:
Effects of Consent Level and Women's Sexual History on Rape Allegations

Heather D. Flowe
Ebbe B. Ebbesen
Anila Putcha-Bhagavatula

Author Note

Heather D. Flowe and Ebbe B. Ebbesen, Department of Psychology, University of California, San Diego. Anila Putcha-Bhagavatula, University of Southern California.

This material is based upon work funded by U.S. Grants and supported under a National Science Foundation Graduate Research Fellowship to the first author. Portions of this paper were presented at the American Psychology-Law Society, March 2000 in New Orleans, LA.

A debt of gratitude is owed to Alejandra M. Duarte and José M. Valencia for their superlative assistance with collecting data in Nevada for Experiment 2. We also thank the anonymous reviewers for their insightful and generous comments.

Address correspondence to Heather Flowe, Department of Psychology, University of California, San Diego, 9500 Gilman Drive, La Jolla, CA 92090-0109; email:

hflowe@psy.ucsd.edu.

Abstract

Rape shield laws, which limit the introduction of sexual history evidence in rape trials, challenge the view that women with extensive sexual histories more frequently fabricate charges of rape than other women. The present study examined the relationship between women's actual sexual history and their reporting rape in hypothetical scenarios. Female participants (college students and a community sample, which included women working as prostitutes and topless dancers, and women living in a drug and alcohol rehabilitation center) imagined themselves in dating scenarios that described either a legally definable act of rape or consensual sexual intercourse. Additionally, within the rape scenarios, level of consensual intimate contact (i.e., foreplay) preceding rape was examined to determine its influence on rape reporting. Women were less likely to say that they would take legal action in response to the rape scenarios if they had extensive sexual histories, or if they had consented to an extensive amount of intimate contact before the rape. In response to the consensual sexual intercourse scenarios, women with more extensive sexual histories were not more likely to say that they would report rape, even when the scenario provided them with a motive for seeking revenge against their dating partner.

Rape Shield Laws and Sexual Behavior Evidence:

Effects of Consent Level and Women's Sexual History on Rape Allegations

Former topless dancer Nina Shahravan reported to authorities on December, 1996, that Eric Williams of the Dallas Cowboys raped her while she was threatened at gunpoint by his teammate Michael Irvin. Twelve days later, Shahravan recanted her claim. She was sentenced to 90 days in jail and fined for lodging false allegations. Highly publicized cases, such as this one, call into question the view that women never lie about being raped. On the other hand, the opposing view that false rape allegations are commonplace should also be questioned because it too has serious implications for individuals and public policy.

The legal system has historically treated claims of rape with skepticism. Many states, for example, once had cautionary instructions to the jury warning of women's¹ propensity to make false charges of rape. Moreover, evidence of promiscuity was routinely admitted at trial to undermine the credibility of a complainant and to demonstrate to the jury that in all likelihood she consented on the occasion in question (Anderson, 2002). Since the 1970's, however, all state legislatures have passed changes in rape statutes. One major change was the enactment of so-called rape shield laws, which limit the introduction of evidence at trial concerning the complainant's sexual history. Congress (Fed. R. Evid. 412), the military (Mil. R. Evid. 412), and all of the states (Miller, 1997) have implemented rape shield laws. Similar to federal and military rape shield laws, almost half of the states generally exclude all sexual history evidence unless it 1) relates to the complainant's sexual conduct with the defendant, or 2) provides information regarding pregnancy, disease, or the source of semen. In the remaining states, sexual history evidence is generally allowed for proving consent, for impeaching the complainant's credibility², or when a trial judge agrees that it is relevant³ (Anderson, 2002, for a historical review of the

chastity requirement in rape law, and Price, 1996, for a review of rape shield laws by state). Rape shield provisions attempt to balance protecting the complainant from potentially capricious invasions of privacy, and the defendant's rights to confront and cross-examine witnesses about potentially probative information (Galvin, 1986; Herman, 1976-1977; Lowery, 1992; Price, 1996). As such, sexual history evidence can still be admitted despite rape shield provisions if the defendant is able to successfully demonstrate that it is relevant in establishing his innocence.

The research carried out in the present paper addresses two specific defense arguments regarding the relevancy of sexual history evidence. The first, which is based on the common law assumption that "chastity" is a character trait, argues that sexual history evidence should be admitted because it is probative on the issue of the complainant's credibility (Anderson, 2002; Berger, 1977; Estrich, 1987). Trial courts, however, seldom allow defense attorneys to argue that the complainant's credibility is undermined by her sexual history. If it is allowed for such purposes, it is usually in cases in which sexual history relates to acts of prostitution by the complainant to demonstrate her moral turpitude (e.g., *People v. Chandler*), or in cases in which the complainant falsely accused someone of rape in the past (e.g., *People v. Franklin*). A second and more likely reason why the defense might seek to admit sexual history evidence is to support a consent defense (Anderson, 2002). In particular, the defense may argue that the complainant consented to sexual intercourse with the accused and is now lying.⁴ Sexual history evidence might be used in such cases to demonstrate a pattern of behavior on the part of the complainant similar enough to the instant case that it increases the likelihood that she consented (Herman, 1976-1977). To illustrate, if a woman accuses a man whom she met in a bar of rape, the defense might argue that evidence of her frequently having "one night stands" with men she meets in bars is probative (Berger, 1977). As another example, the defense may attempt to introduce evidence

of consensual sexual relations between the defendant and the complainant (during the instant case or on prior occasions) to portray the complainant's state of mind toward the defendant and to argue that her state of mind was unchanged during the instant case (Galvin, 1986). In both examples, the defense is arguing that past action on the part of the complainant is predictive of future similar action. On the other hand, one could argue that past behavior on the part of the complainant with others or with the defendant is unrelated to whether she would consent to intercourse with the accused and in turn make a false accusation of rape.⁵

Given the absence of empirical data for evaluating the validity of using past consensual sexual behavior to predict rape accusations, the purpose of this research was to investigate the role that women's sexual behavior plays in rape reporting. In two experiments, responses to hypothetical dating encounters that involved either rape or consensual sexual intercourse were examined in relation to women's actual (i.e., self-reported) sexual behavior. The results are presented following a review of the literature related to this topic.

Frequency of False Rape Allegations

Studies examining police records or medical examiner data have indicated unfounded rates for rape in the 2-25% range (Hursch & Selkin, 1974; MacDonald, 1971; Peters, Meyer, & Carroll, 1976; Schiff, 1969). Unfounded rates, however, typically include not only false complaints, but also cases dismissed for lack of physical evidence, uncooperative victims/witnesses, or because no suspect could be located. Nationwide data from the Uniform Crime Report (UCR) indicates that the unfounded rate for forcible rape remained at about 8% from 1991 to 1997⁶, while the average rate for other index crimes (i.e., property crimes, arson, robbery, and aggravated assault) was considerably lower, at about 2% (U.S. Department of Justice, 1999). The unfounded rate for rape might be higher not necessarily because

complainants are more apt to lie in rape than in other types of crime, but rather because evidentiary issues that impede prosecution are more common in rape compared to other crimes (La Free, 1989).

In a more extensive study focusing on false reports, Kanin (1994) found that during a nine year period in a relatively small Midwestern city, 41% of rape complainants ($N = 109$) later admitted the charges were false. Kanin's study also found that during a three year period at two large Midwestern state universities, 50% of forcible rape complaints ($N = 64$) were false. These false allegation rates, however, are from highly localized populations and might not generalize. Additionally, as suggested by Kanin, a recantation does not necessarily indicate that the original report was false. Victims may recant after deciding not to further pursue prosecution because they fear retaliation by the assailant, or because they want to put the episode behind them and get on with their lives, or because of other reasons.

Sexual History and False Rape Allegations

To date, no study has examined the effects of complainant sexual history on falsely alleging rape. Nevertheless, sexual history is sometimes used by third parties to determine whether rape occurred (for a comprehensive review see Schuller & Klippenstine, 2004). For instance, in actual cases, La Free (1989) found that allegations of nontraditional behaviors (e.g., engaging in sexual intercourse outside of marriage, failing to dress modestly, walking alone in dangerous neighborhoods at night) reflecting on credibility were always made when the primary legal issue was consent—even in cases in which the rape shield law was invoked. In general, rape complainants who have a reputation for being promiscuous or pleasure seekers, use drugs or alcohol, or who willingly enter the residence of the accused are less likely to have their cases seriously pursued by justice officials (La Free, Reskin, & Visher, 1985; La Free, 1989; Stanko,

1982). Rape attribution studies using rape scenarios and college students as subjects report similar findings. Characteristics of the dating situation and victim mitigate the guilt of the rape offender, such as in circumstances when the victim “leads the male on,” (Kanin, Jackson, & Levine, 1987), or when the victim is described as sexually experienced (Calhoun, Selby, & Warring, 1976; Cann, Calhoun, & Selby, 1979; Johnson, Jackson, Gatto, & Nowak, 1995; L’Armand & Pepitone, 1982), or when the victim and perpetrator have previously engaged in consensual sexual intercourse (Monson et al., 2000).

Sexual History and Rape

Women who report on surveys that they have been raped are more likely than their counterparts to report having engaged in consensual sexual intercourse (Kanin & Parcell, 1977; Koss, 1985; Koss & Dinero, 1989). Self-report data also indicate that rape victims engage in sexual intercourse at an earlier age, have a larger number of sexual intercourse partners, and possess more liberal premarital sex values compared to women who have not been raped (Koss, 1985). These data suggest that using sexual history to differentiate false from true allegations might lead to many false negatives because having a more extensive sexual history seems to be associated with an increased likelihood of becoming a rape victim. That is, many true rape complaints might be erroneously deemed false if having an extensive sexual history is used as a predictor, as there seems to be a greater prevalence of rape among sexually experienced women.

Sexually experienced women also might not report rape to the authorities as often as other women. Kanin, Jackson, and Levine (1987) found that women and men with a larger number of sexual partners gave significantly shorter prison sentences to a rapist depicted in a trial scenario than those with more restricted sexual histories. Furthermore, compared to individuals with fewer intercourse partners, those with extensive histories were less likely to consider the

hypothetical act rape if consensual intimacy preceded forced nonconsensual intercourse. These findings suggest that women who are raped and who have more extensive sexual histories may not report rape to the authorities at the same level as other women because they are less likely to identify their experience as rape.

Objectives of the Present Study

Our first objective was to test the idea that sexually experienced women are more likely than their counterparts to make false rape accusations. Particularly, if given a sufficient motive for making a false report, would sexually experienced women report rape at a higher level than other women? The second objective was to discover whether the reporting of nonconsensual forced intercourse (i.e., “real” rape) is predicted by participants’ sexual history. Based on prior research showing that individuals regard rape differently depending on their sexual history (Kanin, Jackson, & Levine, 1987), we predicted that women with more extensive histories would be less likely to report rape. Finally, we also wanted to examine the impact of consensual sexual activity (i.e., foreplay) on rape reporting. Previous research has found that increasing the amount of consensual sexual activity in a date rape scenario reduces the likelihood that both male and female observers regard subsequently occurring forced nonconsensual sexual intercourse as rape (Shotland & Goodstein, 1992). Generalizing this finding, we predicted that as the level of consensual foreplay preceding rape increased in the scenarios, the likelihood that women said that they would report rape to the authorities would decrease.

EXPERIMENT 1

Method

Participants

Female ($N = 217$) undergraduates received partial course credit for participating. Their mean age was 20.00 years ($SD = 1.84$.; range 17–30 years). Almost three-quarters of the sample reported having engaged in consensual sexual intercourse (73%), a proportion that is consistent with other reports (Centers for Disease Control, 1998; Lambert, Kahn, & Kevin, 2003). The average age of first intercourse was 16.78 years ($SD = 1.97$ years); with the average number of partners being 1.59 ($SD = 1.38$; mode = 1; range 1-5 partners).

A total of 9% of the participants reported experiencing rape (defined on the personal history questionnaire as nonconsensual forced sexual intercourse, vaginal or anal) and 6% reported sexual assault (nonconsensual forced sexual contact other than sexual intercourse) with acquaintances, dating partners, or strangers, and 9% reported sexual abuse by a family member. These rates are somewhat lower than those obtained for other samples of this age group (e.g., Abbey, Ross, McDuffie, & McAuslan, 1996; Koss et al., 1987; Testa, VanZile-Tamsen, Livingston, & Koss, 2004). The rates we obtained may be lower in part because we relied on participants to define their experiences with nonconsensual sexual contact as rape or sexual assault, and/or because of the direct manner in which we posed the questions (see Koss, 1985, for a discussion of methodological issues that can affect whether women report rape on surveys).

Materials and Procedure

Several issues are raised regarding the collection of reliable data given the nature of this research topic. Therefore, the following procedures, taken in part from other studies that have investigated rape (e.g., Amick & Calhoun, 1987; Koss, Dinero, Siebel, & Cox, 1988; Ward,

Chapman, Cohn, White, & Williams, 1991), were used to encourage honest responses and to protect the anonymity of respondents. Participants were told that the study concerned the dating and sexual behaviors of college students. Women received a study packet that contained four dating scenarios and a personal sexual history survey. No personal identifying information was recorded on any of the study materials and women were reassured verbally and in writing that their responses would remain anonymous and confidential. Women completed the packets in groups of at least 3 persons in a lecture hall to keep responses anonymous. No one withdrew from the study or chose not to return a completed packet.

Participants read four scenarios (in a predetermined random order), each depicting what began as a romantic date with a male actor. The scenario method was deemed appropriate for the purposes of the present investigation for obvious ethical reasons. Women were instructed to imagine themselves in each scenario and to respond to the situation as if it were really happening to them. Only the actions of the male were described to encourage the participant to imagine how she would actually behave in the given situation. In each scenario, intimate contact would eventually take place during the encounter.

To increase the participant's personal involvement in the scenarios, a somewhat unique procedure was used to present the scenarios, which we will refer to here as the *participant choice procedure*. The participant choice procedure enabled the participant to control the level of hypothetical consensual intimate contact taking place between her and the male in the encounter. To accomplish this, the scenario was presented in a line-by-line format (i.e., one sentence at a time), and the participant had to indicate after each line whether she wanted to remain in the situation being described or instead wanted the activity to stop and the date to end. The total number of lines ranged from 26 to 32 across the four scenarios.

The first few lines of each scenario described an attractive male behaving complimentary toward the participant during a date. Midway through the scenario (i.e., at about line 16 or 17 of the scenario), consensual sexual activity (i.e., foreplay) began to take place, and if the participant remained in the scenario, the sexual activity progressed. For those that remained in the scenario until the end, the last line of the encounter described consensual sexual intercourse taking place between the male actor and the participant. If women withdrew from the situation at an earlier point before consensual sexual intercourse occurred, they were directed to read a subscenario, which was on another page of the packet. Here, forced nonconsensual sexual intercourse, legally definable as rape, was described as taking place between the participant and the male actor. The participant read that although she had indicated verbally to the man that she wished to stop, he physically held her down and forcibly had sexual intercourse with her against her will. Women were instructed to complete the pages in the packet in the order received, to move on to the next section only when instructed to do so, and to not revisit previously answered questions.

The participant choice procedure had the advantage of allowing women to control the amount of sexual intimacy occurring in the scenario. Consequently, we avoided the problem of placing women in situations that involved higher (or lower) levels of consensual intimacy than they would otherwise encounter on a date such as the one described. Furthermore, this methodology allowed for simulating consent in a somewhat realistic manner. This procedure, however, opened the door to a possible confounding between consent level and participants' sexual history. This issue will be addressed later in the paper.

We varied between participants whether the dating partner in the scenario behaved negatively after sexual intercourse to motivate women to say that they would "report" their partner to the legal system for raping them. Half of the participants read scenarios that provided a possible

motive for revenge in every scenario, while the other half read scenarios that simply ended after sexual intercourse was described. For those in the revenge motive condition, the four scenario endings were as follows: The participant sees her date the next night at a party and he ignores her, instead spending the evening with an attractive friend of the participant; Her date worries that other people might discover them together, so he violently forces the participant to leave his apartment; The participant learns that her date was accused of rape two years before; The participant's date brags to mutual acquaintances the next day about being intimate with her, describing the participant as "another notch on his belt." These motivations were based in part on Kanin's (1994) analysis of complainant motives for making false reports of rape in actual cases.

Participants were asked two yes/no questions after reading each scenario. The first asked whether they thought the incident was rape. The second question asked whether they would indicate to a prosecutor that they were raped in the situation presented. Since we were interested in their opinion, no reference to the legal definition of rape was made in these questions.

Participants also responded to a personal history questionnaire, which asked whether they had engaged in consensual sexual intercourse, and if applicable, their age of first intercourse, number of sexual intercourse partners, types of sexual activities they had experienced, and whether they had ever engaged in consensual sexual intercourse on a "first date." Participants also provided general demographic information and indicated whether they had ever been raped or sexually assaulted, and if so, by whom. Half of the participants completed the personal history questionnaire before responding to the scenarios and the other half afterward.

Measures

As a measure of participants' actual sexual history, women were categorized into one of three levels based on their responses to the personal history questionnaire: low experience- never

engaged in consensual intercourse, moderate experience- engaged in consensual intercourse but not on a first date, and high experience- engaged in consensual intercourse on a first date.⁷ Of the total sample, 27% were categorized as having low experience ($n = 59$), 43% as having moderate experience ($n = 93$), and 30% as having high experience ($n = 65$). The correlations of this measure (excluding the low experience group) with total number of lifetime sexual intercourse partners and age of first intercourse were $r = .69$ and $r = -.45$ (p 's $< .01$), respectively. Thus, it appears that the sexual history measure we used captured participant sexual history fairly well.

We were interested in determining whether the level of consent given in the scenarios accounted for variability in the rape measures. That is, would the likelihood that women identified (or said that they would report to the authorities) the intercourse as “rape” decrease as the number activities to which they had consented increased? To investigate, we averaged across the rape scenarios the proportion of lines to which the participant consented before withdrawing from the encounter to create a measure of consent level.

A total of 29% ($n = 62$) of the sample indicated consent to the described sexual intercourse in at least one scenario (41 indicated consent in only one out of the four scenarios, 14 in two scenarios, 7 in three scenarios, and 0 in all four scenarios). As such, 71% never consented to sexual intercourse in any of the scenarios. We will use the terms *accurate rape perceptions* and *accurate rape reporting* to refer to participants' ratings of scenarios depicting nonconsensual sexual intercourse (i.e., she opted out of the scenario before it concluded, and therefore, did not “consent” to sexual intercourse). The accurate rape perception measure was derived by calculating for each woman the proportion of rape scenarios to which she accurately responded that the sexual intercourse that took place in the scenario was rape, and the accurate rape reporting measure was derived by calculating the proportion of rape scenarios to which she

accurately responded that she would report the male in the scenario for raping her. Additionally, in analyzing the consensual sexual intercourse scenarios, we will use the terms *false rape perceptions* and *false rape reporting* to refer to participants' responses to scenarios in which they had indicated "consent" to sexual intercourse. These measures were derived, respectively, by calculating the proportion of consensual sexual intercourse scenarios to which the participant indicated that she was raped, and the proportion of consensual sexual intercourse scenarios to which she indicated that she would hypothetically report to a prosecutor that she was raped.

Results

Preliminary Considerations

No significant differences were found between the first scenario and the subsequently presented scenarios on the consent level, rape perception, or rape reporting measures, indicating that the order in which participants evaluated the encounters did not influence responses. In addition, since these measures did not significantly vary depending on the basic plot of dating scenarios, responses were collapsed across the scenarios, and analyzed according to whether the participant "consented" or not to sexual intercourse.

Results for the rape scenarios are presented first, followed by results for the consensual sexual intercourse scenarios. As a measure of effect size, we report partial eta-squared (η_p^2). Follow-up tests were conducted using Tukey *a*, with $\alpha = .05$.

Accurate Rape Perceptions and Reporting

Table 1 presents the means for the accurate rape perception, accurate rape reporting, and consent level variables grouped by participants' actual sexual history. Accurate rape perception scores indicated significant differences among the low, moderate, and high sexual history groups, $F(2, 216) = 28.71, p < .01, \eta_p^2 = .21$. Participants' sexual history also had a significant effect on accurate rape reporting scores, $F(2, 216) = 82.54, p < .01, \eta_p^2 = .44$. Follow-up tests indicated that women in the high experience group were less likely to perceive the nonconsensual sexual intercourse depicted in the scenario as rape or say that they would report it as such to the authorities compared to women in either the moderate or low sexual history group; the low and moderate experience groups did not significantly differ in their responses.

Participants' sexual history also significantly affected consent level, $F(2, 216) = 22.57, p < .01, \eta_p^2 = .17$. Women in the high experience group remained in the scenarios significantly longer compared to those in either the low or moderate experience group; the low and the moderate groups did not reliably differ.

Insert Table 1 about here

Did the sexual history differences in women's reactions to the rape depictions derive from the length of time women remained in the encounters? To address this question, the accurate rape perception and accurate rape reporting measures were independently regressed against the consent level, revenge motive, and sexual history variables. With regard to rape perception scores, an overall main-effects model was significant, $F(3, 213) = 18.65, p < .01, R^2 = 0.21$. When the independent contribution of the variables in the model was examined, only consent level ($\beta = -0.17, t = -2.45, p < .05$) and sexual history were significant ($\beta = -0.35, t = -5.10, p <$

.05), while revenge motive was not ($\beta = -0.02, t = 0.26, p > .05$). This means that the rate at which women accurately indicated that the nonconsensual intercourse was rape was independently influenced by both participants' sexual history as well as by how far into the encounter women had progressed. Women were less likely to perceive the depiction as rape if they had more extensive sexual histories, or if they had progressed further into the encounter.

With regard to the accurate rape reporting scores, consent level, revenge motive, and sexual history produced a model with a good fit to the data, $F(3, 213) = 53.67, p < .001, R^2 = 0.43$, and all three variables made a significant contribution (consent level $\beta = -0.26, t = -4.48, p < .01$; revenge motive $\beta = -0.15, t = 2.83, p < .01$; and sexual history $\beta = -0.46, t = -7.88, p < .01$). This pattern of findings indicates that women were less likely to say they would report the forced sexual intercourse as rape if they had a more extensive sexual history, or if they had consented to greater levels of contact with the male in the scenario. In addition, women were more likely to say that they would report the rape to the authorities if given an additional motive for so doing.

Adding the interaction terms for sexual history and revenge motive did not significantly increase the predictive ability of the models, nor were the coefficients for the interaction terms significant, indicating that revenge motive did not differentially affect rape perception or rape reporting scores depending on women's sexual histories. Additionally, we examined the effect of consent level on rape perception and rape reporting within each sexual history group. For the moderate and high sexual experience groups, women were less likely to accurately perceive rape with increasing consent level. All but 3 women in the low experience group accurately perceived rape 100% of the time; therefore, the effect of consent level on accurate rape perceptions could not be determined for this group. With regard to accurate rape reporting, increasing consent level

was significantly associated with a decrease in the likelihood that women said that they would hypothetically report rape.⁸

False Rape Perceptions and Reporting

Participants' actual sexual history was significantly related to the number of scenarios to which they indicated hypothetical consent to sexual intercourse (low $M = .02$, Moderate $M = .24$, High $M = 1.01$; Kruskal-Wallis, $p < .05$). Across the four scenarios, hypothetical consent was given at least once by 2% of the low sexual history group, by 18% of the moderate group, and by 67% of the high group (of the high group, 43% consented once, 15% consented twice, 9% three times, and 0% 4 times). These data indicated that we were in a position to examine false rape reporting within the moderate and high sexual history groups, but not within the low sexual history group, because women in the low group rarely "consented" to sexual intercourse.

Women responded that the depicted intercourse was rape in 8% of the hypothetical consensual sexual intercourse encounters. Additionally, in 3% of the encounters, women indicated that they would report to the authorities the depicted sexual intercourse as rape. The low rate of "false reports" precluded us from making meaningful comparisons among the sexual history groups on the rape perception and rape report variables. We present the data by the number of women who answered "yes" on the given measure out of the total number of women who "consented" by sexual history group for descriptive purposes only: For false rape perception, 1/1 woman in the low, 4/16 women in the moderate, and 3/43 women in the high sexual history group indicated that the depicted sexual intercourse was rape (no woman indicated rape for more than one of the depicted consensual encounters). For false rape reporting, 0/1 in the low, 3/16 in the moderate, and 1/43 in the high sexual history group indicated that they

would report the depicted sexual intercourse to the authorities as rape (no woman indicated that she would hypothetically report rape for more than one of the depicted consensual encounters).

Summary

With regard to “true accusations” of rape, Experiment 1 found that women with more extensive sexual histories were less likely to accurately perceive and say that they would report to the authorities nonconsensual sexual intercourse as rape compared to women with less extensive sexual histories. Additionally, consenting to greater levels of foreplay with the male actor in the scenario decreased rape perception and rape reporting ratings for all women, regardless of sexual history.

With respect to “false accusations” of rape, the effect of sexual experience on rape perception and on rape reporting could not be determined. First, when women indicated consent to the sexual intercourse in the scenario, “false rape accusations” were infrequent. Second, since consenting to sexual activity was under the control of the participant, all but one of the sexually inexperienced women opted out of the scenarios before consensual sexual intercourse was described. Consequently, we were not able to examine whether the rate of false accusations differed depending on sexual history. Experiment 2 was conducted to address these issues.

In Experiment 2, the amount of consensual sexual contact depicted in the scenario was experimentally manipulated. Women were presented with rape scenarios in which they were to imagine having consented to a given level of intimate contact before their partner raped them. As before, we expected that increasing the level of consensual intimate contact would diminish the odds that forced nonconsensual intercourse would be perceived or reported as rape. Additionally, all of the women in Experiment 2 were presented with a scenario in which consensual sexual intercourse took place to determine whether false rape accusations varied depending on

participants' actual sexual history. Since all women, regardless of their sexual history, evaluated the consensual sexual intercourse scenarios, we were in a better position to test the legal hypothesis that false rape reporting would increase for those with more extensive sexual histories. Note, however, that experimentally controlling consent required women to evaluate sexual encounters that they may not have otherwise encountered. We will revisit this issue in the General Discussion.

Additionally, sexual history up until this point has been conceived of as a three-value attribute. In Experiment 2, a fourth sexual history group was added, composed of women from outside of the university, namely, women living in a drug and alcohol rehabilitation center, and women working as prostitutes and exotic dancers. The intention behind including this community group was to increase the generalizability of the findings to women outside the college student population. Since legal officials might more heavily scrutinize rape claims made by women from these types of backgrounds, including this group allowed for a more critical test of the hypothesis that sexually experienced women are more likely to make false rape accusations than inexperienced women. Moreover, based on the relationship between sexual history and rape reporting that we observed in Experiment 1, we predicted that the community group would be less likely than the college group to perceive and report forced nonconsensual sexual intercourse as rape.

EXPERIMENT 2

Method

Participants

College women ($n = 97$) participated in the experiment for course credit. None of the women withdrew from the study, though two questionnaires were discarded because they were

incomplete. Women from the community sample ($N = 36$) resided in Nevada, and were recruited from legal brothels or on the streets while they were working as prostitutes ($n = 12$), from an adult club while they were working as exotic dancers ($n = 12$), and from a women's residential alcohol and drug treatment center ($n = 12$). Occasionally, if they asked, they were given monetary compensation (\$2) for their participation. Overall, 56% of the community women agreed to participate (by subgroup, 61% of the women at the rehabilitation center, 74% of at the exotic dancing club, and 33% of those working as prostitutes agreed). Comparisons of the three community subgroups on the sexual history measures did not reveal any appreciable differences; therefore, responses were combined into one group for comparison with the college sample. None of the community women withdrew from the study, though 4 questionnaires were discarded because they were either incomplete ($n = 2$) or the woman appeared intoxicated ($n = 2$). The final sample included 95 college and 32 community women.

The mean age of the college sample was 21.06 years ($SD = 3.84$; 18–49 years). Of these college participants, 72% reported having engaged in consensual sexual intercourse. The mean age of first intercourse was 16.77 years ($SD = 1.87$), with the mean number of partners being 5.26 ($SD = 6.27$; mode = 1; range 1-37 partners). Using the sexual history measure defined in Experiment 1, 28% were categorized as having low experience ($n = 27$), 44% as moderate experience ($n = 42$), and 27% as high experience ($n = 26$). For the community sample, the mean age was 32.27 years ($SD = 10.89$; range 19-59 years, and median = 29.5 years). All of the women in the community sample reported having engaged in consensual sexual intercourse (age of first intercourse $M = 15.66$, $SD = 2.89$), 87.5% reported having sexual intercourse on a first date, and the mean number of partners outside of their paid employment (after excluding from

this analysis one community woman who reported having over 1000 sexual partners) was 18.04 ($SD = 17.35$; median = 10; range 2-50 partners).

Concerning self-reported experiences of nonconsensual intimate contact, 24% of the college participants reported they had been sexually assaulted (defined as nonconsensual forced sexual contact aside from sexual intercourse) and 15% reported they had been raped (defined as nonconsensual forced sexual intercourse). The college participants' self-report data suggest that the odds of rape for a woman who has engaged in sexual intercourse on a first date are 7.5 times those for a woman who has never engaged in sexual intercourse, and 1.5 times those for a woman who has engaged in sexual intercourse but never on a first date. For the community sample, 41% said that they had been sexually assaulted and 55% indicated that they had been raped. These data suggest that the odds of rape for a woman from the community sample are 5.9 times those for a woman from the college sample who has engaged in sexual intercourse on a first date.

Materials and Procedure

Testing and data collection procedures were similar to those used in Experiment 1. The format of the dating scenarios, however, slightly differed. Participants evaluated four scenarios, which described a romantic date that led to sexual intercourse between the participant and a male actor. The sexual intercourse was described as consensual in one of the scenarios and as rape in the other three scenarios for each participant.

Consent (4 levels) was controlled within subjects. The levels of intimate consensual contact that occurred in the scenarios were as follows: *consensual kissing* described kissing alone, *consensual petting* described kissing and petting above the waist, *consensual oral sex* described kissing, petting above the waist, and oral intercourse given to the participant, and *consensual*

sexual intercourse described all lower levels of consent as well as consensual sexual intercourse occurring between the participant and the male actor. Following the description of consensual sexual contact (kissing, petting, oral sex) in the rape scenarios, a legally definable act of rape was described.

For half of the participants, each of the four scenarios ended after sexual intercourse was described. For the other half, the scenarios continued after sexual intercourse to provide the participant with a revenge motive. Four revenge motives were employed: The dating partner knowingly transmits herpes to the participant, behaving callously toward her when she finds out. After making a commitment to be in an exclusive relationship with her, the dating partner suddenly refuses to talk to her anymore and brags to his friends about his sexual exploits with her. The dating partner goes into a jealous rage and physically assaults her following intercourse. The dating partner secretly photographs the sexual encounter and sells the photos to an Internet pornography company.

Each scenario depicted a unique dating partner to maintain participant interest across the four scenarios that she read. In developing the scenario stimuli, each of the four dating partners was crossed with each level of consent to create 16 possible scenarios. Participants were randomly assigned to evaluate four of the possible 16 scenarios, with the restriction that each scenario featured a unique dating partner and a unique level of consent. Thus, each participant evaluated three rape scenarios (one for each consent level) and one consensual sexual intercourse scenario, and each scenario involved a different dating partner. The order in which each participant evaluated her four scenarios was randomly predetermined.

Following each scenario, women responded to questions using 7-point Likert-type scales, anchored at 0, “definitely no” and 6, “definitely yes.” With regard to reporting rape to the legal

system, three questions were asked: Would you report the sexual intercourse to the police as rape? Would you take an evidentiary physical exam to prove you were raped? and Would you testify in court you were raped? Cronbach's alpha indicated high internal consistency on these items ($\alpha=.98$). Therefore, responses to these questions were averaged to form a composite measure of rape reporting. Finally, women were also asked whether they perceived the intercourse that took place in the scenario as rape, the answer to which served as a measure of rape perception. Women also indicated whether they thought the police would believe that they were raped, and whether they thought the guy in the scenario would be found guilty of raping them.

Results

Preliminary Considerations

The order in which participants evaluated the scenarios did not influence any of the dependent variables of interest. Additionally, responses were not significantly affected by the particular revenge motive employed. Therefore, the four revenge motive conditions were combined into one group for comparison with the scenarios in which no motive was provided.

As in Experiment 1, responses to the rape scenarios and consensual sexual intercourse scenarios were analyzed separately. Follow-up tests were conducted using Tukey *a*, with $\alpha = .05$.

Accurate Rape Reporting

Accurate rape reporting (see Figure 1) was analyzed with a three-factor mixed ANOVA, with revenge motive (2 levels) and sexual history (4 levels) as the between groups factors, and consent (3 levels) as the within subjects factor. Greenhouse-Geisser corrections were applied to the degrees of freedom where appropriate.

Accurate rape reporting was significantly higher if the male actor behaved negatively following sexual intercourse compared to when he did not, $F(1, 118) = 14.13, p < .001, \eta_p^2 = .10$. Additionally, participants' actual sexual history was significantly related to rape report scores, $F(1, 118) = 11.77, p < .001, \eta_p^2 = .23$. The main effects obtained for sexual history and revenge motive are qualified by their significant interaction, $F(3, 118) = 9.86, p < .001, \eta_p^2 = .20$. Follow-up tests indicated that the interaction occurred because accurate rape reporting for community women was significantly lower compared to college women when no revenge motive was employed, whereas accurate rape reporting was comparable between the two samples when a revenge motive was provided. College women did not differ in their responses based on sexual history.

Contrary to the results of Experiment 1, consent level did not have a significant effect on accurate rape reporting (consensual kissing $M = 4.74$, consensual petting $M = 4.65$, consensual oral sex $M = 4.65$), nor did it interact with any of the other variables (all p 's $> .05$).

False Rape Reporting

The false rape reporting data were analyzed with an ANOVA, with revenge motive (2 levels) and sexual history (4 levels) as the between groups factors.

False rape reporting in response to the consensual sexual intercourse scenarios was significantly affected by revenge motive condition, $F(1, 119) = 3.59, p = .06, \eta_p^2 = .03$, and by sexual history, $F(3, 119) = 6.84, p < .01, \eta_p^2 = .15$. Sexual history and revenge motive did not significantly interact ($p = .16$). Follow-up tests indicated that women in the low sexual history group were significantly more likely to indicate in the revenge motive condition that they would report the hypothetical rape compared to each of the other sexual history groups, whereas if no revenge motive was given, rape report scores did not vary by sexual history.

Insert Figure 1 about here

Sexual History and Rape Perceptions

Next we asked whether the obtained sexual history differences in rape reporting were related to differences in rape perceptions. Community women were less likely than college women to accurately perceive rape in the rape scenarios, ($M = 4.75$ and $M = 5.65$, respectively), $F(1,125) = 13.78, p < .001, \eta_p^2 = .10$. Comparisons within the college sample indicated that accurate rape perception scores were not significantly affected by sexual history. With regard to the false rape perception scores, sexual history significantly influenced responses to the consensual sexual intercourse scenarios, $F(3,123) = 5.55, p < .001, \eta_p^2 = .12$. Follow-up tests found that women in the low sexual history group were more likely than each of the other history groups to perceive the consensual sexual intercourse that took place as rape (college women sexual history groups: low $M = 1.56$, moderate $M = .67$, high $M = .50$, and community women $M = .28$); the other sexual history groups did not significantly differ from one another.

We also examined whether sexual history was related to women's perceptions of case outcomes. In response to the scenarios depicting rape, community women were less likely than college women to indicate that the police would believe them if they made a report ($M = 3.25$ versus $M = 4.22$, respectively), $F(1, 125) = 8.98, p < .001, \eta_p^2 = .07$. Community women also gave significantly lower ratings than college women regarding whether they thought the male in the rape scenarios would be found guilty of raping them ($M = 2.86$ versus $M = 4.15$, respectively), $F(1, 124) = 15.05, p < .001, \eta_p^2 = .11$. In response to the consensual sexual intercourse scenarios, sexual history was not related to whether women thought that the police would believe them or whether they thought that the male would be found guilty.

General Discussion

Taken together, the results of the two studies suggest that women with extensive sexual histories are less likely to view nonconsensual forced sexual intercourse as rape or report it as such to the legal system, a finding that is in keeping with victim surveys (Koss, 1985). In response to the scenarios presented, women with greater sexual experience reported rape at a level similar to other women only when provided with an additional motive for so doing.

With respect to false rape accusations, women with extensive sexual histories were not more likely than other women to say that they would report consensual sexual intercourse to the authorities as rape. These results are inconsistent with the view that sexually "promiscuous" women are more likely to make false allegations. In the current study, several different motivations associated with false reports in real world cases (Kanin, 1994; McDowell & Hibler, 1987) were provided to encourage false reporting, such as: becoming pregnant and then abandoned, contracting herpes from a partner who maliciously concealed having the disease; enduring the heartache of a broken relationship promise; having one's reputation disgraced; and suffering physical assault at the hand of one's lover. Under these conditions, sexually inexperienced women (i.e., virgins) were more likely than others to say that they would report the male in the scenario for rape. However, we hasten to add that sexually inexperienced women were asked to imagine themselves engaging in levels of consensual sexual contact that they might not have otherwise encountered. Indeed, they were more likely to perceive the consensual sexual intercourse as rape compared to other women. Thus, perhaps from their perspective, they

were in effect raped, even though the sexual intercourse in the scenario was described as consensual.

What is more, we did find that participant self-reported sexual history was related to the extent to which they said that they would consent to the sexual activities described in the scenario. Women with extensive histories progressed further in the sexual encounter than those with less extensive histories, a result that empirically validates our sexual history categorization scheme. The procedures we used to operationally define consent in Experiment 1 compared to Experiment 2, however, differentially affected results. In Experiment 1, in which the participant choice procedure allowed women to control consent level, greater levels of consensual foreplay preceding rape were associated with lower levels of rape reporting. This relationship held even after controlling for participants' sexual history in the analysis. In Experiment 2, consent level was systematically controlled, and women simply imagined themselves in these encounters. Under these conditions, in which participation was relatively more passive compared to Experiment 1, consent level did not impact rape reporting. These discrepant findings suggest that the behavioral act of consenting, which was simulated in Experiment 1, is an important determinant of whether women view or report nonconsensual sexual intercourse as rape. Additionally, the sexual history backgrounds of college women affected rape report scores only in Experiment 1. We suggest that college women in Experiment 2 may not have fully placed themselves in the situations presented because they effectively had no control over the sexual contact that occurred. Hence, sexually experienced college women were more apt to report rape in Experiment 2 compared to Experiment 1.

Experiment 2 also further elaborated on the findings of Experiment 1 by demonstrating that community women (i.e., women working as prostitutes, topless dancers, or living in a

rehabilitation center), a sample that had extensive sexual backgrounds, were less likely to perceive and report nonconsensual forced sexual intercourse as rape compared to college women. Community women also appeared to think that others would not view them as credible victims. However, since the community women probably differed from the college sample in a myriad of other ways besides in their sexual histories (e.g., criminal record, abuse in childhood, economic status), the precise causal psychological mechanism for their behavior in response to these experimental scenarios cannot possibly be specified.

Our findings should be viewed with some caution, however. What participants say that they would do in response to a hypothetical situation might of course differ from how they would really act were the situation to actually occur. Additionally, we might not have created situations or report motives that were strong enough to elicit false reporting. Moreover, some important factor that can lead to false accusations might not have been considered. For instance, if allowed to ruminate over the situation or discuss it with others, would some of the women in our study have reached different conclusions and falsely reported? Having said this, we point out that one could argue that this study actually captured the upper limit of false rape reporting. In the real world, reporting rape entails more than just making a rating on a scale. A woman has to be willing to relate explicit details of a sexual encounter to multiple strangers. She is not anonymous and her responses are not confidential. She has to be prepared to undergo a gynecological (rape kit) examination, and in some jurisdictions, take a polygraph examination. All things considered, the women in our sample arguably might have been even less likely to report rape, whether false or true, in the real world.

Returning to our central question, we have found no empirical justification for the common law view that sexually experienced women are likely to make false rape accusations. In the

current study, the probability that women “falsely reported” rape to the legal system was independent of consenting to sexual activity in the scenarios, or with having a more extensive sexual history. On the other hand, the probability that women “truthfully reported” rape was related to participant sexual behavior, such that women who consented to sexual contact in the scenarios and/or who had more extensive sexual histories were less apt to say that they would report rape. If these findings generalize to actual cases, then legal agents might often fail to prosecute “real rape” if sexual consent level (with the male during the instant case or with others) is used as a predictor to gauge whether a rape complainant consented to sexual intercourse on the occasion in question.

In a sense, from a perpetrator’s point of view, “safe” victims are women who have extensive sexual histories or women with whom he has had consensual sexual relations. Such women might be less willing to notify the police, and if they do report, legal agents might not believe their story because the facts of the case will seem to indicate that the intercourse was consensual, not rape. These final points were made well by someone else, so the last word is left to him: “[T]he perfect crime does not consist of killing the victim or the witnesses...but rather in obtaining the silence of the witnesses, the deafness of the judges, and the inconsistency (insanity) of the testimony” (Lyotard, 1988, p. 8).

References

- Abbey, A., Ross, L. T., McDuffie, D., & McAuslan, P. (1996). Alcohol and dating risk factors for sexual assault among college women. *Psychology of Women Quarterly*, 20(1), 147-169.
- Anderson, M. (2002). From chastity requirement to sexuality license: Sexual consent and a new rape shield law. *George Washington Law Review*, 70, 51-165.
- Amick, A. E., & Calhoun, K. S. (1987). Resistance to sexual aggression: Personality, attitudinal, and situational factors. *Archives of Sexual Behavior*, 16(2), 153-163.
- Berger, V. (1977). Man's trial, woman's tribulation: Rape cases in the courtroom. *Columbia Law Review*, 77, 1-103.
- Cal. Evid. Code § 782, 1103 (2005).
- Calhoun, L. G., Selby, J. W., & Warring, L. J. (1976). Social perception of the victim's causal role in rape: An exploratory examination of four factors. *Human Relations*, 29(6), 517-526.
- Cann, A., Calhoun, L. G., & Selby, J. W. (1979). Attributing responsibility to the victim of rape: Influence of information regarding past sexual experience. *Human Relations*, 32(1), 57-67.
- Centers for Disease Control (1998). Trends in sexual risk behaviors among high school students—United States 1991-1997. *Morbidity and Mortality Weekly Report*, 47(36), 749-752.
- Del. Code Ann. tit. 11, § 3508, 3509 (2005).
- Estrich, S. (1987). *Real Rape*. Cambridge: Harvard University Press.
- Fed. R. Evid. 412 (2003).
- Galvin, H. R. (1986). Shielding rape victims in the state and federal courts: A proposal for the 2nd decade. *Minnesota Law Review*, 70, 763-916.
- Herman, L. (1976-77). What's wrong with rape reform laws? *The Civil Liberties Law Review*,

60-73.

- Hursch, C. J., & Selkin, J. (1974). *Rape prevention research project*. Denver: Division of Psychiatric Hospitals, Department of Health and Service.
- Johnson, J. D., Jackson, L. A., Gatto, L., & Nowak, A. (1995). Differential male and female responses to inadmissible sexual history information regarding a rape victim. *Basic and Applied Social Psychology, 16*(4), 503-513.
- Kanin, E. J. (1994). False rape allegations. *Archives of Sexual Behavior, 1*, 81-92.
- Kanin, E. J., Jackson, E. C., & Levine, E. M. (1987). Personal sexual history and punitive judgments for rape. *Psychological Reports, 61*, 439-442.
- Kanin, E. J., & Parcell, S. R. (1977). Sexual aggression: A second look at the offended female. *Archives of Sexual Behavior, 6*(1), 67-76.
- Koss, M.P. (1985). The hidden rape victim: Personality, attitudinal and situational characteristics. *Psychology of Women Quarterly, 9*, 193-212.
- Koss, M. P., Gidycz, C. A., & Wisniewski, N. (1987). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology, 55*(2), 162-170.
- Koss, M. P., & Dinero, T. E. (1989). Discriminant analysis of risk factors for sexual victimization among a national sample of college women. *Journal of Consulting and Clinical Psychology, 57*(2), 242-250.
- Koss, M. P., Dinero, T. E., Seibel, C. A., & Cox, S. (1988). Stranger and acquaintance rape compared: Are there differences in the victim's experience? *Psychology of Women Quarterly, 12*, 1-24.
- L'Armand, K. P., & Pepitone, A. (1982). Judgments of rape: A study of victim-rapist relationship

- and sexual history. *Personality and Social Psychology*, 8(1), 134-139.
- LaFree, G. (1989). *Rape and Criminal Justice The social construction of sexual assault*. Belmont: Wadsworth Publishing Company.
- LaFree, G. D., Reskin, B. F., & Visher, C. A. (1985). Jurors' responses to victims' behavior and legal issues in sexual assault trials. *Social Problems*, 34(4), 389-407.
- Lambert, T. A., Kahn, A. S., & Apple, K. J. (2003). Pluralistic ignorance and hooking up. *Journal of Sex Research*, 40(2), 129-133.
- Letwin, L. (1980). "Unchaste Character," Ideology, and the California Rape Evidence Laws. *Southern California Law Review*, 54, 35-52.
- Lowery, D. (1992). The sixth amendment, the preclusionary sanction, and rape shield laws: Michigan vs. Lucas, 111 S. Ct. 1743 (1991). *Cincinnati Law Review*, 61, 297-329.
- Lyotard, J. F. (1988). *The differend, Phrases in dispute* (Vol. 46). Minneapolis: University of Minnesota.
- MacDonald, J. M. (1971). *Rape offenders and their victims*. Springfield: Thomas Publisher.
- McDowell, C. P., & Hibler, N. S. (1987). False allegations. In R. R. Hazelwood, A. W. Burgess (Ed.), *Practical aspects of rape investigation*. New York: Elsevier.
- Mil. R. Evid. 412 (2003).
- Miller, N. (1997). *Review of state sexual assault laws, 1997*. Alexandria, V.A.: Institute of Law and Justice.
- Monson, C. M., Langhinrichsen-Rohling, J., & Binderup, T. (2000). Does "no" really mean "no" after you say "yes"? Attributions about date and marital rape. *Journal of Interpersonal Violence*, 15(11), 1156-1174.
- Murthy, S. (1991) Rejecting unreasonable sexual expectations: Limits on using a rape

victim's sexual history to show the defendant's mistaken belief in consent. *California Law Review*, 541-548.

Peters, J. J., Meyer, L. C., & Carroll, N. E. (1976). *The Philadelphia assault victim study (ROMH 21304)*. Washington, D.C.: National Council on Mental Health.

People v. Chandler, No. A072329, 1997, Cal. App. LEXIS 584.

People v. Franklin, No. H010904, 1994, Cal. App. LEXIS 509.

Price, J. M. (1996). Constitutional law--Sex, lies, and rape shield statutes: The constitutionality of interpreting rape shield statutes to exclude evidence relating to the victim's motive to fabricate. *Western New England Law Review*, 18, 541-576.

Sarche, J. (2004, July 23). Judge will allow accuser's sex life as evidence in Kobe Bryant case. *The Associated Press*.

Schiff, A. F. (1969). Statistical features of rape. *Journal of Forensic Sciences*, 14(1), 102-111.

Schuller, R., & Klippenstine, M. A. (2004). The impact of complainant sexual history evidence on jurors' decisions: Considerations from a psychological perspective. *Psychology, Public Policy, and Law*, 10(3), 321-342.

Shotland, R. L., & Goodstein, L. (1983). Just because she doesn't want to doesn't mean it's rape: An experimentally based causal model of the perceptions of rape in dating situations. *Social Psychology Quarterly*, 46(3), 220-232.

Stanko, E. (1982). *Judge, lawyer, victim, thief: Women, gender roles, and criminal justice*. IL: Northeastern University Press.

Testa, M., VanZile-Tamsen, C., Livingston, J. A., & Koss, M. P. (2004). Assessing women's experiences of sexual aggression using the sexual experiences survey: Evidence for validity and implications for research. *Psychology of Women Quarterly*, 28(3), 256-265.

U. S. Department of Justice (1997). *Uniform Crime Reports*. Washington, D.C.: U.S. Department of Justice.

Wallach, S. J. (1997). Rape shield laws: Protecting the victim at the expense of the defendant's constitutional rights. *New York School of Law Journal of Human Rights*, 13, 485-507

Ward, S. K., Chapman, K., Cohn, E., White, S., & Williams, K. (1991). Acquaintance rape and the college social scene. *Family Relations*, 40, 65-71.

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Footnotes

¹This paper is limited in scope to male perpetrated sexual assault on females.

²Only California (Cal. Evid. Code § 782, 1103) and Delaware (Del. Code Ann. tit. 11, § 3508, 3509) expressly allow sexual history evidence to attack the complainant's credibility.

³For instance, the trial judge ruled in the Kobe Bryant case that the complainant's sexual behavior 72 hours preceding her physical examination could be admitted into testimony because it was relevant in establishing source of semen and the cause of her injuries. Other aspects of her sexual history were ruled inadmissible (Sarche, 2004).

⁴A related but distinct defense argument is that the accused had knowledge of the complainant's extensive sexual history beforehand and consequently mistakenly believed that the complainant consented. Sexual history evidence might be admitted to make this point (Murthy, 1991).

⁵Letwin (1980) essentially has argued that a more appropriate line of inquiry would adhere to the following logic: Given that a woman has consented before and not falsely accused men of rape, is it likely that she would consent again and then falsely charge a man with rape? He further notes that this line of reasoning actually benefits the prosecution more than the defense, because it shows on the part of the complainant a pattern of consenting and not making false charges.

⁶The last year that the UCR reported the unfounded rate for crimes was in 1997.

⁷Results were highly similar regardless of how we conceptualized sexual history. Therefore, for simplicity and brevity we present results based on only one measure, which we believe captures sexual experience as well as any other.

⁸For the relationship between consent level and accurate rape perception, b was equal to .001, -0.25, and -0.33, for the low, moderate, and high sexual history groups, respectively. The regression coefficients for the moderate and high history groups did not significantly differ ($p = .58$). The low sexual history group was not compared to the other groups, as all but 3 women in the low group indicated 100% of the time that they perceived the sexual intercourse as rape. With regard to the relationship between consent level and accurate rape reporting, b was equal to -0.36, -0.34, and -0.52, for the low, moderate, and high sexual history groups, respectively. These regression coefficients when compared pair-wise did not significantly differ (all p 's > .15).

Table 1

Mean (*SE*) accurate rape perception, accurate rape reporting, and consent level scores in response to the rape scenarios grouped by participant sexual history in Experiment 1.

Measures	Participant Sexual History		
	<i>Low</i> (<i>n</i> = 59)	<i>Moderate</i> (<i>n</i> = 93)	<i>High</i> (<i>n</i> = 65)
Rape Perception	0.99 (.01)	0.92 (.02)	0.65 (.05)
Rape Reporting	0.82 (.03)	0.74 (.03)	0.19 (.04)
Consent Level	0.51 (.03)	0.54 (.02)	0.69 (.02)

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Figure Caption

Figure 1. Mean rape reporting scores by, revenge motive condition, consent level, and participant sexual history in Experiment 2. In the scenarios, the kissing, petting, and oral sex consent levels preceded a depiction of rape; hence, reporting in these scenarios represent “accurate reporting.” The intercourse scenarios portrayed only consensual sexual contact, including sexual intercourse; hence, reporting in these scenarios represent “false reporting.”

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Figure 1

