



Attitudes and Responses to Rape in Light of the Low Conviction Rate

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Abstract:

The law relating to rape is currently the subject of much debate following the Home Office figures which state that the UK conviction rate is under 6%, creating pressure on the Government to implement change. It is well-documented that pre-conceived attitudes about the nature of rape can be a huge barrier to prosecuting rape effectively. Each year the number of women reporting rape increases significantly but the conviction rate remains the same. This article examines the current role and practices of the police and CPS in prosecuting rape cases and considers the impact that rape myths and pre-conceived attitudes held by the public and potential juror members can exert on the trial process.

Keywords: Rape, rape myths, conviction rates, prosecuting rape

Introduction

Concern has been voiced in recent years about the fall in the conviction rate for rape in the United Kingdom, which decreased significantly from 24% in 1985 to just 6% in 2008, despite the increasing amount of reforms and practices aimed at improving the Criminal Justice System's response to rape. The consultation paper, *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*,¹ established a number of reasons why the conviction rate is so low, the first concerning evidential difficulties and the burden of proof. The report concludes that, in the majority of cases rape is committed by someone known to the victim, where more often than not there are no bruises and a lack of forensic evidence. It is often cited that rape is one of the hardest crimes to prove being one person's word against another with generally no witness involvement. Contrary to

¹ Home Office, *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*, (2006)

public expectation, 'acquaintance rapes are by far the majority of cases to come before the courts, when there are no witnesses, forensic or medical evidence, and so proving beyond reasonable doubt is almost insurmountable.'² That said, the most widely publicised factor is the public perception on sexual violence. In 2005 Amnesty International conducted a survey of 1,000 members of the public, where it was found that 26% 'thought a woman was totally or partially responsible for being raped if she was wearing revealing clothes.'³

In relation to other crimes 'where the status of victim usually confers a sense of deserving sympathy and support, declaring that one has been raped frequently invites the wrong kind of judgment.'⁴ Many victims withdraw from investigation because of the fear of the trial or of not being believed. Another common rape myth is that a victim will have physical injuries following the rape because one cannot be raped against their will.⁵ However, Bonney⁶ found that in many cases, rape is accomplished through verbal and psychological coercion rather than physical force. This article examines the proposition that such myths influence any willingness to convict and that despite legal reforms, professional and public attitudes still impact significantly on rape case outcomes.

1 The Police: Have Things Really Changed?

The police in Britain have come a long way since the controversial Thames Valley Police documentary was aired in 1982, which showed a victim of rape being interrogated. It was thought that the 'public outrage sparked by this programme prompted positive changes in police practice.'⁷ Yet, a survey conducted by Woman Against Rape (WAR) in 1985⁸ found that 79% of women did not report their experience to the police because they felt the police would be unsympathetic or unhelpful. The experience of reporting rape throughout the 1980s and 1990s was described as being, 'so arduous, that for many

² Hanley, K., 'Law of Rape: Lack of conviction?' (2006) *Law Society Gazette*, p.2

³ Temkin, J. and Krahe, B., *Sexual Assault and the Justice Gap: A Question of Attitude*, (2008, Hart Publishing) p.33

⁴ Kelly, L. et.al., *A Gap or a Chasm? Attrition in Reported Rape* (2005, Home Office) p.1

⁵ Doherty, K., and Anderson, I., 'Perpetuating Rape-Supportive Culture: Talking About Rape,' (1998), *The Psychologist* 583–587.

⁶ Bonney, R., *Bureau of Crime Statistics and Research Crimes: Sexual Assault Amendment Act*, (1985, Sydney: Attorney General's Department).

⁷ Lees, S., and Gregory, J., *In Search of Gender Justice, Ruling passions: Sexual Violence, Reputation and the Law*, (1997, Open University).

⁸ Hall, R., *Ask Any Woman: A London Inquiry into Rape and Sexual Assault* (1985, Falling Wall

women it replicated the violation felt in the rape itself.⁹ Although seemingly positive reforms were introduced in the 1980s little research into the effectiveness of those reforms was undertaken until Jennifer Temkin's study in 1997 of rape victims in Sussex.¹⁰ Temkin concluded that 'old police attitudes and practices, widely assumed to have vanished, are still in evidence and continue to cause victims pain and suffering.'¹¹ The study further suggested that more research was crucial to discover whether the treatment by the police in other areas of the UK was 'as benevolent as it is commonly supposed.' The general aim of all police officers involved in rape cases is to investigate and assist the Crown Prosecution Service (CPS), ensuring all victims receive the same highest standard of care and support. In 2005 the Association of Chief Police Officers (ACPO) published Guidance on Investigating Serious Sexual Offences providing the police service with 'clear information and standards for the investigation of serious sexual offences, from the initial response through each stage of the investigation to its conclusion.' A model protocol designed to improve the investigation and prosecution of rape cases throughout England and Wales, was signed on the 7th March 2008 by the CPS and ACPO. Mike Kennedy, Chief Operating Officer of the CPS confirmed,

rape is one of the most serious and damaging offences. It is essential that the police and CPS co-ordinate our efforts and co-operate with each other to investigate thoroughly and prosecute effectively those responsible for this dreadful crime.¹²

The protocol deals with the specialized training of officers, the use of Early Evidence Kits and the provision of information and support for victims through referral to either a Sexual Assault Referral Centre (SARC) or an Independent Sexual Violence Advisor (ISVA). More recently, Home Office Minister Vernon Coaker announced on the 15th April 2009, new measures to improve the investigation and prosecution of rape and to provide support to victims. The measures focused on more training and ensuring that all victims are seen by a specially trained officer within an hour of reporting.¹³ Sue Lees believes

Press: Bristol).

⁹ Jordon, J., 'Worlds Apart? Women, Rape and the Police Reporting Process', (2001), 41, *The British Journal of Criminology* 679-706 at 679

¹⁰ Temkin, J., 'Plus Ca Change: Reporting Rape in the 1990s,' (1997) *The British Journal of Criminology*

¹¹ Ibid.

¹² Home Office, *CPS and ACPO sign protocol on handling of rape cases*, 7 March 2008 http://www.cps.gov.uk/news/pressreleases/115_08.html

¹³ Home Office Press Release, *New measures to support victims of sexual assault*, 15 April 2009 <http://press.homeoffice.gov.uk/press-releases/New-measures-victims-sex-assault>

'the attitudes of some police officers to rape were still highly sceptical,' but acknowledges that police treatment has 'undoubtedly improved' since police policy was to let a women 'make her statement and then drive a coach and horses through it.'¹⁴ At the Police Superintendents' Annual Conference in 1997 the campaign, Are Rape Victims on Trial, was unanimously supported as the police called for reform of the Criminal Justice Service. The police have expressed their frustration with the criminal justice system, believing their efforts are wasted because following effective investigation cases are either dropped by the CPS or the defendant acquitted at trial. This frustration was expressed by Metropolitan Police Commander Tom Williamson:

any progress that the police have made over the last decade is negated by the adversarial ordeal which victims have to face. It should not entitle a barrister to metaphorically rape them a second time.¹⁵

Sue Lees and Jeanne Gregory conducted research with an initial sample of 40¹⁶ women who responded to letters sent out by the police to find out their views of the service they received from the police. Ten responded with a letter explaining that it would be too painful for them. 20 out of the subsequent 26 women interviewed were satisfied with the way they were treated by the female officers and only four were highly critical of the police. One of the women had to report her crime to two police stations, 'she contrasted this when she had reported a burglary and the police had come round immediately.'¹⁷ The main problem identified through the research was that the victims were not always told the outcome of their case, one victim commented, 'it seems quite extraordinary that the police do not realise the effect this has and the discomfort it causes.'¹⁸

Simultaneously, the Metropolitan Police introduced a Chaperone System where a female officer having completed their training programme on Sexual Offences Investigation Techniques¹⁹ is assigned to a case from the outset. Thought to improve the relationship between the victim and the police, Victim Support interviews conducted following its introduction concluded that there was still cause for concern. Ten of the eleven women interviewed stated that although they were kept informed at the beginning, as the case

Lees, S., *Carnal Knowledge: Rape On Trial*, (2002, 2nd edn., The Women's Press Ltd., pp.238,239.

¹⁵ *Guardian*, 24 October 1995.

¹⁶ This was a mere 12% of the total actually sent out.

¹⁷ Lees, *Carnal Knowledge: Rape On Trial*, p.154.

¹⁸ *Ibid* p.159.

progressed, the contact reduced. The information they hoped to receive from the Chaperone included, trial dates, bail decisions and what would be expected of them in court, information none of them received. Lees concludes that their research and later research by Jennifer Temkin 'highlights the continuing inadequacy of the way victims of sexual assault are treated and demonstrates the urgent need for improvement in police service delivery to women who report rape.'²⁰

In the Sussex study by Jennifer Temkin, 23 women who reported rape to the Sussex Police between 1991 and 1993 were interviewed. 13 were positive about their treatment by the police, 7 held mixed views and 3 were wholly negative. Temkin concludes that the main reason for those who were dissatisfied with the treatment was because they were either harshly questioned, felt they were treated with disbelief or were not happy with the follow-up treatment by the police. She also interviewed 16 police officers where only one had received training on the effects of rape on victims. 32% believed the training they received was completely inadequate and felt the training concentrated mainly on the investigatory techniques not necessarily on victim's needs. Eight of the officers believed a quarter of rapes reported were false, furthermore, 'victims who knew the assailant, reported late and had no injuries were still regarded as objects of suspicion.'²¹ Temkin emphasized the importance of challenging the myths and stereotypes of rape and how their effects should be incorporated into police training.

In 2006 Assistant Commissioner John Yates was interviewed for BBC's Panorama and concerning Britain's Rape Crisis, he stated that the vast majority of rape cases were treated with great detail, sympathy and empathy by officers and that while a small degree of poor policing exists it was lessening. However, in another interview for Channel 4's Dispatches he admitted that in some areas there was better treatment by the police than in others. Further, during 2008 he began appearing in the media commenting that specialist units were needed to improve the low conviction rate. He was frequently quoted in several newspapers with the headline, 'rape investigation teams should be set up in every police force.'²² Despite the introduction of significant changes

¹⁹ They would then be referred to as SOIT Officers.

²⁰ Lees, *Carnal Knowledge: Rape On Trial*, p.166.

²¹ *Ibid* p.168.

²² Hope, C., 'Rape units should be set up in every police force,' *The Telegraph*, 9 July 2008 www.telegraph.co.uk/news/newsttopics/politics/lawandorder

in the way the police approach rape investigations, he was critical of the scepticism of some officers confirming that 'delivery remains inconsistent and there is much more to do.'²³

Sexual Assault Referral Centres (SARCs)

SARCs offer victims of sexual assault a service where they can receive medical care, psychological counselling and legal advice in one place from professionally trained staff. The idea of the SARCs was to improve forensic response to victims, facilitate the gathering of evidence and provide immediate counselling for the victims, ultimately providing a safe place where the police could meet with the victim. The first SARC, St Mary's, was established in 1986 in Manchester, a time when there was widespread public concern about police responses to rape victims. Throughout the 1990s only a further three SARCs opened, giving rise to the contention that victims were subjected to what was described as a 'postcode lottery' of treatment. Indeed, *Map of Gaps 2: The Postcode Lottery of Violence Against Women Support Services Across Britain*,²⁴ concluded that such services were seriously under-funded or simply did not exist in some areas. By 2006 there were 14 SARCs in operation throughout England and Wales with one being piloted in Scotland. The Solicitor-General, Vera Baird responded in 2008 to claims made by Women Against Rape that the Government had not done enough to secure justice for rape victims, 'there will be at least 36 by the end of the financial year 2008-09.'²⁵ To date there are just 24.

Then Home Secretary, Jacqui Smith, in October 2008, announced steps to ensure that every person in the country had access to a SARC. She pledged an extra £1.6 million to help local areas increase the support offered to victims through the building of ten new SARCs in areas of greatest need. An additional £100,000 was allocated to create a team of experts to target areas without a SARC and increase victims' access to these facilities:

There are few crimes more horrific than rape and I am determined to ensure that

²³ 'Every police force should have specialist rape investigation squads to raise conviction rates,' *The Daily Mail*, 9 July 2008 www.dailymail.co.uk/news/article-1033645/Police-chief-calls-force-expert-rape-squad-bid-increase-convictions.html

²⁴ Kelly, L., Coy, M., and Foord, J., *Map of Gaps 2: The Postcode Lottery of Violence Against Women Support Services Across Britain*, (2007, Equality and Human Rights Commission).

²⁵ Government Making Real Progress on Rape Convictions, *The Times Online*, 21 February 2008 <http://business.timesonline.co.uk/tol/business/law/article3405450.ece>

every victim has immediate access to the services and support they need. These centres not only improve the support we provide for victims but also encourage these crimes to be reported to the police. The expert medical advice available on site and the forensic examinations are vital in bringing offenders to justice.²⁶

On 15 April 2009 it was announced more funding was to be given to SARCs, reinforcing the Government's commitment to have a SARC in every police force area by 2011.

Assistant Commissioner John Yates commented,

ACPO welcomes the announcement of the additional funding to support the expansion of Sexual Assault Referral Centres. We know from experience and feedback what a dramatic difference they make both in terms of care and support for victims and in relation to giving investigators the best chance to build a successful case.²⁷

Initiatives Introduced by Individual Police Forces

Rape Examination Advice Counselling Help (REACH) was founded in 1991 by the Northumbria Police to provide confidential support and advice for women subjected to sexual violence. Like SARCs, REACH provides an environment where the victim can feel safe while evidence is gathered. REACH has two centres, designed to provide a fully equipped medical examination suite, interview facilities and quiet rooms for counselling. It also provides Case Tracking Co-ordinators, able to offer the victim the opportunity to receive regular updates throughout the whole of the criminal justice process. Believing that victims will be better prepared when attending court if they are aware of procedures and the roles of court personnel, REACH offers victims the opportunity to attend court prior to the trial.

Similar to REACH, in 1994, Surviving Trauma After Rape Project (STAR) was introduced as a jointly funded initiative between the West Yorkshire Police and the Health Authorities within West Yorkshire to improve the services victims received. STAR expressed the importance of early counselling in order to reduce the likelihood of long-term psychological effects. Unlike REACH, which only provides services for those aged 16 and above, STAR was successfully allowed to develop their service to work with

²⁶ Home Office Press Release, More funding announced for sexual assault referral centres, 7 October 2008 <http://press.homeoffice.gov.uk/press-releases/more-funding-for-sarcs>

²⁷ Home Office Press Release, *New Measures to support victims of sexual assault*, 15 April 2009

young people from the age of 14.

In response to criticism²⁸ that officers involved in rape cases lacked adequate training, forces began introducing trained specialist officers, Sexual Offences Investigative Trained Officers (SOITs), with the intention that by 2006 a SOIT would be available in every case of rape. Known also as chaperones, victim liaison officers, or sexual offence liaison officers their two most important roles include, ensuring victims receive the highest standard of care and support from the outset of the investigation. They also must ensure that the best possible evidence is obtained in order to assist the investigation and any future prosecution. Karen Lawton a Detective Constable sums up the role of a SOIT:

as a SOIT officer I provide an important link between the victim and the investigation team. I maintain support with the victim throughout the investigation and the court process- letting them know if any arrests have been made, the results of forensic evidence and the sentencing of offenders. It's all about keeping them informed and being there for them when they need support the most.²⁹

Project Sapphire was an initiative introduced by the Metropolitan Police Service in 2000 in order to improve the care of rape victims. Officers within Project Sapphire specialise in investigating rape and sexual assault cases to provide victims with the support, information and care they need. Each borough in London has a dedicated Sapphire team, an experienced police officer and either a male or female chaperone officer are assigned to each case. Their duties range from explaining the process to the victim, to talking to employers or simply listening. Initiatives like project Sapphire have been described as rare, an exception to the rule, 'a flagship, not the norm.'³⁰ Despite this, Scotland Yard in March 2009 announced that it had passed the case of London cab driver, John Worboys, arrested for drugging and sexually assaulting more than 30 women, to the Independent Police Complaints Commission. It emerged that 12 women had told the Metropolitan Police that they had been drugged and sexually assaulted by a taxi driver between 2003 and Worboys' arrest in February 2008. Despite similarities between the stories the information received by each Sapphire team was never

<http://press.homeoffice.gov.uk/press-releases/New-measures-victims-sex-assault>

²⁸ HMCPSI/HMIC, *A Report on the Joint Inspection into the Investigation and Prosecution of Cases Involving Allegations of Rape* (HMCPSI, 2002).

²⁹ Investigating Rape <http://www.cheshire.police.uk/showcontent.php?pageid=1053>

³⁰ Hanley, K., 'Law of Rape: Lack of Conviction?' *Law Society Gazette*, (2006)

exchanged, if it had been alerts would have been raised of a serial sex attacker in London. One officer was found to have commented, 'black cab drivers don't do that sort of thing.'³¹ Although seen as a coincidence the control of Project Sapphire has now been taken away from borough level and placed under the control of the Homicide and Serious Crime Command at Scotland Yard.

Greater Manchester Police followed in the footsteps of London and introduced their own initiative, Project Nightingale in 2004. It set out the standards for the investigation of rape and sexual assaults ensuring officers follow the correct procedures. Greater Manchester Police possibly lead the way with more than 300 officers trained to provide a first response to victims of rape. Similarly, West Yorkshire Police announced the opening of their specialist unit set up to focus solely on investigating reports of rape in 2008. The officers are specifically trained to investigate reports of rape retaining ownership of cases from the initial report right through to the court stage. They also maintain victim care arrangements by working alongside the STAR Project and introduced medical examination suites, away from police premises, embedded in discreet places within health clinics. Detective Inspector Dick Nuttall, who heads this new team, states,

the creation of the Rape Investigation Unit means we now have a dedicated team of specialist investigators who can focus their growing expertise on investigating reports of rape, gathering the strongest possible evidence from the outset and giving continuity to the investigation.³²

2 The Crown Prosecution Service: Bringing Cases of Rape to Trial?

The CPS policy on rape is intended to improve public confidence in the Criminal Justice System by clearly explaining how the CPS deals with rape cases. As, Solicitor General, Vera Baird QC MP, asserts,

our aim is clear. All parts of the criminal justice system must work together to ensure that these cases are properly investigated and well prepared and rape complainants have the confidence to go through with the prosecution process to get justice.³³

³¹ Fresco, A., Revealed: Taxi driver rapist John Worboys is Britain's most prolific sex attacker' *The Times Online*, 14 March 2009

³² Specialist Rape Investigation Unit Launched in West Yorkshire
www.westyorkshire.police.uk/section-item.asp?sid=12&iid=5270

³³ CPS launches consultations on rape and domestic violence policies, CPS Press Release 7 August 2008 http://www.cps.gov.uk/news/pressreleases/152_08.html

Since 2004, the CPS has had the responsibility for deciding whether a suspect should be charged with a criminal offence. When the police have a reasonable suspicion that a suspect has committed the offence of rape, they refer the case to a Crown Prosecutor, who should, in practice, be experienced and trained in the handling of sexual offence cases. The CPS makes the decision whether to charge the defendant, even though they have had no direct contact with the victim or key witnesses. It must be satisfied that there is enough evidence to provide a realistic prospect of conviction - the evidential stage. If the case does not pass this stage it cannot go ahead, no matter how important or serious the charge is. Not only must a case pass the evidentiary stage, the CPS has to decide whether a prosecution is necessarily in the public interest. A balance is thereby needed between the public and the victim's interests,

we always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual.³⁴

Differences in Prosecution Rates

Women who report rape are five times less likely to see their attacker convicted in some parts of the country than in others, according to new research.³⁵ An analysis of official figures reveals that the conviction rate fell in 18 out of 43 police force areas in England and Wales between 2004 and 2006. For example, in Leicestershire, one in 35 women who report rape will see a successful prosecution, but in Cleveland the figure improves to one in seven. 13,272 rapes were reported in 2004, compared to 14,449 in 2006, yet the rate of conviction did not increase in line with these figures. In Cambridgeshire, Bedfordshire, Sussex and Leicestershire only 3% of reported rapes ended in conviction in 2006 whereas Cleveland, which has a specialist support centre for rape victims, saw a 13% conviction rate.³⁶ Vera Baird, who also chairs the Fawcett Commission on Women and the Criminal Justice System, said:

It's unacceptable that a rape victim's chances of getting justice depend on where she lives. There is some good work being done in some areas of the country, while others are lagging behind. We need an integrated approach that gives

³⁴ A Consultation on the CPS Policy for Prosecuting Cases of Rape
http://www.cps.gov.uk/consultations/rape_index.html

³⁵ Criminal Statistics: England and Wales 2007 <http://www.justice.gov.uk/docs/crim-stats-2007-tag.pdf>

³⁶ Woolf, 'Postcode lottery of rape conviction,' 6 July 2008

women all over the country confidence in the system, delivers justice and prevents violence in the first place.³⁷

With regards to Cleveland's higher conviction rate, an Independent Sexual Violence Advisor (ISVA) is based in the Rape Crisis Centre in Cleveland as a result of a £3 million Government package to introduce a 'new network of expert advisors to give victims of sexual violence better care and support at every stage of the criminal justice system.'³⁸

Criticisms of the CPS

In 2002 HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate published a joint *Report into the Investigation and Prosecution of Cases involving Allegations of Rape*.³⁹ The aim of the report was to establish the reasons behind the high attrition rate and to, 'analyse and assess the quality of the investigation, decision-making and prosecution by the police and CPS of allegations of rape.'⁴⁰ The inspection sample showed that 131 of 230 cases submitted to the CPS were either subjected to no further action or were dropped by the CPS after charge. The report identifies a need for greater consistency in decision-making, for more specialization on the part of reviewing lawyers, and for a second opinion in all cases where a prosecution is to be dropped or substantially reduced. The main findings concluded that training available to the police did not conform to the minimum standard and the availability of staff trained to receive rape victims was limited. Also the environment into which a victim is taken is not always conducive to securing the confidence of the victim. Rape cases are not always allocated to specialist prosecutors, who do not take the opportunity to learn from unsuccessful cases. The efficiency and quality of service to the victim varies considerably between areas where there is high caseworker coverage and continuity of prosecutor and those where there is not. Prosecutors have also faced criticism for their pre-trial handling of rape cases. The Report concluded that the approach of prosecutors 'too often tended to be one of considering any weaknesses, rather than playing a more proactive role in seeking more information and trying to build or develop a case.'⁴¹ The

³⁷ Verkaik, R., 'Rape conviction rates depend on where you live,' *The Independent*, 30 March 2006

³⁸ Home Office, *Improved support for victims of sexual violence*, 5 October 2006

³⁹ HMCPSI/HMIC, *A Report on the Joint Inspection into the Investigation and Prosecution of Cases Involving Allegations of Rape* (HMCPSI, 2002).

⁴⁰ *Ibid* p.7

⁴¹ *Ibid* p.9.

latest Home Office study to examine attrition in rape cases raised similar concerns, recommending, 'a shift from a focus on the discredibility of complainants to enhanced evidence gathering and case-building.'⁴²

It has been a long standing rule in England and Wales that prosecutors do not have any contact with witnesses prior to cases, which means prosecutors make decisions about whether a case should proceed having had no direct contact with the victim or witnesses. With no opportunity to address any flaws in the witness's statements prior to the trial, 'this suggests that it will more than likely have a disproportionate and negative effect on the quality of case preparation in rape cases.'⁴³ In January 2007, the HMCPSI/HMIC published its follow up report, *Without Consent*,⁴⁴ in order to assess the progress from the 2002 investigation. The report notes some improvement in approaches to case-building in rape cases, describing some lawyers as 'extremely proactive,' but concludes that practice remains variable.⁴⁵ The review found that, 'in many cases it is not necessarily about changing what is done, but ensuring instead that what is done is effective and is carried out to a consistently high standard, and that the efforts of those involved are properly supported and coordinated.'⁴⁶

The 2007 report identifies the strengths of the CPS since the 2002 report but also highlights the areas that need further improvement. Strengths include the introduction of rape co-ordinators and specialist lawyers; 'area rape co-ordinators are pivotal to ensuring that national initiatives and legislative changes are followed and applied locally.'⁴⁷ The CPS considered the introduction of specialist lawyers to be the keystone to the effective prosecution of rape cases. These were generally experienced lawyers who have to attend training courses on sexual offences and special measures for vulnerable and intimidated witnesses. But the report also established that once again there were areas in need of improvement. Firstly, the area rape co-ordinators were unclear as to what was expected of them as their role had not been defined, with no minimum standard of competence resulting in varied practice throughout the country.

⁴² Kelly et al., *A Gap or a Chasm?*

⁴³ *Ibid*

⁴⁴ HMCPSI/HMIC, *Without Consent, a Report on the Joint Inspection into the Investigation and Prosecution of Cases Involving Allegations of Rape* (HMCPSI, 2007).

⁴⁵ *Ibid* p.113

⁴⁶ *Ibid* p.6

Secondly, while some of the specialist lawyers dealt regularly with rape cases; others, although experienced lawyers, had not. The importance of early involvement in cases by the specialist lawyers was highlighted as crucial.⁴⁸

Furthermore, earlier in 2008, two new consultation papers regarding CPS policy for prosecuting cases of domestic violence and rape invited public comment on the procedures. Sir Ken Macdonald, QC, then Director of Public Prosecutions, commented, 'we are committed to improving the way we deal with rape and domestic violence cases, which are among the most serious crimes we deal with.'⁴⁹ The main changes reported in the 2008 policy are the introduction of Witness Care Units and special measures to protect victims and witnesses. No Witness, No Justice is a joint programme between the police and the CPS aimed at responding to the individual needs of victims and witnesses through dedicated Witness Care Units. There are Witness Care Units in all 42 CPS areas which are run jointly by the CPS and the police. Witness Care Officers provide a single point of contact and support for each witness, assessing their needs and to ensure that they are able to give their best evidence.

The author responded to the 2008 Consultation on the CPS Policy for Prosecuting Cases of Rape. The author originally thought that although it gives adequate information on how rape cases are prosecuted and what victims can expect, not enough information was given on how the CPS are going to tackle the issue of myths and stereotypes in the courtroom. However, feedback was received from the CPS stating, 'as a result of the responses from the consultation we have improved the section on rape myths and stereotypes.'⁵⁰ Improvements include a list of the myths surrounding rape and more information in relation to training which prosecutors will receive. The Attorney General, Baroness Scotland, recognises the efforts of the CPS stating:

their updated policy reflects changes since 2005 such as the roll-out of statutory charging, better training for CPS staff, special domestic violence courts and measures for victims and witnesses which together have brought about substantial improvement.⁵¹

⁴⁷ Ibid p.95

⁴⁸ Ibid p.96

⁴⁹ CPS launches consultations on rape and domestic violence policies (7 August 2008)

⁵⁰ An email sent by the CPS in response to the author's feedback on the consultation paper.

⁵¹ CPS launches consultations on Rape and Domestic Violence Policies

3 The Jury and the Media: Reinforcing Stereotypes

The number of reports and studies concerning the effect of the jury upon rape cases is limited, partly because research into the 'use of real life jurors is either prohibited or heavily regulated in the UK.'⁵² Most studies are carried out with people who have to put themselves in hypothetical scenarios, known as a 'mock jury paradigm.'⁵³ The most researched aspect concerning the jury in sexual assault cases concerns preconceived attitudes about what rape is. Temkin, a leading academic in this area has developed the stereotype known as the 'Real Rape Stereotype.' She believes that when people are asked to describe a typical rape scenario, many are likely to

conjure up an attack by a stranger on an unsuspecting victim, in an outdoor location, involving the use or threat of force by the assailant and active physical resistance by the victim.⁵⁴

Indeed, Hanley suggests that the majority of stranger rape cases result in convictions 'because in the public's mind, that fits the stereotype of what rape is.'⁵⁵ Official statistics, however, show that the most common form of sexual assault occurs by someone known to the victim i.e. acquaintance rapes; 'about 50% of rapes in the UK occur in the home of the women or the perpetrator.'⁵⁶ Whereas research shows that the majority of stranger rapes are more than likely to receive a guilty conviction as 'society comes to think of rape as a sudden, violent attack by a stranger in a deserted public place'⁵⁷ the uncomfortable truth is that rape is much closer to home than many people would like to admit.

Jurors Attitudes and their Effects

Sinclair and Bourne not only suggest that jury decisions are influenced by stereotypical beliefs; they also serve to reinforce these very beliefs. When the jury returns a verdict in a rape trial it also 'contributes to the ongoing process of defining rape in a very real sense; rape is whatever a jury says it is.'⁵⁸ Louise Ellison's article focuses on the findings

http://www.cps.gov.uk/news/pressreleases/152_08.html

⁵² Temkin and Krahe,, *Sexual Assault and the Justice Gap*, p.53

⁵³ Temkin, J., Krahe, B., and Bieneck, S., 'Schema-Driven Information Processing in Judgements about Rape,' (2007) 21 *Applied Cognitive Psychology* 601-619 at p.601

⁵⁴ Temkin and Krahe,, *Sexual Assault and the Justice Gap*, p.31

⁵⁵ Hanley, 'Law of Rape: Lack of conviction?'

⁵⁶ Campbell, S., *She was probably glad of the attention: tackling rape in the UK*, 28 November 2007 www.opendemocracy.net/article/5050/16_days/rape_conviction_uk007

⁵⁷ LaFree, G., *Rape and the Criminal Justice System* (1989, Wadsworth Publishing)

⁵⁸ Sinclair, H., and Bourne, L., 'Cycle of blame or just world: Effects of legal verdicts on gender patterns in rape-myth acceptance and victim empathy,' (1998) 22 *Psychology and Women*

of a study where 24 volunteers observed one of nine mock rape trials, then decided upon a verdict. She too believes this area regarding jury deliberations is relatively under researched, particularly as the cases that make it to court are dictated by the fact that it is a matter for the jury to decide whether the victim consented and whether belief in consent was harboured by the defendant under section 1(2) Sexual Offences Act 2003. It is thereby clear that the 'veracity of the victim's allegations is often on trial at the same time as the defendant culpability.'⁵⁹

Previous research suggests that jurors are highly influenced by stereotypical factors such as, behaviour of the victim,⁶⁰ style of her dress⁶¹, or previous intimacy between the victim and the defendant.⁶² The victim's credibility is also affected if her actions after the alleged attack are perceived to be suspicious or unusual behaviour of someone who has been raped. The most common three examples are, delay in reporting the rape, a lack of physical resistance by the victim and how calm they are giving evidence during the trial as 'recounting events at the trial may fail to convince jurors of their victimization.'⁶³ It has been established that the public do not have a realistic understanding of how a victim would react in a particular situation as each person would react differently and therefore 'lack an appreciation of the diverse reactions that the experience of sexual victimisation might elicit.'⁶⁴

The research explained in Ellison's article found that in the scenario where the victim had no physical signs of injury, the jury found it hard to convict as it was felt that the lack of bruising was significant in their decision to return a not guilty verdict. One juror stated, 'even in a paralysed state, isn't it the body's natural reaction to put up some kind of defence?' Another stated, 'no matter how big the guy, if she was 8 stone and he was 16

Quarterly 575-588.

⁵⁹ Boeschen, L., Sales, B. and Koss, M., 'Rape Trauma Experts in the Courtroom,' (1998) 4, *Psychology Public Policy and Law*, 414-32

⁶⁰ Lees, S., *Carnal Knowledge Rape on Trial* (1996, Hamish Hamilton).

⁶¹ Abbey, A., Cozzarelli, C., McLaughlin, K. and Harnish, R., 'The Effect of Clothing and Dyad Sex Composition on Perceptions of Sexual Intent: Do Women and Men Evaluate these Cues Differently?' (1987) *Journal of Applied Social Psychology* pp.1333-44

⁶² Whatley, M., 'The Effect of Participant Sex, Victim Dress, and Traditional Attitudes on Causal Judgments for Marital Rape Victims,' (2005) 20, *Journal of Family Violence* 191-200.

⁶³ Ellison, L., and Munro, V., 'Reacting To Rape: Exploring Mock Jurors' Assessments of Complainant Credibility,' (2008) *British Journal of Criminology*, 202-19

⁶⁴ *Ibid* pp.207-8

stone, at some point she can scratch, she can kick and she can knee.⁶⁵ Another significant observation from the trials was the importance of the immediate reporting to the police. One juror stated that she would not know what else to do other than contacting the police.

Notwithstanding this, it does not mean that those who are late reporting are instantly under suspicion. Some of the jurors maintained the view that it is impossible to predict how someone might react. Other jurors could not understand the logic of early reporting to the police particularly where the victim did not give any physical resistance but as soon as the ordeal was over she was able to immediately react and contact the police. One stated, 'I'm just not convinced that someone who has been through the ordeal that was suggested is so switched on as to be virtually phoning the police straight away.'⁶⁶ More specific comments expressed a wider awareness of why the victims were late reporting, including self-blame, fear of others' judgment, disbelief, shock and embarrassment. The research suggests that the jurors displayed a greater understanding of the impact of rape in the context of delayed reporting than they did to the narrower views of the absence of physical resistance.

Ellison and Munro also found that there is a significant 'amount of evidence which suggests that 'people's perceptions of witness credibility are influenced not only by the content of testimony, but also by the manner in which it is presented.'⁶⁷ The most common emotional styles portrayed by the victims range from 'being outwardly distraught or crying to being composed or emotionally numb.'⁶⁸ Most jurors, however, associate anger and sadness to be the emotions of a rape victim and when these are not the emotions held by the victim, this can cause serious doubt within the jurors as to their credibility. Research indicates that victims' who 'do display visible emotional upset will be regarded by third parties both as more cautious and as less responsible for the rape than their calm counterparts.'⁶⁹ One female juror was surprised the victim could face the defendant in court and still remain calm, while another juror could not understand why the victim had not been unnerved by giving evidence in court. The

⁶⁵ Ibid

⁶⁶ Ibid.

⁶⁷ Ibid. p210

⁶⁸ Ibid.

⁶⁹ Ibid citing Winkel, F., and Koppelaar, L., 'Rape Victims' Style of Self-Presentation and Secondary

majority of jurors referred to the victim in each scenario as being calm but some used more negative words, such as, cool, cold and calculating, 'implying a lack of feeling, and suggesting deliberate connivance and a lack of honesty.'⁷⁰

Responses Being Introduced

Initially, the 2006 Office for Criminal Justice Reform proposed to allow expert witnesses into rape trials to try and combat some of these myths and stereotypes surrounding rape, by giving expert knowledge on how and why a victim may behave the way they do. Nonetheless this is no more than just a proposal as it does not seem to have progressed further. The consultation paper, *Convicting Rapists and Protecting Victims*⁷¹ raised mixed responses concerning the introduction of expert evidence. The Police Superintendents' Association of England & Wales noted that not only would it be beneficial to prosecutors, but general expert evidence would raise public awareness and potentially increase the confidence of victims to come forward and report offences. Rumney commented, 'it should be remembered that this type of expert evidence does appear to work in challenging rape myths, while in no way threatening the defendants' rights.'⁷² Others have disagreed; the Council of Circuit Judges have 'argued against amendment of the law on the grounds that the use of expert testimony could cause delays and prove expensive, unnecessary and inappropriate in many cases.'⁷³ The Centre for Crime and Justice Studies, King's College London also stated, 'it would give the prosecution a distinct and unfair advantage which would serve to increase the number of miscarriages of justice.' The Government is concerned that the introduction of such evidence may not work in the victim's favour as it

could build a profile of a typical rape complainant, which might become a standard by which rape victims are judged, thereby potentially harming the case of a complainant who did not fit that pattern.'⁷⁴

The Government has however, emphasized the fact that they will try and look for ways for expert evidence to be presented in court, as their aim is to dispel myths surrounding

Victimisation by the Environment,' (1991) *Journal of Interpersonal Violence* , 29–40.

⁷⁰ Ellison and Munro, 'Reacting To Rape,' p.211.

⁷¹ Convicting Rapists and Protecting Victims – Justice for Victims of Rape (2006) <http://www.cjsonline.gov.uk/downloads/application/pdf/Response%20to%20rape%20consultation.pdf>.

⁷² Ibid at p.12

⁷³ Council of HM Circuit Judges, 'Convicting Rapist and Protecting Victim: A Consultation', (2006, Response of the Council of HM Circuit Judges).

rape trials but until an appropriate method is found nothing concerning expert evidence will be cited in legislation.

An important Court of Appeal ruling in *R v Doody* [2008] may help increase the poor conviction rate. It was held that trial judges will be able to tell jurors why a victim may have delayed reporting the rape because of feelings of guilt and shamefulness about the act. This decision came when John Doody, who was convicted of six counts of rape, appealed after the trial judge gave possible reasons during his summing up why a victim may be late reporting rape. Lord Justice Latham stated, 'the judge is entitled to make comments as to the way evidence is to be approached, particularly in areas where there is a danger of a jury coming to an unjustified conclusion without an appropriate warning.'⁷⁵ Vera Baird, QC, the Solicitor General felt it would hopefully bring an end to the myth that a victim of sexual assault will always scream for help as soon as she is able to, if she does not, she must have made the whole thing up. She also stated that the

court has taken the opportunity to tackle this myth, on the basis that judges are better aware from their court experience that many reasons, including trauma, fear and shame may make a victim unable to complain for some time.⁷⁶

4 The Effect of the Media on Rape Cases

The BBC, in 2007, aired the controversial programme, *The Verdict*,⁷⁷ where twelve celebrity jurors were part of a fictional rape trial. Although actors played the victim, defendant and witnesses, the legal and medical professionals were real. The legal team involved felt the show was needed in light of the low conviction rate in order to gain an insight into the way that juries reach their verdicts, and to expose any inherent flaws as well as the strengths of the jury system. The show also exposed the difficulties in rape cases particularly due to the lack of evidence; usually the situation is whose version of the truth is believed. The celebrity jurors found the footballers, in the fictional case, not guilty on all counts, even though the majority stated they believed the rapes had taken place but were unwilling to convict due to insufficient evidence. The show received a number of criticisms on the basis it could turn rape into entertainment, 'the BBC's new

⁷⁴ Convicting Rapists and Protecting Victims – Justice for Victims of Rape (2006) p.21.

⁷⁵ *R v Doody* [2008] EWCA Crim 2394.

⁷⁶ Martin, B., 'Rape Conviction Rates May Rise After Court of Appeal Ruling,' *The Telegraph*, 24 October 2008

⁷⁷ *The Verdict*, BBC documentary transmitted February 2007

court-based programme is meaningless rubbish that could potentially do a lot of harm.⁷⁸

Professor, Liz Kelly believes the programme is guilty of trivializing rape,

this is reality television that misses much of the reality of rape - for example, the fact that most women are raped by someone they know. The bleak truth about rape is that little support or justice exists for women in this country.⁷⁹

Although the programme highlighted one of the reasons behind the low conviction rate, as one journalist stated, 'could you imagine many rape victims currently waiting to go to court thinking twice about proceeding with their case as a result of this programme.'⁸⁰

Victim Support said: 'some people that have been through something like this, either as witnesses, jury members, or a victim, may feel that it has been cheapened or trivialised.'⁸¹

The BBC has insisted that the purpose was to show the difficulties inherent in rape cases and to bring it into the public eye, yet they failed to get a number of important factors right. The viewers are told that the judge is allowing the defence to admit previous sexual history evidence of the victim without telling the viewers why, yet in a rape trial, it is very important especially after the law was changed in 2001,⁸² to restrict the use of such evidence unless absolutely necessary. The producers were further criticised for including Jeffrey Archer in the jury, as he be ineligible due to his criminal conviction for perjury. Whether the show has been educational is debatable, but it has proved a number of researcher's hypotheses over the years, that jurors rely more on their own predetermined views than on the evidence given.

Attention from the media 'has historically focused upon trials with a sensational element, such as the sex-beast in the bushes, the pervert in a position of trust, or the despoiled virgin.'⁸³ The media is distorting the public's perception of what rape is and how it is punished consequently creating a negative impact upon women who experience sexual

⁷⁸ Bindel, J., 'The BBC's new court-based programme is meaningless rubbish that could potentially do a lot of harm,' *The Guardian*, 12 February 2007.

⁷⁹ 'Verdict show is trivialising rape' — *Yahoo! News*, 12 February 2007

<http://uk.news.yahoo.com/12022007/344/verdict-show-trivialising-rape.html>

⁸⁰ Bindel, 'The BBC's new court-based programme.'

⁸¹ Nugent, H., 'Celebrity rape trial reality TV show outrage,' *The Times*, 13 December 2006

⁸² s.41 Youth Justice and Criminal Evidence Act 1999 was introduced to attempt to address the failures of s.2 Sexual Offences Act 1976 forbidding evidence or questions to be asked concerning a victim's previous sexual history unless absolutely necessary.

⁸³ Eden, I., *Rape Convictions in London*, (2005, The Lilith Project)

violence outside these elements. This will most probably result in victims feeling unable to report their rape because their situation does not fit how the media perceives it. The media does not report on the wife or the friend who was raped, who has no bruises because she was too scared to fight back, which results in this common scenario being unknown to the public. More than 80% of rapes in the UK are perpetrated by men known to their victim, and only 13% happen in public places, yet,

the widespread belief among the public is that women are most at risk of being raped when walking alone in dark or remote areas. Although instantly recognisable, the scenario bears little resemblance to the reality of most rapes.⁸⁴

The Rape Convictions in London report examined media reporting in rape trials by using a sample of cases from April 2003 to March 2005. The cases had to be brought in a London court and reported in at least two publications. The fact that the media choose which cases to report depending on their extreme facts was proven as the media reported on only 21 cases of rape convictions, while the Home Office reported 265 cases of rape conviction in 2003 alone. Therefore only 3% of rape cases ending in a conviction were chosen to be reported. The media presents rapists as a 'selection of isolated individuals who hold aberrant beliefs and have odd habits, rather than the rapist being an average man.'⁸⁵ Vera Baird, the Solicitor General, said:

jurors sit down expecting to hear what they have read about in the papers and what they get is real-life rape. After reading all the sensational stories, this does not tally, and they think normal rape is not the same offence.⁸⁶

Although the Just Representation⁸⁷ report suggests reporting guidelines in relation to reporting of rape cases, nothing will happen in the way of change immediately particularly as a spokesperson for the Press Complaints Commission (PCC) commented that the media are just doing their jobs. The report identified that the 'press heavily reports unusual incidents of sexual violence. However, this is what the media do – they report on things that are unusual.' The PCC is the independent body responsible for regulating press adherence to the Codes of Practice. The report suggests that a number of the sections within the PCC have particular relevance for the reporting of sexual violence, although they leave the boundaries of acceptable reporting of rape and sexual

⁸⁴ Marhia, N., *Just Representation? Press Reporting and Reality of Rape*, (2008, The Lilith Project)

⁸⁵ Ibid

⁸⁶ Shields, R., Report calls changes to rape coverage, *The Independent*, 24 February 2008

⁸⁷ Marhia, *Just Representation?*

assault wide open. The report concludes that the media, 'continues to propagate harmful myths which feed back into the criminal justice system, perpetuating a vicious cycle of under-reporting, attrition and low conviction rates.'⁸⁸

Conclusion

From the evidence it appears that, as hypothesized, despite legal reforms, professional and public attitudes still impact significantly on rape case outcomes and until the recommended reforms are implemented effectively in all areas, at all levels, and until the myths and stereotypes are successfully challenged it is unlikely that change will be brought about. It is not just in the UK⁸⁹ but also in other criminal justice systems where they 'actively perpetuate a world in which rape goes unpunished.'⁹⁰ Most rapes do not conform to the highly publicized stereotypical scenario of the stranger rapist who rapes his victims down a side street, therefore doubt is cast in people's minds when the majority of rape cases are committed by someone known to the victim in the privacy of their own home. Education in society is perhaps the key to justice for women. Education would include training for those involved in the rape trial, including the prosecution, the judges and most importantly the jury and the public. Raising awareness of the effects of myths and stereotypes to those selected for jury service is important as their beliefs are highly relevant to the outcome. Education could begin in schools and continue, to reach the public at large via the media through for example, poster campaigns or adverts on the television.

Police practice has changed accordingly over the years but the pace of change is varied. Temkin's Study in 1997 is evidence that even though the police hold an important position in law they are not immune from believing in the myths surrounding rape. The problem that most countries have is making sure whatever reforms are introduced are implemented and are effective throughout the country, from the larger cities down to the smaller towns and villages. Myths and stereotypes have been proven to have a significant impact on jury deliberations in the court room and although there have been some reforms; the list is far from being extensive. Women, who do not fit the public

⁸⁸ Ibid

⁸⁹ The author's full dissertation also examined the professional approaches and issue of rape myths in Scotland, Australia and some states within the USA

⁹⁰ Lees, *Carnal Knowledge: Rape on Trial*, p.1

perception of a rape victim, will undoubtedly, find the criminal justice process hard, particularly when her ordinary behaviour will be depicted at trial as out of the ordinary and regarded as suspicious by the defence and the jury. Jurors, although meant to, do not leave their beliefs out of the court room. Furthermore, it is not only the perception of who a rape victim is, it is also what the public and the jury perceive a rapist to be. In addition media representation frequently reinforces such perceptions. It is therefore important to tackle the problems of myths and stereotypes both in and out of the court room.

The definition of rape in England in comparison to countries such as America or Scotland is wide enough to cover areas which would not constitute rape in other countries. Despite this, our conviction rate says it all; no matter what reforms over the years have been introduced there is a significant amount of injustice for victims. Could England adopt the American approach by reforming the law on rape by introducing a gradation scheme of offences where time spent in prison would depend on the severity of the rape committed? Would lower penalties encourage jurors to convict defendants as they would not be putting the defendant away for life? Jurors tend to find it hard to convict defendants in cases of rape because of the surrounding circumstances, for example the lack of 'concrete' evidence; therefore they may feel more comfortable convicting the defendant for a shorter period of time. On the other hand a defendant may be able to negotiate more favourable bargains in order to secure a conviction but this would result in more lenient sentencing than perhaps that deserved. There has also been considerable debate on the use of expert witnesses mainly because the adversarial system promotes a system of (in)equality with the defendant having 'more' right to a fair trial than the victim. Therefore the introduction of expert witnesses at trial has been prohibited so far.

In order to prevent the affects of the postcode lottery, in an ideal world, academics, campaigners and the author herself would like to see that in each police force there would be a team dedicated to the investigations of rape. Each CPS region would have more Area Rape Co-ordinators and only specialist prosecutors would prosecute cases. Most importantly a SARC would be set up in every area so each rape victim would have access to one in order to receive the highest quality of care they actually deserve. In 2009 women have a much better chance of a successful experience of reporting rape

than they would have done 20 years ago, nowadays 'woman can get better care, but she still can't get justice.'⁹¹

⁹¹ Campbell, B., 'Rape: The Truth, Fawcett Society,' 16 April 2007