

Yale Rape Verdict Shows How ‘Yes Means Yes’ Can Be Murkier in Court

By VIVIAN WANG

When a jury in the trial of a Yale college student on rape charges returned a verdict of not guilty on Wednesday, after barely three hours of deliberations, the message seemed clear: Evidence that might warrant punishment from a campus panel was insufficient for a court of law.

At the heart of the trial was the question of whether the complainant could have agreed to have sex with the defendant, Saifullah Khan, 25, on Halloween night in 2015, when the two found themselves in her dorm room after a night filled with alcohol, text messages and conflicting accounts of flirtatious behavior. The complainant was not named in the arrest warrant application.

Had the case gone before Yale’s own internal panel, the outcome might have been different. The panel, the University-Wide Committee on Sexual Misconduct, uses a “preponderance of the evidence” standard in determining responsibility, and its members are trained in a notion of consent where



Saifullah Khan, who was accused of raping a fellow Yale student on Halloween night in 2015, was declared not guilty on Wednesday after barely three hours of deliberations.

only “yes means yes.”

But the jurors seemed to have come to the case with a different understanding of what it means to show consent, highlighting the divide between the standards of sexual behavior espoused in

freshman orientation programs and campus brochures, and those that operate in courts of law.

One, speaking anonymously after the verdict out of hesitancy to speak for other jurors, said the panel members asked themselves whether

there was “enough evidence to show that there could not have been consent. And we couldn’t get there.”

James Galullo, another juror, said he did not understand the outrage that the verdict had inspired on campus, among students who wrote angry opinion pieces for the campus newspaper or took to social media to denounce the outcome.

“I just think it’s lack of experience in the world,” Mr. Galullo, 61, said. “The jurors were all basically middle-aged. They were able to see their way through all the noise.”

Alexandra Brodsky, a lawyer at the National Women’s Law Center who graduated from Yale College and Yale Law School, said, “Schools have adopted consent as an educational tool, but that sometimes means we end up using words that mean different things in different contexts.”

“There are many forms of violence that would be condemned on campus, where a prosecutor would have trouble getting a jury to convict,” she added.

But even college students disagree on the language of consent. A 2015 poll by the Kaiser Family Foundation and The Washington Post found that 47 percent of current and recent college students said that someone undressing themselves signaled agreement to further sexual activity; 49 percent said it did not.

Defense lawyers did not necessarily paint a flattering picture of their

client, who acknowledged having sex with the woman, despite the fact that she had been drinking to the point of vomiting several times. He also said that he had called his longtime girlfriend, with whom he had an open relationship, from the complainant’s bedroom.

But Mr. Khan’s lawyers pressed the woman on the witness stand about messages she had sent inviting Mr. Khan to dinner, or writing “lol” — short for “laugh out loud” — the morning after the alleged assault, when she woke up with bruising on her legs. Norman Pattis, one of the defense lawyers, asked if the messages indicated her interest in Mr. Khan. She replied that she spoke to everyone in that manner.

Mr. Pattis also asked about a screenshot that she had sent to Mr. Khan of a Shakespeare sonnet that seemed to imply a romantic interest. She replied that she had been joking; the screenshot was from a popular campus Facebook group, where jokes are often posted.

Dan Erwin, who handled jury selection for the defense, said that they had favored “older jurors, 30 to middle-age” because “there was a seriousness about them insofar as none of them accepted, condoned or denied the existence of misconduct, harassment or assault, but they all seriously engaged with the need for due process.”

The juror who spoke anonymously said that the panel had not focused on the banter or on Mr. Pattis’s suggestion that the woman’s Halloween costume had been

too sexy. Instead, the jurors focused on evidence like security camera footage that showed the complainant and Mr. Khan walking back to her dorm room. The complainant had testified that the footage showed her so drunk that she was unable to support herself, her leg dragging behind her.

“We looked at and we looked at and we looked at that video of them walking,” the juror said. “We could not see her leg dragging. We could not see her eyes shut. We could not see what she said.”

Mr. Galullo said the rigorous standard of proof required, coupled with the length of Mr. Khan’s possible prison sentence, weighed heavily upon him.

“We wanted to really be sure that he was guilty,” he said. “These kids went through a lot. It was really very, very sad. You had tears in your eyes — for both of them.”

Mr. Khan may still face a hearing at Yale. He was suspended by the university shortly before he was arrested and charged, and his lawyers said that Yale’s disciplinary hearing had been delayed pending the criminal trial. That panel would only have to determine that it was “more likely than not” that he was in the wrong to find him responsible.

Mr. Khan’s lawyers are seeking to have him reinstated. A university spokesman declined to confirm or deny the existence of an internal complaint.

Several experts agreed that the distance between campus and criminal understandings of permissible sexual conduct may continue to widen, especially as conversations about sex and power continue to evolve.

While juries must interpret legal definitions of rape, students and administrators have increasingly sought to define “ethical sex,” said Vanessa Grigoriadis, author of a book on campus consent policies and a contributing editor at The New York Times Magazine. Unlike criminal courts, Ms. Grigoriadis said, campus communities are quicker to denounce sexual encounters that are “immoral but not criminal.”

Jaclyn Friedman, a consent educator and author, said that in the end, “Consent is not a legalistic construction. It gets translated into law, and should be reflected in our laws, but it is actually a moral value.” ■