By Robert Whiston  FRSA

Recorded National Rape Allegations 1890-2002

Submission by
Men's Aid
in response to the Consultation Paper

“Convicting Rapists and Protecting Victims – Justice for Victims of Rape”

April 2006
Foreword

The title, “Convicting Rapists and Protecting Victims – Justice for Victims of Rape” together with the contents of the Consultation Paper reveals - sometimes overtly, sometimes subconsciously – an almost overriding urge to convict any and all rapists with little regard to the acceptable benchmarks required for justice.

Wanting to convict as many of those charged with rape as possible and being prepared to remove any obstacle to that goal pervades the Consultation Paper. Wanting rather than ‘needing’ to convict all rapists is a dangerous ambition. Indeed, it is positively unhealthy and corrupting.

The present Consultation Paper is the daughter of the Sexual Offences Act 2003 (SOA) which, after being knocked back by two high profile cases, is failing to function as envisaged. It also has to be viewed as one more component in a 10 year rolling programme to incrementally change out of all recognition Britain’s rape laws.

It was in the pre-election manifesto of 1996 that New Labour pledged that “greater protection will be provided for victims in rape and serious sexual offence trials”. Almost fortuitously in 1996 and then again in 1997 two rape cases involving extended cross examination made national headlines.

In 1997 the Gov’t came under further pressure to set up working group. It was said at the time to be very important to seek the opinions and views on issues that needed to be addressed and in June 1997, Jack Straw, the then Home Secretary, announced the setting up an "interdepartmental" working group to undertake wide-ranging views. The working group first met in August 1997 and thereafter on a monthly basis.

‘Speaking up for justice’ a 250 page publication was a product of that inter-departmental working group (Home Office, June1998). During its compilation the inter-departmental group wrote to 84 organisations, inviting them to submit written comments. All were female organisations - not one men's group was invited

The present Consultation Paper is another instance of government moving the goal posts to meet a political target. Progressively spared the need to weigh the evidence and excused from adhering to procedural safeguards, the barometer for reported rape moves ever skyward as the natural pressures, checks and balances surrounding rape are vaporised and we move closer to vacuumised situation.

Throughout this period rape claims have doubled (1995 – 2003).

It is for this reason that a graph showing the number of rapes from 1890 to 2002 was chosen for the front cover

There is little in the Consultation Paper about protecting any victims. What there is, however, are proposals to penalise those charged with those categories of crime that comprise rape or sexual abuse. Not a moment's thought is given to the other victims – usually men - who have been wrongly or falsely accused. There is no justice for this category of rape victim.
Is this an oversight or a deliberate policy decision?

Given our previous Whitehall experiences, we believe it is a deliberate policy decision. In the light of the recent fiascos at the Home Office and its ineptitude regarding the human rights accorded to convicted criminals from overseas it is all the more inexcusable for the Home Office not to consider the human rights of British nationals wrongly charged whenever criminal justice reform is mooted.

The typical rebuttal to complaints about inactivity over false allegations (on the rare occasions when one is made) normally takes the form of suggesting action under the Perjury Acts. But anyone finding themselves in this situation soon realises that the police will not take action because the courts are not interested and the courts will not take action because the police are not interested.

In matters relating to sexual offences we are in the grip of a movement comparable to the Temperance Movement of the late 19th century which everywhere saw alcohol as the root of all evil.

Society now finds itself dancing to another tyrannical doctrine – that of the evil man - promoted by outdated and discredited feminist writers such as Catharine MacKinnon, Marilyn French and Andrea Dworkin who hold that, “All men are rapists and that’s all they are”.

These notions have found a safe berth inside the Home Office and are now so ensconced and hold-up among staff that the reluctance by the Home Office and the Lord Chancellor’s Dept, to deal with “real issues” unwittingly gave rise to the ‘Fathers 4 Justice’ movement.

Men’s Aid  
Milton Keynes  
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Executive Summary

There is a ‘need’ to convict those properly found guilty of rape – which we would fully support. But there is also a ‘need’ to find not guilty those incorrectly accused of rape (and others sexual offences), The Consultation Paper by-passes that second consideration and assumes all those accused are guilty.

There is a ‘need’ to convict sadistic murderers and rapists, or dreadful people that both rape and murder and then mutilate bodies. This submission deals not with monsters, sexual predators, psychopaths and sex fiends. This submission deals with the ordinary man and the ordinary situation of “He said, she said” cases that comprise 95% of all rape cases.

Since time immemorial we have had homicide laws that deal with murder and manslaughter, but arguably they are hard pressed to be seen to be adequate in the face of serial murderers and the sickening acts of psychopaths in general. Perversely, the criterion is reversed in mattes of rape. Society designs and advocates measures better suited to the most sickening of crimes and offender but offers not exit, alternative or softer landing for those charged with less serious crimes.

This submission, therefore, deals with the ordinary man caught up in laws designed to catch and punish society’s more extreme sexual deviants.

Inexplicably, England & Wales has a relentlessly rising number of ‘reported rapes’ when the rest of the world has static or falling reported rapes (see front cover). As a result Home Office statistics are now being openly questioned by academic researchers. Is there a link between the relentless rise of ‘reported rapes’ and the unreliability of Home Office statistics?

When, in 1999, the Home Office team showed itself unwilling to listen to contrary warning views some delegates felt they had no alternative but to list their grave misgivings in a Minority Report (“Rape Reform: When Justice Collides with Science”, June 2000). Betty Moxon, head of the Sexual Offences Review Team (SORT) totally rejected the report and returned it with a note refusing to include it among papers forwarded to ministers.

Never mind the evidence

The real ambition of the Home Office team in 1999 was not justice but as an accompanying Home Office leaflet stated, to let no man arrested “slip through the net”.

The reformers appear to have a fantasy that society is suffering an epidemic of sexual abuse, rape and paedophile “grooming”. It was conceded by SORT, in 1999, that some law was quite new, e.g. the definition of rape for example was last changed in 1994, but much was old, “dating from nineteenth century laws that codified the common law of the time, and reflected the social attitudes and roles of men and women of the time.”

As we shall see later in our submission, about 60% of alleged / reported rapes may never have happened in the way that would qualify them as a rape (see HMIC). The public will be concerned by the current level of 12,000 rape reports but they will be startled to learn that 9,000 prove to have no substance to them. This means that an unseen 9,000 men and their families might have been needlessly distressed by false allegations.
It is this failure to address the distress caused by alleged rape victims that this paper also addresses.

In 1999 SORT would have no truck with the concept of false allegations or wrongful conviction. Nor would the concept of serial rapist be discussed. The average number of rapes committed by a serial rapist before he is arrested appears to be around six. Misleadingly only the number of offences and not the number of offenders is publicly discussed. Hypothetically, if a large proportion of proven rapes were perpetrated by serial rapists then the number of rape offenders in jail would be 500 (3,000 / 6).

A life insurance company must, to remain in business, protect its future commercial life and prospects. If it specialised, for instance, in rock stars and musicians then it would be derelict if it was not aware of the differential risks associated to their insured clients flying on scheduled commercial flight compared with privately chartered ones, e.g. John Denver, Buddy Holly etc. SORT, the Home Office and this Consultation Paper cannot differentiate and are therefore derelict.

Writing in The Independent (13 January 2001), Deborah Orr rightly described rape as unlike any other crime; “People often pruriently believe, in the case of both accuser and defendant, that "there's no smoke without fire."

The reason so many more rapes are being reported is surely because of the huge campaign by the Home Office to persuade women that male violence against them is routine. Melanie Phillips (Daily Mail, 6th June 2005), observed how;

“…. in case after case women have made false allegations of rape, sheltering behind the shield of anonymity to destroy the reputations and lives of innocent men. Yet despite a disturbingly long list of false accusations by women, the Home Office continues to promote an utterly skewed picture of a sexually predatory male population. It has also redefined rape to be far broader than most people would accept, including being 'forced to have sexual intercourse against your will' which can boil down to merely “having sex when I wasn't very keen on the idea’.

The reason so many more rapes are being reported is surely because of the huge campaign by the Home Office to persuade women that male violence against them is routine. And the reason there are fewer convictions is because of the casualisation of sex, in which women get themselves into situations which they may later regret.

In an age when ‘moral relativism’ is rampant and non-judgementalism is overarching, is it any surprise that society needs at least one agreed evil to fasten upon? That need has been supplied by the promoting of the iconic predatory male who is everywhere within our midst, and the Paedophile as the bogey man.

This out-of-control dimension led Mick Hume to comment in his column (The Times, April 1st 2005):

Paedophile-hunting has also become a rare opportunity to claim a moral consensus. Perhaps we cannot agree about what is right or wrong on anything from abortion to drugs, but we can all accept that kiddie-fiddlers are evil. Celebrities can now get away with just about anything, except being accused of child abuse.

The key phrase here is ‘moral consensus’ for regardless of our veneer of modernity we have difficulties suppressing deeply held and instinctive feeling of morality and moral conduct which we are exhorted not to show. When it is pointed out to us that ‘Celebrities can now get away with just about anything’ we suddenly realise that we have lost our moral compass.

People and prurience was a topic Mick Hume, also turned to in The Times, (May 3rd 2004), when he lashed the new Sex Offences Act 2003;
“In this lowlife judgment on human sexuality, we are all assumed to be potentially vile or vulnerable, and probably both. In which case, we need the State to act as a legal chaperone from cradle to grave.

Since nobody wants to be seen as a defender of ‘perverts’ rights’, the only criticism of this authoritarian law has come from zealots insisting that it does not go far enough. No doubt they have a point. After all, it is all very well outlawing sex with “a living animal” or “a dead person”. But what about protecting dead animals from non-consensual touching and grooming?

Mick Hume rightly highlights the dilemma for a position paper such as this when he writes, “nobody wants to be seen as a defender of ‘perverts’ rights’. Yet if no one does speak up for the innocently accused the argument goes by default to the other side, namely the only criticism of this authoritarian law comes from unrepresentative but zealous women’s groups ‘insisting that it does not go far enough’.

Society’s nervousness should not stop with the scope of the new legislation; it should continue into the implementation phase and operating of the law in the coming years. This is particularly so if a national unified police force emerges from other government proposals. This will politicise the police. It will give central government unprecedented centralised control over how the police think, work, prioritise and operate.

It is reported that the police are preparing to change their policies to require less evidence that a rape has been committed.

When the Home Office says jump, the police puppet dangling on the end of its strings duly jumps.

Never mind the evidence - just feel those convictions.

And to cap it all, just look at who Sir Ian has put in charge of his review - Brian Paddick, the officer who used Brixton for his catastrophic ‘blind eye to cannabis’ experiment and who was suspended in a scandal over a gay lover who was on bail - but who, by wrapping himself in the mantle of a gay martyr, ensured that instead of being transferred to traffic duties he was promoted instead to the rank of Deputy Assistant Commissioner”.


In our opinion, the 2006 Consultation Paper entrenches the received wisdom that maintains rape is abhorrent; happens only to women; that men invariably perpetrate it; that all men are capable of rape; and that women are simply vulnerable, limp, helpless victims.

We would only agree with the first proposition, i.e. rape is abhorrent, the subsequent one are not only untrue but they also happen to men.

While we are not decrying for a moment the need for rape to be a criminal offence and for measures that increase the safety of all rape victims - be they men or women - we would question the priorities this Consultation Paper reinforces. Rather than focusing on the safety of all rape victims which is a post factum situation we would prefer to focus on the safety of all citizens by preventing them from becoming rape victims. This simple measure, though circuitously hinted at in the Coxell footnote, is not addressed in the Consultation Paper.

In common with previous attempts to close supposed loopholes, the authors have fallen victim to pressure groups. There is a real danger of demolishing crucial legal safeguards simply to get more convictions. This submission therefore challenges the comfortable consensus contained within the Consultation Paper that all rape is the same.

The Solicitor General, Home Office and Dept for Constitutional Affairs all agree that conviction rates in rape cases remain unacceptably low; and that they are determined to “demolish barriers to successful prosecution”. Rape is described, and we agree, as ‘an appalling crime that devastates the lives of victims and their families and inspires fear in our
communities. Rape is defined as “sexualised violence, representing a psychological as well as [a] physical violation. If government gets its way both the law and the offence will, in the longer term, be trivialised.

Man as Negro

The America of the 1930s was in the south an overtly segregationist society. A charge of rape would have only one verdict for a Negro. No woman, especially a white woman, would ever claim to have been raped unless it was true. Yet this is the same proposition and mentality we are being asked to believe and endorse in this Green Paper.

In Harper Lee’s “To Kill a Mockingbird”, what right did the accused negro have to a vigorous defence, right of cross-examination, right to due process and to a fair trial? In theory all, but in practice, none.

In the Britain of today the legal standing of a man accused of rape is little better than a Negro in Alabama.

The unambiguous intention of the Consultation Paper is to jail more men than at present. Inevitably, if that happens the number of wrongly convicted men will also increase. Future male victims of wrongful imprisonment will not receive proper levels of financial compensation because of government proposals to reduce compensation payments.

Rape represents less than 1% of all reported crime. The probability of being raped is about equal to being enmeshed in a Post Office hold up where shotguns are used. This is never conveyed to the public.

Throughout the Consultation Paper the authors are obsessed with the conviction rate and for this reason the authors will never find the solution they seek. It is bizarre to believe that by increasing the conviction rate the incidences of rape will reduce - it has been tried before and failed. We give examples from overseas. That is perhaps the Consultation Paper’s most glaring mistake.

If rape were murder, would we allow everyone accused to be hanged without a fair hearing? Why then do we adopt such a posture for rape and sexual offences?

Advocates of stiffer tariffs across the board fail to realise that rape offenders are not one homogeneous group that can be neatly categorised and carolled. Nor are they likely to read Consultation Papers. In some cases, confessions are propelled by a need by the accused to be the centre of attention at least once in their lives (and this can also apply of some rape victims). The role of bi-polar disorders and low IQs is not fully recognised in policy circles. This can lead to inappropriate sexual intimacy/congress between immature young suspects with victims who are also immature and or below the age of consent.

Not enough attention is paid, in our view, to the phenomenon of age-incompatible sexual intimacy / behaviour, i.e. between the very young and the very old. This is an awkward topic for the Home Office to comment upon as it impinges on an area of homosexual activity that the Home Office has lobbied long and hard to de-criminalise.

What is never highlighted is that most victims of sex offences are unmarried women. The same age and marital pattern can be seen in domestic violence where unmarried single women aged under 30 are far more likely to be victims. Yet this is the very lifestyle government is endorsing.
The Home Office by not divulging age and sex of victims or perpetrator perpetuates a highly unsatisfactory situation where perennial incompleteness permeates British public statistics. We can only give a shadowy numbers and gender through our researches in adjacent fields where age and sex of victim and or perpetrator are sometimes given in surveys.

The present Consultation Paper is another instance of government moving the goal posts for political expediency. It has to be viewed as part of a 10 year rolling programme beginning with the pre-election manifesto of 1996 where New Labour pledged that “greater protection will be provided for victims in rape and serious sexual offence trials” to incrementally change out of all recognition Britain’s rape laws.

Immediately after the general election, in June 1997, Jack Straw, the then Home Secretary, announced the setting up an “interdepartmental” working group to undertake wide-ranging views. The working group first met in August 1997 and thereafter on a monthly basis. Twelve months later the product of that inter-departmental working group was the 250 page ‘Speaking up for Justice’ (pub’d Home Office, June 1998). In 1999 SORT was set up. This reported in 2000. Every year has seen a new development.

DNA Myth

DNA, which is universally proclaimed as being totally reliable, is not. When determining guilt it is not an ‘absolute’. Matching depends on probability of time, place and the closeness of the suspect’s DNA to that of the crime scene, e.g. the suspect could have been there an hour or a week ago.

In addition, the inventor of DNA, Professor Sir Alec Jeffreys, now agrees with our earlier premise that the present regime of markers is insufficient to secure a safe conviction. He now believes, “There is still a residual risk of a false match and about 15 markers should be used because otherwise it leaves open the possibility that the match from the crime scene sample is genuine but a fluke.”

Under the present method only 10 different DNA markers are used on the database to distinguish between individuals, Professor Sir Alec Jeffreys said, “If you have a database of 2.5 million people you will start having matches” i.e. false positives.

The implications of this have yet to permeate down to front line police officers and defence counsels.

Professor Jeffreys also warned that if the police kept profiles of suspects who were later cleared - which they can now legally do - that could lead to a disproportionate representation of minority ethnic groups, especially in the major cities, on the database (yet another small erosion, among many in recent years, of our civil liberties).

Men, who are rape victim, are a category that is constantly ignored by this Consultation Papers and legislative reforms. This is institutional direct sex discrimination. It is a discrimination also manifest in domestic violence where official circles, e.g. Baroness Scotland, never sees men as victims.

To suggest to these reformers that for a long time probably more men are raped each year than women leaves them thunderstruck and flailing for a riposte.

The present government has created 1,000 new criminal offences in 8 years.

It has created the Sentencing Council which dictates sentencing policy rather than judges.

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It has created legislation to remedy apparently lenient sentences but the overwhelming numbers of prisoners to receive longer sentences are men.

Rape is a crime that has entered the retail revolution of the vacuum packed commodity. Rape trials have become streamlined; court procedures have become obsequious, cowed by the demands of vocal lobbyists; the drag coefficient that any evidential niceties might present have been neatly eliminated and the inconvenient lumps unique to individual cases have been slecked away by the vacumed pack.

All shapes, sizes, colours and any future variants can now be fitted onto the new legislative template and suffocated under the legal polythene - all that has to be changed is the wording and tariff.

The Consultation Papers wants to see the prosecution team as aerodynamic as any bullet and the defence team castrated and hobbled, simply to improve convictions per claim made with evidential weight sacrificed to improve a higher top speed into jail.

The desired changes presage that awful shadow of some unseen power that floats unseen among us, visiting the very corners of our world.

Is this the price we want to pay, and the direction in which we really want to go?

Despite all the public clamour the true state of affairs is itemised by government in this way:

“Sexual offenders rose 2% to 5,700. The rise in the last three years can be attributed to the addition of abuse of trust offences and sex offender notification offences to the sexual offences group. [see new SOA 2003]. The number of sexual offenders in 2003 was, however, only three quarters of the number in 1993. Almost half of all sexual offenders were cautioned or convicted of indecent assault on a female. The number of rape offenders was approximately 710, a rise of four per cent compared with 2002. (Table 2.12)”

Rape in a Vacuum

1. Introduction

The Consultation Paper is an important social document as it demonstrates a uniformity of thinking which is at one and the same time socially divisive, dangerous and unhelpful.

It exposes, in our view, a predisposition toward a shuttered mind approach that not infrequently alights upon departmental thinking in Whitehall. That amendments are found necessary so early into the life of the 2003 Act provides evidence that the misgivings we expressed in 1999, 2000 and 2002 were well founded.

There is a ‘need’ to convict those properly found guilty of rape – which we would fully support - but this Consultation Paper by-passes that consideration and assumes all accused are guilty. There is a ‘need’ to find not guilty those incorrectly accused of rape (and others sexual offences). There is a ‘need’ to convict sadistic murderers and rapists, or dreadful people that both rape and murder and then mutilate bodies. That category of offender emphatically needs to be taken out of circulation.

This submission does not deal with that repugnant but rare headline-grabbing category. This submission deals with the ordinary man caught up in laws designed to catch monsters and punish sex fiends; the ‘He said, She said’ cases that comprise 95% of rape cases.

Both the critically acclaimed “Jewel in the Crown” and “Passage to India” dealt with the devastation of a man's life when falsely accusing of rape in India. In many ways we have not moved on.

The ambition of SORT in 1999 to let “no man slip through the net” was fraught with complications if it was to short cut procedural safeguards and still maintains a high standard of justice. SORT dismissed ‘evidential’ issues as secondary and would not impinge on their primary legislation. When the Home Office team showed itself unwilling to listen to contrary warning views some delegates had no alternative but to list their grave misgivings in a Minority Report (“Rape Reform: When Justice Collides with Science”, June 2000).

Betty Moxon, head of the Sexual Offences Review Team (SORT) totally rejected the report and returned it with a note refusing to include it among papers forwarded to ministers. The stated intention of SORT was to draw on those who held strong legal, moral and political views on the issue, especially in the face of “looser modern structures for families and [sexual] relationships.” It goes without saying that such views were omitted from all later developments.
At the time, the *raison d’etre* for the Sex Offences Review was not that the law was ineffective, but that the legislation was more than a hundred years old. The real ambition, however, contained in an accompanying Home Office leaflet, was to let no man “slip through the net”.

SORT showed itself unwilling to listen to views it had not already espoused. Some delegates could foresee the strong possibility that any new Act would founder on the evidential criteria that SORT wanted to sweep away. Both ‘Setting the Boundaries’ (2000), followed by ‘Protecting the Public’, failed to include any countervailing voices and although of the Consultation Paper (page 12) implies an equally enviable scope and depth of consultation, no Paper has provided anything other than a uni-dimensional view.

It is for this reason that the front covers displays the rise in recent years of allegations of rap. As we shall see later, about 60% of these alleged / reported rapes may never have happened in the way that would qualify them as a rape. We may be startled by the current annual level of 12,000 rape reports but we should be equally wounded to learn that an unseen 9,000 men and their families might have been needlessly distressed.

It therefore comes as no great surprise that our predictions, made earlier in 2000, regarding flaws and the probable unworkability of any subsequent legislation have been vindicated.

This submission (2006) in response to the Consultation Paper again discusses issues adjacent to and surrounding the good working of any rape law by seeking to keep it within the bounds of ‘fair play’ and balance to reach an acceptability for both the accused and the accuser.

The Whitehall culture we witnessed in the period 1999 to 2001, and the errant conclusions, are suspiciously similar to those found in today’s Green Paper.

The aim in 1999 was to; let no man escape; to lengthen sentences; to broaden definitions and to come down hard on any transgressors. An ambition in 1999 was to re-categorise incest by redefining it a form of rape and remove all guilt from the females party involved. No consideration was given to female offenders or post sentencing FBI type tests (see FBI).

In 1999 SORT would have was no truck with the concept of false allegations or wrongful conviction. SORT insisted that was a process and evidentional matter. But in 2006 it is precisely the process and evidentional matters that have caused this Consultation Paper to be created.

Writing in *The Independent* (13 January 2001), Deborah Orr rightly described rape as unlike any other crime; “People often pruriently believe, in the case of both accuser and defendant, that "there's no smoke without fire."

Criticising the Sex Offences Act 2003, Melanie Phillips, in the Daily Mail (6th June 2005), wrote;

“…. in case after case women have made false allegations of rape, sheltering behind the shield of anonymity to destroy the reputations and lives of innocent men. Yet despite a disturbingly long list of false accusations by women, the Home Office continues to promote an utterly skewed picture of a sexually predatory male population. Its absurd claim that one woman in 20 between the ages of 16 and 59 has been raped is drawn from self-completion questionnaires, which begs the enormous question of whether what respondents say on such forms is actually true.”

Mick Hume, (The Times, May 3rd 2004), characterised the new Sex Offences Act 2003 in this way:

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The reformers seem to have a nasty fantasy that society is suffering an epidemic of sexual abuse, from drug-assisted date rape to paedophile “grooming”. When they talk about “protecting vulnerable people”, they have just about everybody in mind as a potential victim. They have dreamt up a law to cover every imaginable type of interpersonal abuse. Unabashed, the Sexual Offences Act continues its awkward fumble through layer after layer of legal definitions, leaving its fingerprints all over places they had no business to go. It is now written into law, for example, that a silly young teacher who falls in love with a sixth-former must marry the pupil before sex if she/he hopes to avoid jail.

Barbara Hewson, a barrister, argues that the SOA 2003, “ … assumes that women are frail creatures, who must be protected from sex and can’t be trusted to make their own wishes clear.”

The legislation captures a misanthropic outlook; where intimacy is always dangerous and no one can be trusted. In this squalid sexual soup we are all assumed to be lowlifes, potentially vile or vulnerable.

The reformers appear to have a fantasy that society is suffering an epidemic of sexual abuse, rape and paedophile “grooming”. When they talk about “protecting vulnerable people”, they have just about everybody in mind as a potential victim.

Every imaginable type of interpersonal abuse that could be dreamt up is now covered by the law.

2. Victorian Entrenchment

The reason given in 1999 for reviewing the law of rape was that it was “a patchwork quilt of provisions ancient and modern that works because people make it do so, not because there is a coherence and structure.” The official view was that much law was old “dating from nineteenth century laws that codified the common law of the time, and reflected the social attitudes and roles of men and women of the time.” Despite the coherence and structure thus achieved, it still disappointed officials, though they accepted some law was relatively new, e.g. a new definition of rape (1994).

What was sorely needed in 2000, we were told, was legislation that reflected the “new family structures” that both governments of recent decades had been promoting. What the document called ‘looser family structures’ where inter-generational marriage, cross-marriages, cohabitation and re-marriages were expected (indeed, urged, to be the norm) proved to be the underlying excuse to seek change. With the advent of a new century and the incorporation of the European Convention of Human Rights into English law, the time was said to be right to take a fresh look to see if the law met the need of the country today and thus dispense with the existing laws because they were “old”.

In our opinion, the 2006 Consultation Paper entrenches the received wisdom that maintains rape is abhorrent; happens only to women; that men invariably perpetrate it; that all men are capable of rape; and that women are simply vulnerable, limp, helpless victims. While we would agree with the first proposition, ie rape is abhorrent, the subsequent one are not entirely untrue - they also happen to men.

While we are not decrying the need for rape to be a criminal offence and support measures that increase the safety of all rape victims- be they men or women - we would question the priorities this Consultation Paper reinforces.

Society is being asked to make a chivalrous but regressive sacrifice, to make rape a unique crime by denying the accused his rights to a defence, cross examination, to deny him ‘due process’ and ignore the fact that every accused is presumed innocent until proven guilty. The defendant was, in the 1970s, allowed to remain anonymous until guilt was established - now his name is unmercifully published the day he is arrested (e.g. the TV actor Craig Charles, John...
Leslie, Neil Hamilton MP, and even his wife, were all publicly accused and pilloried before their trial and acquittals).\(^5\) We are fast losing from our culture and our jurisprudence the notion of ‘innocent until proven guilty’.

This state of mind and focus of the Consultation Paper would not appear out of place with Victorian morality and the social values of the 19th century. It has the effect of ‘infantilising’ the status of women. It does not want them treated as adults, mature enough to make decisions, or as equals before the law, but little better in terms of reliability than minors, drunks and the insane. A status that women rightly fought hard to shed in the 19th and 20th century is once again being bestowed on them.

Victorian values that upheld the chastity and virtue of women are perhaps still admired by some but they are surly incongruous in the 20th and 21st century that teaches 7-year-olds the mechanics of sexual intercourse and 14 year olds which contraceptives best avoid pregnancies and sexually transmitted diseases (STDs). The government is sending out mixed messages. Why do we in the 21st century judge offences using such old fashioned views? Why is a legislative reversal into yesteryear being contemplated when today’s ‘man in the street’ knows about the Human Rights Act, his right to equal and fair treatment and, not unnaturally, expects to exercise them?

The country has been increasingly seduced by ever more liberalisation and individual autonomy stretching back 35 years. In the 1970s and 1980s it was every woman’s right to ape men’s propensity, as feminists then supposed, to be promiscuous and have as many sexual partners as they liked.

The negative impacts of increased ovarian cancer and greater difficulties in conceiving, now commonly seen, serve only to show how short-sighted and unaware of possible side effects these trendsetters were. This is a criticism that can be levelled at present government policy and the Consultation Paper now under review.

In common with previous attempts to close supposed loopholes, the authors have fallen victim to pressure groups. They have allowed themselves to become mesmerised by the problems visualised by particular partisan lobby groups.

Neither the authors nor the pressure groups appear enthusiastic to dig below the surface and come to terms with whatever they may find. They address the symptoms but not the manifold subsets and causes. The proposed solutions contained within this Consultation Paper are not target sub-group specific and are therefore cosmetic. As a consequence their effectiveness will be transient and, in our view, this subject will need to be revisited yet again in the very near future.

This submission therefore challenges the comfortable consensus contained within the Consultation Paper that all rape is the same. It will question the very cornerstones that conventional wisdom insists must be the answers to the problems and upon which our moral panic is presently based.

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\(^5\) ‘Teacher facing sex charge hanged himself’, The Independent, 21 April 2004. Headteacher, Mr Wilbee, a well-respected and married with two teenage children, fearing his career was ruined killed himself after a schoolboy accused him of indecent assault. Coroner John Matthews, said facing sex abuse charges should not be named publicly until convicted.
3. Demolishing Legal Safeguards

The opening ministerial Preface (page 4) sets the tone for the Consultation Paper. They are intent upon measures that will properly convict more rapists. Mike O’Brien MP, Fiona Mactaggart MP, and Harriet Harman MP who represent the Solicitor General, Home Office and Dept for Constitutional Affairs, respectively, all agree that conviction rates in rape cases remain unacceptably low; and that they are determined to “demolish barriers to successful prosecution”.

Rape is described, and we agree, as ‘an appalling crime that devastates the lives of victims and their families and inspires fear in our communities. Rape is defined as “sexualised violence, representing a psychological as well as [a] physical violation”.

The definition of rape (sexualised violence) is, in our view, a good one, but does it tell us everything we need to know?
We believe it does not.
We believe it contains an economy of truth that needs to be exposed.

The euphemistically termed ambition of “strengthening the existing legal framework” (page 5) could, given the track record of discrimination against men to date, be easily construed as assuring them that they must continue to endure the torment because it will cleanse their soul – or as one advocate of ‘cultural change’ once put it ‘Arbiet Macht Frie’.

The present triumvirate of ministers have added a caveat that they do not intend to interfere “with the burden of proof” despite their disclosed ambition which is “to increase convictions rates” (but isn’t the centrepiece of the Consultation Paper ‘increased conviction rates’ and won’t that aim be nullified by maintaining a high burden of proof?). Examples of how little reliance can be placed on such ministerial promises are too numerous to mention. From the fox hunting ban, hare coursing, smoking ban, ‘the pound in your pocket’, Sunday Trading, protecting retail trading at Christmas and Easter, ‘no plans to increase taxes’ and ‘life imprisonment’ meaning a lifetime in jail, etc, all have been reneged upon.

These ideological mantras for wreaking cultural change by putting more men behind bars have been wheeled out once too often and the idea is a little tawdry and tired. It is nothing short of suborning due process, compromising Equity and perverting the natural course of justice. In wanting to see Equity no longer used as a bulwark against statutes when they are used as instruments of fraud. (see Dicey, Question 2 below), there is a whiff of conspiracy.
There is a danger that in widening the definition of rape to include non-vaginal penetration that the law and the offence becomes trivialised.
Thirty years ago a County Court Judgement (CCJ) would have spelt the end of any dream of buying a motor car. Today, with so many local authorities and parking meter companies seeking prosecuting for minor amounts, CCJs have become trivialised and no bar to purchasing a motor car.
Furthermore, for the state to repudiate a woman’s capacity to accept or reject any form of contractual undertaking and then to bestow itself with powers to prosecute against the express wishes of the victim tells the world that the victim is no more than an ‘infantilised’ person.

It is undeniable that rape is an appalling crime and is here not contested, but should the accompanying ministerial views, no doubt sincerely expressed, be enough to convince us to follow the path outlined in the Consultation Paper that could lead to eventual trivialisation?
Vainly threatening more of the same ineffectual medicine as a ministerial response is only to be expected when devoid of effective alternative options. They feel more keenly than most the chill wind of a fickle electorate.
We should fear for the virtue of democracy and the rape of justice when plans are put in motion to demolish barriers to prosecutions. There is always a danger that the chattering classes in thinking they know what is best might really be out of touch with public sentiment.

Our prejudices towards someone accused of rape have changed little from the innate bigotry vividly portrayed in Harper Lee’s book “To Kill a Mockingbird” set in the 1930s. The 1962 film version is a treasure-trove for the socially astute. The inward-looking ‘small town’ mentality and racism of America in the mid 1930s is replaced in the 21st century by a determination to jail all men, not just the occasional ‘nigger’ who might waywardly look at a woman and endure having all the evidence discarded.

A charge of rape in the racist 1930s could have only one verdict; rape, attempted rape or false allegation - it made little difference. The verdict was a foregone conclusion. The only question to be resolved was whether it would be a legal hanging or a mob lynching. (see footnote 1 above).

Before we allow ourselves to become too righteous or to complacent, there are more than a few uncomfortable parallels concerning our legal system of today. Harper Lee’s story epitomises the moral contradictions, double standards and unspoken bigotry that finds so many resonances in Harriet Harman’s Britain of today.

No woman, especially a white woman, would ever claim to have been raped, especially by a black man, unless it was true – and that is the same proposition and mentality we are being asked to endorse in this Green Paper. How little has changed in mainstream political attitudes and how much the Consultation Paper has in common with the worst excesses of ‘To Kill a Mockingbird’.?

The American Constitution should have given the accused (the ‘nigger’) all the rights of due process afforded to everyone else regardless of crime, income or social standing - but it did not. It took until the 1960s for the US Supreme Court to rule that these attitudes were unconstitutional, barbaric and must cease. The second class citizen is not a Negro in Alabama but shortly any man in Britain.

In the Britain of today the legal standing of a man accused of rape is little better than a black man accused in segregationist America. The apathy in official circles to ‘trial by media’ is breathtaking and the discrimination in law enforcement by executive agencies for similar offences equally tangible. A fair trial is next to impossible and the verdict almost a forgone conclusion because of the Billam guidelines.

To this litany of discouragements it is now proposed to add further curtailments to an individual’s right to a vigorous defence, right of cross-examination, right to due process and to a fair trial. Harper Lee’s rape victim, namely the accused, had to wait 30 years to be posthumously exonerated.

The implication is whether the present proposals will lead to increased persecutions of the innocent in the name of chasing down the guilty - and will those innocent Britons have to wait a similar time?

As a quid pro quo to the austere proposals attacking men’s civil liberties the government needs to reinforce, not undermine, confidence in the judicial process.

In 2003, Harriet Harman, the Solicitor General, made no secret who were her targets – men. The defence of ‘provocation’ was to be abolished.

In 2004, by Home Secretary David Blunkett attempted to recover £80,000 for board and lodging from a man who was wrongly convicted and who spent 25 years in jail. Blunkett took

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6 Melanie Phillips 2001

7 Florida, USA: Alan Crotzer, aged 45, spent 24 years behind bars for the rape of a 38-year-old woman and a 12-year-old girl. An all-white jury took one hour to convict him. In 2006 after a wait of 3 years DNA evidence proved his innocence. Mr Crotzer is black http://www.guardian.co.uk/international/story/0,1693610,00.html
his fight for the right to charge victims of miscarriages of justice more than £3,000 for every year they spent in jail while wrongly convicted to the High Court in 2004. In 2006, the new Home Secretary Charles Clark sought to decrease compensation payments for miscarriages of justice from £8 million per annum to £5 million. His aims were to prevent defendants walking free from the Court of Appeal after their convictions have been quashed. 8

The unambiguous intention of the Consultation Paper is to jail more men than at present. Inevitably, if that happens the number of wrongly convicted men will also increase (See Sect 20. US Prison Population).

Government proposals to reduce compensation payments means that future victims of wrongful imprisonment will not receive adequate levels of financial compensation while compensation paid to their alleged victims will remain unaffected. All this does not augur well for justice for men in Britain. It is repugnant and sexist in the extreme. It belongs to a government that has no conscious. 9 Britain, the mother of parliaments, home of Magna Carta is now home to pernicious legislation aimed specifically at men.

Accusations of rape against the whole of the Duke University La Crosse team triggered the media equivalent of a lynch mob (April 2006). The girl at the centre of the rape accusations first claimed she had been raped by all 20 student players but later she changed it to only three. Police found no matching DNA for either the 3 or the 20. The names and photos of the accused are smeared across network television in what sometimes seems to be a conscious effort to wreck lives. All their fixtures have been cancelled and their careers as players probably wrecked. So much as a hint of the accuser's initials is strictly forbidden. Their anonymous accuser filed another rape complaint against three men in 1996, but ultimately declined to pursue the case.

The imbalance in media reporting has got to be wrong. For the media, trials are apparently little more than legal eccentricities allegedly once loved by liberal intellectuals but now largely being abandoned, and are not necessary in order to ascertain guilt. 10

4. Better Background Statistics

To borrow from the late Jacob Bronowski, ‘only by asking the impertinent questions can we arrive at pertinent answers’. 11 That, after all, is the essence of rational scientific endeavour. Although impertinent questions would bring it closer to the pertinent answers it so desperately needs it feels paralysed to ask. Government invariably shies away from asking these supremely important ‘impertinent questions’ yet craves being perceived as impartial, rational and objective in its deliberations. The Consultation Paper also shirks the necessity to elicit uncomfortable truths.

It is therefore left to those who are not beholden to any vested interest, whose salaries cannot be jeopardised and who are unconnected in any way to the establishment, to pose impertinent questions.

We would agree with everyone that, in the words of the Consultation Paper, ‘Rape is a crime, it can devastate victims and families’, but we would have to impertinently insert that murder is

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9 Michael O'Brien, freed in 1999 after being locked up for 11 years for a murder he did not commit received £650,000 in compensation with which to rebuild a broken life but found £37,000 had been taxed at source by the Home Office. Another, Robert Brown was found guilty in 1977 of murder when he was aged 19. In 2002 he was freed, after 25 years imprisonment. He received a bill for the £80,000. Vincent Hickey & Michael Hickey, both wrongfully imprisoned for 18 years, and both billed £60,000. Pub’d March 19th 2004, Mark Griffith.

10 See also accusations made against Mike Tyson, Kobe Bryant etc etc

11 British scientist and mathematician, authored ‘Ascent of Man’
more absolute in its devastation. However, if we are to concentrate on rape let us also weigh as equally important the devastating effect of being wrongfully arrested, wrongly convicted, and wrongly imprisoned. In these circumstances the rape victim is the accused facing a false claimant.

The serious concerns expressed by Prof Reece Walters regarding the accuracy and reliability of Home Office statistics are shared by other researchers. Just how serious his concerns are can be gauged by his call for fellow researchers to boycott Home Office data. 12 John Haskey, once the doyen of social policy statistics, has experienced government suppression of data and has now left his employment at the ONS for the spires of Oxford. 13

Everyone would agree that rape inspires fear - that aspect is not in contention - but how much of this is due to mischievous Home Office statistics and how much to the relentless and colossal publicity that is prompted by a Home Office looking a for a soft target to detract criticism by scare tactics?

Having established the repugnance of the crime the Consultation Paper equates the conviction rate as the cause for the high level of fear and devastation. However, the devastation is not on a societal scale but on the individual and within this context it matters little if there are 2,000 alleged rapes or 250 actual rapes. It is the impact on the individual and the reasons for the event that must be separately tackled. This can best be done by the categorisation, not aggregation, of rape.

Rape represents 1% of all reported crime and it is this that is never conveyed to the public. The probability of being raped is about equal to experiences an armed hold-up in a Post Office held up where shotguns are used.

Throughout the Consultation Paper the authors are obsessed with the conviction rate and for this reason the authors will never find the solution they seek. It is bizarre to believe that by increasing the conviction rate it will reduce the incidences of rape. It will not. Nor will longer prison terms.

How the two (or three) are linked in the first instance is not stated and why altering one will affect the second and third is never mentioned. We are expected to believe it as a given. That is one of the Consultation Paper’s Top Ten most glaring mistakes.

Providing everyone with ever-bigger legal umbrellas doesn’t stop it raining. If rape were rain we would not stop to count the droplets but start to examine the phenomenon by identifying the factors. We must cease our fixation with counting offences and victims, and focus on the types of offender. That alone holds the key to influencing the number of offences and the number of victims.

If rape were murder we would not allow everyone accused to be hanged without a fair hearing. When murder was a hanging offence the consensus was that it was far better to allow nine murders go free than to hang an innocent man. Why then do we adopt a reverse posture for rape and sexual offences? What bankruptcy in our culture makes this sensible protective maxim outmoded and superfluous?

The Papers authors clearly think they are dealing with normal rational beings, with average IQs.

12 ‘Home Office accused of ‘political bias’ in research’, By David Barrett, the Scotsman, Feb. 2006, http://news.scotsman.com/politics.cfm?id=223312006

13 Single mothers’ benefits ‘cover-up’, by David Leppard and Robert Winnett, The Times, October 17, 2004 http://www.timesonline.co.uk/printFriendly/0,,1-523-1314096,00.html
They expect the perpetrators to ‘weigh up’ the consequences and decide to postpone indefinitely their actions. The paper assumes that some powerfully overarching “message” will reach out to potential sex offenders from legislation and Consultation Papers and that it will be a sufficient deterrent for offenders to permanently put an end to their evil ways. The advocates of this approach fail to realise that rape offenders are not one homogeneous group that can be neatly categorised and carolled - nor are they likely to read Consultation Papers. They are not one monolithic sub-set but an amorphous mass that fall into many classifications.

Some people with low IQs get through life by being agreeable to ‘authority figures’ and telling them what they want to hear. In other cases, they are propelled by a need to be the centre of attention at least once in their lives to make confessions (though this can also apply of some rape victims). Sometimes police claim a suspect confesses, knowing the public will tend to believe the police and not the suspect. What can be said of them is that they are a series of groups with distinct sub-sets, some with bi-polar/personality disorders that respond differently because they are motivated differently.

Britain is poorly served by its statistical capabilities. Data showing age, race and sex of victim and perpetrator at one and the same time (as will be repeatedly revealed in this submission) are rarely available. This is a common deficiency not only for sex offences but for cases of child abuse and child homicide. To illustrate the rarity the matrix below, taken from “Victims of Violent Crimes” published by the Home Office, (Table A) shows the victim and rape perpetrator by age but dates from circa 1995 (sample size 600).

The two areas shaded yellow (one vertical and one horizontal), indicate a mismatch in age between victim and suspect thought to be the perpetrator. Studying the horizontal area we observe inappropriate sexual congress between 1). emotionally immature young suspects with victims aged under 9, [12%], 2). inappropriate sexual activity with the same category of very young girls (though they could be boys) by adult suspects of more mature years, e.g. aged 25 to 45, [76%] and finally 3). much older suspects aged 60 and over inappropriately engaging in sexual activity with very young girls [9%] (see Table A).

<table>
<thead>
<tr>
<th>Age of victim Recorded</th>
<th>Age of suspect</th>
<th>Not</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-9</td>
<td>10-15</td>
</tr>
<tr>
<td>100%</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>10-15</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>16-24</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>25-39</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>40-59</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>60+</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Subtotal</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>All ages</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>100%</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>


The vertical yellow area represents emotionally immature young suspects (see 1. above) who engage in sexual activity with, a). victims of immature years, e.g. aged 1 to 12 [12%], b).
victims of more mature years, e.g. 15 to 25, [10%] and c), more elderly victims, e.g. all ages including pensioners [6%]. From the study 28 out of the 600 fell into the last three categories. Another deviancy column could be highlighted in the “60+” age group

Once again, by not revealing, the gender of victim and suspect our knowledge is limited. We have to assume the victims are female for ease of comparison but they could as easily be abused young boys.15

Analysis of the second vertical yellow area, i.e. suspect column aged ‘60+’, would provide a mirror or inverse view of the above ‘a, b and c’ categories and the motives or drivers would probably be unrelated. Some in this subset we would today label paedophiles. Paedophiles tend to be identified when in their early thirties and span every aged group thereafter.

Table B. Offenders found guilty at all courts or cautioned by type of offence, sex and age group, 2003, Number of offenders (thousands) Indictable offences.

<table>
<thead>
<tr>
<th>Males:</th>
<th>All Offender</th>
<th>All Ages</th>
<th>Aged 10-11</th>
<th>Aged 12-14</th>
<th>Aged 15-17</th>
<th>Aged 18-20</th>
<th>Aged 21 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual offences</td>
<td>5.7</td>
<td>5.6</td>
<td>0.0</td>
<td>0.3</td>
<td>0.6</td>
<td>0.4</td>
<td>4.3</td>
</tr>
</tbody>
</table>

Source; Criminal Statistics 2003, Home Office, Table 2.10, page 41.

The area shaded grey within Table A displays the expected sexual partners by age compatibility. The figures indicate that the majority of suspects [520 out of 600] fall within the age range of 16 to 59, with far more appearing in the 25 -29 group [25%, 40%, 22%].

This could be highly significant because the average age of marriage is now over 29 for women and over 30 for men. The likelihood that most sex offence victims and suspects would be unmarried in this category would be high. The same age and marital pattern can be seen in domestic violence where unmarried single women aged under 30 are far more likely to be victims.

Dealing with paedophiles should call for a very different approach to that of immature young suspects highlighted at Table A and B. Paedophiles are less likely to be found in the grey shaded area. But the younger age groups i.e. up to 17 may be perpetrators of low level inter-familial sexual offences.

Although the victim perpetrator matrix published by the HO (from 1994) repays examination we have to stress that there is insufficient evidence displayed to arrive at firm conclusions. The Home Office by not divulging how many, if any, were male victims perpetuates a highly unsatisfactory situation where perennial incompleteness permeates British public statistics.

5. Alternative statistics.

The only diagram in the Consultation Paper can be found on page 9 and is not particularly helpful or instructive for the lay reader. To remedy the situation this chapter will be given over to a series of diagrams (tables and charts) that better display key information. The graph at Fig 1 shows the rise in the number of rapes claims reported to police based on data from the Home Office and United Nations. This is the same graph used for the Minority Report “Rape Reform: When Justice Collides with Science” (June 2000).

Fig. 1. Number of rapes claims reported to police. 1975 to 1998 [source; Home Office]

15 "The Ultimate Taboo", female sex offenders of young boys, BBC TV ‘PAN0RAMA’ TX. 6.10.1997
From around 1985, the trend line for rape claims can be seen continually rising year upon year. This is not of itself abnormal but doubts must arise when the increase is a). constant, b). unwavering c). persists over a 20 year period, and d). when the trend is not seen in other countries (Fig 4 and p.14)

The second graph, representing divorce (Fig. 2), illustrates what would normally be expected by events that turned on a sudden change in the law, e.g. the divorce reforms of 1971, followed by successive legal amendments. This creates minor spikes in the trend line but not radically re-invigorated trends. However, counting divorce numbers is simple and is not subject to counting revisions, policy reviews or definition changes which in the case of rape can influence results.

Fig. 2.  No. of Divorces 1961 – 2003 (GB and UK) (includes annulments)

In these circumstances the trend line can be seen to settle down into a plateau after an initially brief period of increase, e.g. 1971 to 1981.
However, more recently available rape figures when added to the graph of 1999 (Fig. 1) shows that the trend line for reported rapes shows no signs of lessening its increase and no sign of levelling off prior to reaching a plateau seen in divorce (Fig. 3)

Fig. 3.  Number of rapes claims reported to police. 1975 to 2003 [source; Home Office]
6. New Zealand

Further concerns as to the veracity and accuracy of reported rapes occur when statistics from other countries fail to show the same steep rise. For instance, in New Zealand the number of convictions for rape have both risen and fallen over time as one would expect (see Fig. 4 and Table C). Conversely, in that same period New Zealand has seen a dramatic collapse in the number of reported rapes and sexual offences generally. Canada also reports the lowest rate of sexual assaults since 1985.

Fig. 4. Number of Rape reported New Zealand 1992 to 2001

<table>
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<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>149</td>
<td>238</td>
<td>247</td>
<td>327</td>
<td>302</td>
<td>210</td>
<td>253</td>
<td>207</td>
<td>131</td>
<td>183</td>
</tr>
</tbody>
</table>

Source: The graph above (Fig 4) is derived from data displayed at Table C http://www.justice.govt.nz/pubs/reports/2003/conviction-sentencing-2002/chapter-2.html#2.5

Table C. Rape, number of convictions for violent offences, 1992 to 2001

British Government policy has been obsessed with the ‘conviction rate’ for sexual offences for many years. For the last 10 years newspaper have been lead to believe that this was defined as the number of convictions achieved as a ratio of the number of rapes reported. It is only in the last month that the Home Office has subtly redefined what they mean by ‘conviction rate’ and belatedly brought themselves more into line with what we defined as the conviction rate, namely, the rate by which those accused at their trail were later convicted (Fig. 5, below).

In the past the Home Office tended to obfuscate the issue for lay readers by talk of conviction rates when they actually meant the problems of getting cases to stand up in court. This they wrongly termed the ‘attrition rate’. Today the Home Office more properly state, “Fewer than 6% of rape cases reported to the police ultimately result in a conviction.” We welcome the change.

Calculations using Fig 5 (below) reveal not a 6% conviction rate but a fairly constant conviction rate of 48% for those cases brought to trial and where the accused is found guilty. It was reprehensible for the Home Office to persist in misleading the press and the public by claiming low conviction rates in the region of 6% when the rate of almost 50% conveys a completely different picture (Annex B).

In 1999 we defined the gap between reported rapes and convictions, not as the conviction rate that Home Office publicity then favoured, but the ‘Credibility Gap’ (see Fig. 6).

**Fig. 5. Conviction Rate** (come to trial versus found guilty)

**Fig. 6. Credibility Gap** [difference between rapes claims and come to trail]
If we accept that common behaviour, actions, responses and conduct are all expressions of the human condition then we go some way to explaining why there is rough parity of offending among people regardless of national borders. A typical example is that of child abuse. Statistics across the whole of the English speaking world puts perpetration of child abuse by women at over 60%, and for neglect at over 80%. Only in the sexual abuse category do men exceed the number of female perpetrators.

Murder and rape, to name but two crimes, share certain similarities in their pattern by way of dominant gender, the number and proportion involved, and their frequency and location of event.

The US, during the mid 1980s, tried unsuccessfully to address the problem of rape by heavier criminal penalties. Reported rapes did not reduce but the numbers incarcerated rocketed (Sec 20).

To make British rape figures comparable with New Zealand’s the numbers for New Zealand would need to be increased by a factor of 15 (population 4m and 60m respectively equals to 1/15 of UK Pop’n). Table D shows an increasing gap developing when the number of reported rapes in England and Wales are compared with the number of New Zealand rape convictions. Comparisons between countries are complicated as each nation has slightly differing definitions and sub-categories. New Zealand has a regime where claims for rape compensation are not related to an actual sex offence, courtroom trials or proven rapes. Canada has a Level 1 through to Level 3 classification for rape.

Nonetheless, it is possible to glean some insights into frequency and movements by comparing trends between what, at first sight, might be seemingly incompatible data-sets. For instance, Table D shows a divergence over time between rape convictions in New Zealand and reported rapes in England & Wales. Similarly Canadian figures for reported rapes and convictions indicate a stable trend (Table E). This is in stark contrast to England and Wales (see Fig 5) where rape convictions and ‘come to trial’ cases in the 1990s have both increased.

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17 From 400 to 600 and from 600 to 1,200, respectively.
7. Monetary Distortions

In New Zealand rape figures collapsed after 1992 and this seems to have followed a significant alteration to the calculation of compensation payments paid to rape victims. The burgeoning expense proved too great and government was forced to abandon victim compensation payments in 1993 and chose instead to pay for medical and counselling treatment only.

When lump sums were still available to rape and sexual abuse victims (pre-1993), the number claiming rose from 221 in 1988 to 13,000 in 1993 (from a population of just over 4 million).

In 2002, New Zealand introduced for a second time compensation allowing sex abuse victims to receive lump-sum payments of up to $NZ 100,000, a five fold increase in compensation claims was seen. Within one month more then 100 sex offence claims a week were being made.

At some time in the future it would not be a revelation to learn that the real UK rape figures at this present time were actually downwards in the same way as domestic violence figures are now downwards. The number of sexual offenders in 2003 was only 75% the number in 1993. Despite this, Britain is directing more funding and more legislation towards rape and rape victims.

In the last 12 years, criminal prosecutions in New Zealand for all categories of sex crimes (including rape) have averaged approx.700 a year (far less than the 13,000 compensation claims in 1993).
However, the compensation figures include general sex abuse and relate to counselling etc which since 1993 has totalled on average 6,000 a year.

Comparisons with British rape trend figures could not be more stark. No where in New Zealand figures is the same overall and ever-upward trend seen, and reported rape figures in Canada are downwards (see Section 6 below).
New Zealand rape conviction figures rise and fall with no particular pattern and the overall result is that rape convictions in New Zealand are at the same level in 2001 as they were in 1992.
Canada has seen reported rapes and rape convictions fall slightly. Both countries project a static situation on the whole.

8. Canada

Canada’s reported rape figures are remarkably stable (Table E). Canada has re-named crimes of rape as ‘sexual assault’ which, as part of a thorough review, offers a better way forward in our opinion.

Sexual assaults are divided into 3 broad categories or levels according to the seriousness:

- Level 1 (the category of least physical injury to the victim);
- Level 2 (sexual assault with a weapon, threats to use a weapon, or causing bodily harm);
- Level 3 (sexual assault that wounds, maims, disfigures or endangers the life of the victim).

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18 “Sex abuse claims at 500 a week”, by Roeland van den Bergh, Feb 21, 2002, since January 7th claims rose from 100 a week to 500 a week. The increase followed a national mail-out offering up to $175,000 in compensation to sexual abuse victims.


Unfortunately, Canada’s re-bundling of offences took place in the 1990s and no longer allows for easy comparisons with British offences of rape, sexual assault, sodomy, under-age-sex, flashing etc, etc. Canada’s aggregation renders comparisons with particular sub-sections almost impossible. Although there are advantages to replacing rape with ‘sexual assault’ (in our opinion it removes the sense of fear, dread and emotion out of discussions) there is a grave disadvantage that we pointed out to the Home Office when they wanted to re-categories sex offences in 1999 namely that future analysis would be problematical.

Table E. Sexual assault (sexual assaults reported by police), Canada.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>24,001</td>
<td>78</td>
</tr>
<tr>
<td>2001</td>
<td>24,044</td>
<td>78</td>
</tr>
<tr>
<td>2002</td>
<td>24,499</td>
<td>78</td>
</tr>
<tr>
<td>2003r</td>
<td>23,514</td>
<td>74</td>
</tr>
<tr>
<td>2004</td>
<td>23,534</td>
<td></td>
</tr>
</tbody>
</table>

Canadian statistics allow us to see that more than 98% of sexual assaults reported by police in 2004, were classified as Level 1. Under the same regime we would expect to see the same in England and Wales, but this ability to distinguish between types of rape is something totally missing from British published statistics. Level 1 sexual assaults actually decreased 1% in 2004, while one of the more serious forms of sexual assault (level 2) increased by 8%. When Sexual Assaults and Other Sexual Offences are combined the totals for 2000 - 2004 vary from 27,000 to 26,000.

Almost all Canadian provinces reported drops or stability in sexual assault in 2004, with the exception of Quebec and Ontario where rates increased by 2% and 3% respectively. Prince Edward Island recorded the largest decline – down 36%. Other notable decreases occurred in Nova Scotia (down 9%) and Saskatchewan (down 7%). Quebec once again had the lowest rate (at 59), followed by Ontario (at 65) and Prince Edward Island (at 65). The highest rates were seen in Saskatchewan (at 129) and Manitoba (at 128). This is of more than passing interest because British government funding for both rape and domestic violence is based on the assumption that both are rising whereas in the case of the latter it has fallen consistently for 6 years. Why should acts of domestic violence fall but reported rapes increase?

Canada has a population of 32,270,500 (2005). For figures to be comparable with England & Wales the totals would have to be doubled (Table F). We suspect the ambition of the Home Office is to configure category and data collection to show all diverse offences as “rapes”. This would lead to lesser crimes being included and an apparent enhancement of ‘conviction rates’ would follow.
Table F. Sexual assault [x 2] (sexual assaults reported by police), Canada Versus Reported Rapes only, Eng & Wales

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003r</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>rate</td>
<td>Number</td>
<td>rate</td>
<td>Number</td>
</tr>
<tr>
<td>Canada [x 2]</td>
<td>48,000</td>
<td>78</td>
<td>48,100</td>
<td>78</td>
<td>49,000</td>
</tr>
<tr>
<td>Eng &amp; Wales [1]</td>
<td>7,929</td>
<td>9,002</td>
<td>11,436</td>
<td>12,354</td>
<td></td>
</tr>
</tbody>
</table>

[1] Figures are exclusively reported rapes. Unlike the Canadian figures they do not include other offences.

9. England & Wales

As of June 30th 1999 there were a total of 4,946 people jailed for sex offences in England & Wales (HO Table 1.6). Of these, 2,576 had been jailed for rape (i.e., just over half) and a further 2,370 were in jail for various other sexual offences. From a total prison population of 51,392, the 4,946 jailed for sexual offences accounted for 9.6% of all incarcerations. Although rape is a dread among the populace we should not forget that it represents only 0.6% of all reported crimes.

In contrast to Canada and New Zealand, the number of rape allegations in England & Wales doubled between 1987 and 1997 and then doubled again to over 12,000 between 1997 and 2003.

Table G. Reported Rapes (Eng & Wales) 1975 - 1997 and 2000 - 2003

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported rape</td>
<td>1040</td>
<td>1094</td>
<td>1015</td>
<td>1243</td>
<td>1170</td>
<td>1225</td>
<td>1068</td>
<td>1336</td>
<td>409</td>
<td>429</td>
<td>421</td>
<td>396</td>
<td>491</td>
<td>564</td>
<td>426</td>
<td>543</td>
</tr>
<tr>
<td>Come to trial *</td>
<td>409</td>
<td>429</td>
<td>421</td>
<td>396</td>
<td>491</td>
<td>564</td>
<td>426</td>
<td>543</td>
<td>453</td>
<td>454</td>
<td>569</td>
<td>593</td>
<td>649</td>
<td>799</td>
<td>930</td>
<td>914</td>
</tr>
</tbody>
</table>

The numbers accused of rape and who subsequently ‘came to trial’ in England & Wales increased at the same rate – doubling between 1987 and 1997. Table G (above) shows the historical progression of reported rape and accusations that reach the trial stage, i.e. come to trial.

This would indicate that the same degrees of false or spurious rape claims are made in any one year. The reasons why reported rapes do not equal the number of rape trial initiated is given in Table H citing the research paper published by the Home Office (HORS 196). (See below for more detail)
This is indeed borne out by the Harris & Grace survey of 1999 (HORS 196) which confirmed earlier trends and the reasons why so few reported rapes reached trail stage. In essence, about 60% of all reported rapes were false allegations in so much that the accusers later withdrew their allegations after police had begun to investigate the matter (see also Sect 22 page 35).

There are those that excuse this fall off by blaming factors such as fear etc. While this is a factor in some instances, conversations with officers and police surgeons reveal a very different causation despite the Home Office placing restrictions on how the police may 'officially' determine that a rape allegation lacks credibility and should be assigned to NFA (no further action) or 'no crimed'. Home Office Study 196 (page xi) explains that rapes can only be "No-crimed" by the police when the complainant voluntarily retracts completely and admits fabrication. Therefore, "No-crimed" rape allegations can be treated as prima facie claims that are false and / or malicious.

On other occasions some women who falsely accuse may be reluctant to admit to fabrication, perhaps for fear of prosecution. They feel unable to comply with the strict terms for retraction demanded by the Home Office. However, they can “indicate” to police that the crime was fabricated, or contained evidence false. Where police receive these indications, the allegations are termed "NFA" (no further action). This, to a large extent, explains the low conviction rate.

### 10. US Air Force

Every commentator is too embarrassed by their own sense of etiquette or of being intimidated by peer pressure to suggest that women are capable of lying and some can be bare faced liars. This leads to a reluctant endorsement of the radical feminist view that not only are all men rapists but that to have a moments doubt shows disloyalty to women and proves it must be true. Why, such advocates ask, would women lie about being raped; why make up such a fantastic story? The reasons are numerous.

Why women make false and malicious rape allegations is as uncertain now as it has ever been. There are few studies into the phenomenon and this will remain the case while the present intellectual cowardice and intimidation remains.

<table>
<thead>
<tr>
<th>Table II. Harris &amp; Grace Survey (1999), HORS 196, &amp; HORS 293, page 28.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial sample size</strong></td>
</tr>
<tr>
<td><strong>Cases lost at Police stage</strong></td>
</tr>
<tr>
<td>Comprised of:</td>
</tr>
<tr>
<td>No-crimed</td>
</tr>
<tr>
<td>NFA</td>
</tr>
<tr>
<td>Unsolved</td>
</tr>
<tr>
<td>Balance c/fwd 31% to CPS</td>
</tr>
<tr>
<td><strong>Cases lost Prosecution stage</strong></td>
</tr>
<tr>
<td>Referred to CPS</td>
</tr>
<tr>
<td>Discontinued</td>
</tr>
<tr>
<td>Balance c/fwd 20% to trial</td>
</tr>
<tr>
<td><strong>Court stage</strong></td>
</tr>
<tr>
<td>Prosecutions</td>
</tr>
<tr>
<td>Verdicts:</td>
</tr>
<tr>
<td>Rape conviction</td>
</tr>
<tr>
<td>Other conviction</td>
</tr>
<tr>
<td>Acquittal</td>
</tr>
</tbody>
</table>

Source: [http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf](http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf)
A widely quoted figure comes from a study conducted by Eugene Kanin of Purdue University, who examined 109 rape complaints registered in a Midwestern city from 1978 to 1987. The police finally classified 45 of them - or approximately 41% - as false.

Another rare insight into false allegations comes from a US Air Force survey that was undertaken in 1983 by Charles McDowell PhD. US Air Force Office of Special Investigations, Washington DC. His report tabulated the motivations cited by women who acknowledged that they had made false accusations of rape. (Table I).

The USAAF results were as follows:

<table>
<thead>
<tr>
<th>Reason given:</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spite or revenge</td>
<td>20</td>
</tr>
<tr>
<td>To compensate for feeling guilt or shamed</td>
<td>20</td>
</tr>
<tr>
<td>Thought she was pregnant</td>
<td>13</td>
</tr>
<tr>
<td>To conceal an affair</td>
<td>12</td>
</tr>
<tr>
<td>To test husbands love</td>
<td>9</td>
</tr>
<tr>
<td>Mental/emotional disorder</td>
<td>9</td>
</tr>
<tr>
<td>To avoid personnel responsibility</td>
<td>4</td>
</tr>
<tr>
<td>Extortion or failed to pay</td>
<td>4</td>
</tr>
<tr>
<td>Scared of S.T. Disease</td>
<td>3</td>
</tr>
<tr>
<td>Others</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>


It has been shown to only a few police surgeons within the last 4 years but they confirm that the two lead causes are, in their estimation, closer to 30%, i.e. revenge and sense of guilt or shame.

Given evidence from adjacent areas of research it would be reasonable to expect that the mental and emotional disorder category together with the desire to avoid personnel responsibility category would remain as a constant were a study be undertaken today. 21

Paternity fraud is another instance where women make false allegations, knowingly and calculatingly. Nationwide results in the US show that 1 in 3 of the men named by the mother and then DNA tested are not in fact the biological father.

More exploration of women’s psyche is required before we can say we have an understanding of why women make extravagant claims. (See bi-polar disorder, p 7; USAF results, p 15; FBI p 32 & 42).

11. False Allegations

In 1999 it was pointed out to the SOR team that by insisting in not contemplating the complications and possible injustices caused by false accusations of rape, there was the very real risk of new legislation being compromised.

What was not addressed in 1999 and again in 2002 was the possibility of, a) false accusations of rape and b) false allegations of sex offences other than rape (as per V.A.P. Act 1861 definition).

21 Domestic violence research by Ms Terie Mofitt, Dunedin study showing a high incidence of ‘comorbidity’, i.e. bi-polar traits among respondents / aggressors.
Government figures, uncomfortable though they are, show that that while many accusations are made only a small minority have any substance (less than 30%). Estimates as to the number rapes that go unreported vary wildly from 15 times to 19 times and therefore cannot be measured. Different interest groups will put different emphasis on these theoretical numbers

What is certain is that where a case of, say, child asexual abuse is under way it dominates newspaper headlines. Once the cases collapsed for lack of substantive evidence, as happened in a recent Scottish instance, all coverage stops immediately. No one asks why so many cases suddenly collapse or how the accused is supposed to get on with his or her life afterwards.

Two nursery workers whose lives were wrecked when they were falsely branded paedophiles in an official report were each awarded (after a 10 year battle) the maximum possible £200,000 libel damages recently after a top judge declared them innocent.

Christopher Lillie and Dawn Reed were tried at Newcastle Crown Court in 1994 on 11 counts of indecent assault and rape following the original allegations of abuse. They were acquitted due to lack of evidence. Newcastle City Council set up an Independent Review to consider the parents' complaints against Lillie and Reed in 1995. The report, published in 1998, claimed that Lillie and Reed 'had abused their charges at Sheffield nursery sexually, physically and emotionally; used them to make pornography; and were part of a paedophile ring'. The report again hit the headlines of local and national papers. Lillie and Reed then brought a libel case against Newcastle City Council.

Nine years later and after a five-month High Court trial costing millions of pounds, Mr Justice Eady found in August 2002 that the child sex abuse claims were 'untrue'. He awarded them the maximum permitted damages, saying: 'They have earned it several times over because of the scale, gravity and persistence of the allegations and of the aggravating features'. In addition to their libel damages, Lillie and Reed also claimed 'special damages' of £60,000 each for items such as loss of earnings and possessions.

In the adult world the situation is just as bad for those accused of a sexual offence as those who are rape victims. Without first a criminal case civil compensation suits are not common but damages can be successfully claimed. The first private prosecution for rape in an English court was brought by two prostitutes in 1995 which the CPS had declined to take forward on grounds of insufficient evidence.

This was followed in April 1995 by Linda Griffiths when the Crown Prosecution Service decided not to prosecute on grounds of insufficient evidence. She claimed her former boss had raped her in 1991 and took her case via the civil courts and won £50,000 in damages. Instead of needing proof beyond reasonable doubt, in a civil action where the court must decide 'on the balance of probabilities'.

Taking the same recourse, but this time for false allegations of rape against him, Martin Garfoot won £400,000 in damages against a woman colleague, Mrs Lynn Walker, in February 2000. Mr. Garfoot had to stake his home, his marriage and his career to prove he was not guilty of rape in 1996. With no legal aid for libel, he also had to consider that the allegations of rape would be published to an audience far beyond the High Street chemist's shop where he worked.

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22 The judge's verdict pulled no punches. Mr Justice Eady upheld Newcastle City Council's defence of qualified interest, which usually protects reports published in the public interest from libel action; but he made a 'very rare' finding of malice against the Independent Review Team because 'they included in their report a number of fundamental claims which they must have known to be untrue and which cannot be explained on the basis of incompetence or mere carelessness'.

http://www.butterworths.co.uk/pionline/quantum/archive/2002/july.htm#Lillie%20and%20Reed
Fortunately, security video footage in the shop recorded a few days later showed his accuser “at ease and untroubled” as she worked closely with Mr Garfoot. The jury was told that Mrs Walker, “... twisted and twisted and twisted the knife in Mr Garfoot for two years, like a drill going into teeth” and she was described as not just an actress but “a straight-forward liar who set out to destroy his reputation”.

If the intent is get the public ‘sensitised’ to the trauma that rape victims experience we should also consider the greater trauma of being falsely accused. For the innocent accused the alternative to resolutely suing the accuser is, far too frequently, to chose suicide.

* Mr. Carmichael a father aged 63, from Morpeth committed suicide in 1999 after being accused of rape by an 18 year-old girl. It took 5 months for forensic evidence to be processed. Police DNA and semen test were negative – he was not linked but it was 2 months too late. * A husband who faced the rape charges, brought by his wife some months earlier when custody of the children was in dispute, suffocated his two children during their first contact visit to him (Daily Telegraph - April 2000). He then hanged himself.

One can easily imagine the father realising he would be barred from ever seeing his children - even if her claim failed - and would have to face the odium of being a father once accused of rape, took what seemed the best way out for them and for him.

In the stampede for more convictions this is the dark and unspoken side of the law of unintended consequences.

* A Blackpool man, Harry Turner, aged 62, was finally cleared of sexual offences against a young girl following a 3-day trial where it took the jury one hour to find him totally innocent of all 9 charges of indecent assault. Mr Turner said that for over a year his life was "turned upside down, “I have been treated like scum” and ostracised by society.” His disabled wife left him and his family shunned him. Mr Turner took a lethal overdose. (The Gazette, (Blackpool) Feb 19th 2000).

* James Mason, a bus driver aged 23, was falsely accused of raping and kidnapping a 16 year old girl (not named) on Jan 20th 2000. Arrested and charged with raping her in a field, he made three court appearances in relation to the charges before being found not guilty. Magistrates ordered that Mr Masons defence costs be met not from the girls pocket but ‘from central funds.’ As a result of the case he lost his job. A spokeswoman for Blackpool Transport, Liz Esnouf, said that in spite of the courts decision Mr. Mason would not be getting his job back because he drove his bus into a field with a passenger on board which constituted "gross misconduct" (The Gazette, (Blackpool) 4th April 2000).

* False allegations are not confined to celebrities or to make money when newspaper buying the sole rights, e.g. Neil Hamilton, MP, QC, Andrew Neil, former Sunday Times Editor, rock star and friend of Tony Blair, Paul Weller and Mick Hucknall, have all fallen foul to career wrecking claims.

* The least able to defend themselves are ordinary men like Steve Lewis who was arrested in 1996 for two rapes; one which took place in 1992 and the other in 1995. He and his wife know nothing about these rapes. In January 1998 he was found guilty solely on the evidence produced by the police. DNA tests were never made available to his defence lawyers and no identification parades took place.

At the time of one of the alleged rapes Mr. Lewis was with his wife and family. At the time of the second rape Steve was at work with witnesses who voluntarily gave evidence on Steve's behalf - one of them was a director of the company for whom he worked. Steve had no previous criminal record, but is now branded as a serial rapist and sentenced to 15 years imprisonment.
For those very disturbing reasons no one can afford to acquiesce in the matter of false and malicious allegations:

* A Northamptonshire GP was forced to sell his home and practice after attempting to clear his name in court following sexual offence allegations (Chronicle Echo, March 19th 1999).

* Louise Brazil, aged 47 and her teenage daughter Ada, aged 16, were given custodial sentences after falsely accusing the girl’s boyfriend of rape. The rape was sheer invention against Shaun Howes who had been living with them for some considerable time. 23

* Angela Stretton was the woman whose claims of satanic child sex abuse helped put eight people in the dock. She had a history of making false allegations and although this was known to police she was nonetheless the key police witness in the Lewis abuse case which collapsed in the summer of 2004 with charges against all the accused being dropped. 24

* Kerry Emmett, aged 19, falsely accused her boyfriend of rape soon after losing her baby (Daily Telegraph, Nov 3rd 1999) and wasted 66 hours of police time.

* Over 40 police officers took part in the operation to find an alleged rapist before a young girl's rape claim was found to be false. In March 2005 a major inquiry was sparked when Essex police were alerted to the report made by a girl aged around 10. She had told officers an intruder got into her bedroom and attacked her.

The girl was able to give police a false description of her alleged assailant (see opposite). It was not until May 2005 that detective found the report to be false. 25 Race relations would have been prejudiced as Supt Caton was at the point asking every male in the black community to provide a DNA sample.

* Liza Watts, a teenage barmaid from Crawley, West Sussex falsely accused a customer of raping her after he had offered her a lift home at night.

On the TV programme “Friday Night Live” (Nov 1999) the 18 year-old told viewers that her false allegation it was her ‘plea’ for help because she had been sexually abused all her childhood.

She said she hadn’t known where to turn. Over 60 hours of police time was wasted excluding all the costly and time-consuming forensic scientific tests. Before she withdrew her allegation and admitted there had been no rape. Liza Watts, the court was told, had made similar claims in the past and though she had deep psychiatric problems, was a borderline psychotic with “the mind of a 12 to 13 year old”. She was found guilty and ordered to pay £50 costs plus £150 compensation and put on one year’s probation. (case reported in Daily Telegraph 19/8/99).

* A 37-year-old nun who claimed to have been raped was later found to have been lying. She claimed that she had been raped after a Christmas party. There then followed a 10-week investigation costing £50,000. Though the nun had horrific injuries, had lost three pints of blood and required emergency surgery, absolutely no evidence of rape was found. It was later discovered these were self-inflicted and that she was suffering from the mental illness of

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23 ‘Mother and daughter are guilty of fake rape claim’, By Fran Yeoman, The Times, April 28th 2006 http://www.timesonline.co.uk/article/0,,200-2155237.html


25 BBC on line, 17th May 2005 http://news.bbc.co.uk/2/hi/uk_news/england/essex/4554445.stm
Munhausens Syndrome and was from a troubled background and a complicated upbringing (Daily Mail, 2nd March 2000).

* Natalie Knighting, aged 20, and an unwed mother of 3, claimed that when aged 16 she had been raped by a tramp. For this she received £7,500 in compensation. She later claimed compensation for an alleged rape when she was 18. Soon after, her falsehoods were discovered. For defrauding the state she was jailed for six months; for perjury and false allegation there was not tariff. As at 2002 the authorities had been unable to recover any money from her. (Daily Telegraph, Sept 17th 2000).

Frequently there is no penalty to pay for making a false rape allegations, but sometimes the penalty for endangering a man to 7 years of imprisonment is worth £150 in compensation. 26

The worry is not that occasionally false allegations happen and are discovered in time, but that they occur more frequently and are never discovered. The FBI has begun to address this but the Home Office still refuses (see Sects 22 and 23).

The growing expectation should be that to acquire a fair and equitable approach to rape sentencing agreeable to both men’s and women’s interests would require changes which would make men feel every bit as safe as women. Men need a scheme that they can “buy into”.

The other fear, as New Zealand has discovered, is the monetary cost of offering compensation not only to proven cases but the many cases where only an allegation has been made. 27 (Table J).

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Claims paid</th>
<th>Value of all Claims paid £</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>1,164</td>
<td>£400,000</td>
</tr>
<tr>
<td>1981</td>
<td>20,000</td>
<td>£21m</td>
</tr>
<tr>
<td>1991</td>
<td>35,000</td>
<td>£109m</td>
</tr>
<tr>
<td>1996</td>
<td>46,000</td>
<td>£210m</td>
</tr>
</tbody>
</table>

Table J. New Zealand - Compensation paid to victims

Source: CICA (Criminal Injuries Compensation Authority). All types of offences.

Rape accusations are acknowledged by judicial leaders to be very easy to make but very difficult to defend. Some false allegations can be inspired by malice or post-natal depression. Others may be triggered by mental instability or personality disorders. Some are driven by greed while others result from uniquely personal ulterior motives or twisted vendettas.

One such ‘alleged victim’, in Northern Ireland saw a RUC officer jailed while she, his accuser, received over £20,000 in compensation from a variety of sources.

In the recent Duke University case (USA), for example, the accuser has both an extensive police record and children. After the notorious party, she was described as "just passed-out drunk" in a car by one of the first police officers to see her.

By claiming rape she may have been trying to avoid the possibility of re-arrest and the possible loss of her children to the child welfare system.

A shielded accuser does not incur the same degree of personal devastation as befalls the named accused. She is not under any pressure to re-assess what her allegations have wrought. The fact

26 Compare this to £227,000 for costs & compensation paid to an allegedly proven rape crime victim Ms. Parrington Sept 1999

27 Nearly 40,000 claims for a total of about £100m were rejected by the authority after its investigators discovered that many were from criminals. According to the CICA report, the number of fraudulent claimants has doubled since 1998. The Criminal Injuries Compensation Authority acknowledged that the number of "disallowed" claims had risen by more than 10,000 since 1998 and were now running at half of the total claims he received. Of the 38,157 disallowed applications for compensation, 5,082 included false claims for injuries that did "result from a crime of violence". Another 4,097 were made by claimants whom the police said provoked the fights that caused their injuries. And 2,766 were from convicted criminals.
that the media is shielding her name while airing those of the accused provides her with another incentive for inaction and the reinforcing to herself of her own history of events.

In England & Wales anonymity for complainants of rape and sexual assault has been standard for some decades. Over the past two decades the protection afforded complainants has been strengthened so that it now runs from when a woman first makes her allegation to the police. Robin Corbett, MP, who helped introduce the Sexual Offences (Amendment) Act 1976, believes the defendant should also have anonymity and that the right was “given away” by the Conservative government in 1988 (after a landmark case Wiltshire Police complained that the rape defendant's right to anonymity had stopped them from being able to make a public appeal to catch a suspect).

Robin Corbett believes that an acquittal is not enough to repair the damage to the reputation of a person accused of rape or other sex crimes. “It appears clear to me if you give the victim anonymity then you should also give it to the accused up until conviction.”

David Calvert-Smith, the Director of Public Prosecution and head of the Crown Prosecution Service has backed moves for ‘anonymity’ for defendants in all sex cases. By making it clear that conviction rates in rape and child abuse cases would not be affected by giving anonymity to defendants, Mr Calvert-Smith has removed the main obstacle to change. (Independent, 12 Jan 2001).

Government has been pro-active on many fronts – civil rights, gay and lesbian equality, equal opportunity, civil liberties - but the lack of government action or even a statement regarding men’s civil rights is conspicuous by its absence. Leslie Warren spent two years in jail for raping an ex-girlfriend. In March 2003 his conviction was quashed after the court heard that a detective had failed to pass on information about false allegations the woman had made against other men. She later admitted she had lied.

In 2002, rape charges against Andrew Bond were dropped after CCTV footage was discovered which showed his accuser fabricating evidence against him.

In 1993, student Austen Donnellan was cleared of date rape after the jury heard that his accuser had been so drunk that she could hardly walk.

Worst of all, in 1996 Stephen McLaughlin was accused of rape by a former girlfriend. She later admitted that she had made up the story and was prosecuted. But 18 months later, having never recovered from the shock of the accusation, he drove into a forest and gassed himself to death.

The parliamentary response to these travesties is limited to Charles Clarke MP, replying on behalf of Lord Bassam of the Home Office, that the Gov't accepts “… the very great distress and discomfort that is often experienced by those wrongly accused or charged with a sex offence …. “.

12. Feminists and Rape

Feminism has successfully cuckolded socialism as the dominant ideology of the left, the Labour Party and the trade union movement. Without a shot being fired all three traditions of socialism have surrendered. The concept that improving the conditions of the working man and his family as the best vehicle to improve liberty and general living standards is gone. Instead, the politics that dominate trade union and Labour Party agendas alike are female focussed. This effectively hands feminism the veto power in arbitration and so influences New Labour’s many internal undercurrents.

In her book, *The New Feminism*, Natasha Walter (Virago, 1999), writes that, “Women are learning to speak out about rape; the number of women reporting rape has more than doubled since 1983. …The conviction rate in rape cases is decreasing year by year, even though DNA
testing now makes it much easier to prove that the accused has had sex with the complainant” (p. 123).

Although lights years away from the original feminist approach to social issues, her mind still reflects the 1970’s. Steadfastly, she believes that a man accused of rape must be guilty. She is unable to grasp the equation that increases in reported rapes must necessarily increase false claims.

Indeed, she appears to have no comprehension whatsoever of a false allegation. To her, women never lie. She fails to see that DNA can be a better indicator of guilt and that consequently wrongly accused men are less likely to be found guilty and therefore the conviction figures decline.

When Natasha Walters welcomes the doubling in women ‘reporting rape’ since 1983 this does not mean rapes committed have increased 100%. If the “overall conviction rate stands now at fewer than 10% of reported rapes; compared to 24% in 1985”, the reciprocal isn’t even considered, namely that DNA can prove the accused did not have sex with the complainant. She sees declining figures simply as evidence of a patriarchal conspiracy – a failure of the system, not a triumph of due process and of justice (see footnote 2, p.3). It is also the point at which women’s groups in the past have attacked both police and CPS. They claimed that women were not allowed to influence whether their case was allowed to progress to trial. They also claimed that women were not allowed to control or influence the prosecution lawyers and had no direct representation in court - but this is standard practice in all court cases. In 1999 we commented to the Home Office, “If we were to accept these points we would head straight back to the unsophisticated legal system best seen in Islamic countries”. Changes to how rape cases proceed have nonetheless been made.

Women’s groups attack the police for failing to send out officers and follow up on rape claims. If this is so, such groups have our support for a better standard of service. Regrettably, we have no reliable way of telling how true is this reportedly poor standard, but we note from the Harris and Grace study that the quality of service provided by the police is said to be improving in recent years.

Allegation of perjury and false allegation prove most difficult to get to the trial stage. Circuit judges respond to complaints about false allegations by saying that courts have no facilities to investigate an allegation of perjury or false allegations involving violence and seek to lay-off the problem by suggesting that the police or CID be contacted. The police are not and the CPS never, interested.

Frequently in family courts allegation of violence (physical or sexual) are merely technical devices to enable the smooth running of a divorce or custody action and there is equally no practical legal remedy for the victim of the false allegation.

The figures in Table K speak for themselves and make our case succinctly. Of the millions of crimes committed every years, and the hundreds of thousands of court cases, the perjury figures fail to break into three digits.


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</tr>
</thead>
<tbody>
<tr>
<td>Cautions</td>
<td>26</td>
<td>24</td>
<td>0</td>
<td>0</td>
<td>22</td>
<td>20</td>
<td>32</td>
<td>22</td>
<td>23</td>
<td>33</td>
<td>17</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>Prosecutions</td>
<td>55</td>
<td>48</td>
<td>52</td>
<td>56</td>
<td>53</td>
<td>54</td>
<td>56</td>
<td>53</td>
<td>54</td>
<td>50</td>
<td>49</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Convictions</td>
<td>62</td>
<td>45</td>
<td>56</td>
<td>84</td>
<td>87</td>
<td>65</td>
<td>64</td>
<td>49</td>
<td>54</td>
<td>50</td>
<td>49</td>
<td>49</td>
<td>49</td>
</tr>
</tbody>
</table>

The only other alternative to combat false allegations is to take out a private action for ‘malicious falsehoods’. This Mr Denton who was not charged considered this when a Mrs Trimby accused him (quite groundlessly), of sexual inappropriateness. Curiously, this was only several weeks after Mrs Trimby’s own son had been accused by his girlfriend of rape and he had been arrested.
Mr Denton, an ordinary working man, had his life devastated by the accusation and sought counsel’s opinion (as Martin Garfoot did) to pursue a civil claim for damages against.

These are the victims of rape that every Consultation Paper and legislative reform constantly ignores. The present government has created 1,000 new criminal offences in 8 years and created the Sentencing Council which dictates sentencing policy rather than judges. It has created legislation to remedy apparently lenient sentences but upon examination the overwhelming numbers (and proportion) of prisoners to receive longer sentences are – that’s right – men.

13. The Missing Category

Great care has to be exercised when dealing with rape figures. There is a tendency to assume one reported rape equates to one rape defendant. Published statistics reflect only the number of rapes reported, rarely the number of offenders. Missing too from the debate is the serious failure of the tabloids to distinguish sex offence categories particularly dangerous serials rapists who commit anything between 4 and 12 rapes before they are caught. (See Sect 9 and Table M). If any distinction is attempted it is usually between rapists and paedophiles.

Recent examples of serial rapists:

1. Jan 2003, re “R” Court of Appeal, 10 years for 5 counts of rape and 6 counts of indecency.


3. March 2004. Andrzej Kunowski, aged 45, an illegal Polish immigrant, serial rapist, and on the run from Poland, was found guilty of raping a foreign student and sentenced to 9 years. He was charged with the rape of a 10-year-old girl in Warsaw in 1995 but never stood trial. It also emerged that Kunowski had attacked another 27 women and children in Poland. He fled to England in 1996 where he disappeared after being refused asylum and where he would strike twice again. He committed his first rape age 17, and was sentenced to 15 years in prison.


5. Aug 2005, John David Hall, 34, a Prison Officer from Wakefield prison, was jailed for life on five counts of rape involving four women, two attempted kidnappings and two indecent assaults relating to five girls aged 12 to 17.

6. Oct 2005. An exclusion zone has been imposed on a suspected serial rapist who police believe has carried out four rapes on three women in the Smethwick area of the city since April, three at knifepoint. Police believe that they do not have enough evidence to prosecute him. Therefore, residents groups in the Edgbaston area where he lives have been shown a photograph and given descriptions of the man. His victims were street prostitutes who have identified him but that evidence has been deemed too weak to secure a conviction in court. [There is also a basic Civil Rights issue re: the suspect being publicly exposed].

7. March 2006. Police were hunting for Clive Hayes, 54, after the 20-year-old Polish careworker’s body was found in his flat near Bristol last month. It was revealed that Hayes was a serial rapist who was released from Leyhill Open Prison in 1999.

8. May 2006, Kevin Hazelwood, 40, from Brighton, East Sussex, was jailed indefinitely. The attorney general has decided not to seek a tougher sentence for a known paedophile who was jailed for repeatedly raping a young girl. He had also admitted charges of sexual activity with or in the presence of a child under 13, historic assaults on a girl dating back to the 1980s.

The number of all sexual offenders rose only 2% to 5,700 in 2003. Yet looking only at the ‘reported rape’ sub-set (above), over 12,000 rapes were reported. 29 (see also Table L).

The small rise in sexual offenders over the last three years can be attributed (according to HO and HM Constabulary reports) to the addition of the new classifications of 1). ‘abuse of trust’ and 2). ‘sex offender notification’ offences. These are part of the already dizzying array of indictable sexual offences. The number of sexual offenders in 2003 was, however, only three quarters (75%) the number in 1993 (para 2.7 (b), see footnote 24).

The state of Minnesota, for example, also saw a fall of 64% in the number of sex offenders convicted from 1994 to 2002 (ref. Minnesota Bureau of Justice Statistics, Sentencing Guidelines Commission). 30 This was despite an average sentencing tariff of 155 months (i.e. 13 years).

Perhaps most surprising to the British eye is that in Minnesota, only about two-thirds of convicted rape defendants received a prison sentence. In England & Wales almost half of all sexual offenders were cautioned or convicted of indecent assault on a female (the number of rape offenders was approximately 710, a rise of 4% compared with 2002).

Table L. Offenders found Guilty at all courts for indictable sexual offences (Rape of a female) (actual numbers).

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Come to trial</td>
<td>--</td>
<td>--</td>
<td>914</td>
<td>933</td>
<td>892</td>
<td>940</td>
<td>1065</td>
<td>1107</td>
<td>1209</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape – convicted</td>
<td>613</td>
<td>561</td>
<td>559</td>
<td>529</td>
<td>482</td>
<td>460</td>
<td>578</td>
<td>573</td>
<td>599</td>
<td>656</td>
<td>631</td>
<td>710</td>
</tr>
</tbody>
</table>

Source: Criminal Statistics England & Wales 1999, Table 5.12

The Home Office has undertaken a limited amount of research in the area of serial rapists but no where near enough (HORS 215). Our attempts to evince a separate Crime Index Classification/ Code for serial rapes have been rebuffed by the Home Office (see also Annex D).

In the sample study database (see HORS 215) there were 468 rape cases committed by 210 offenders, the great majority dating back 10 year but with a few from older cases. All were from the ‘stranger rapes’ classification. Of these, 129 had been convicted of a single offence while rapists who accounted for two or more rapes totalled 81.

The distribution of the number of attacks per offender is shown below in Table M. It can be seen that the majority of serial cases involved two or three offences (Av’ge 2.2). The unweighted average, however, is 6.2 rapes per serial rapist. 31 In the middle column only 31 of 210 offenders committed four or more rapes before being caught

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31 Where ‘serial’ denotes more than one discrete rape incident. Overall, 26 per cent of the serial offenders committed two or more offences within their series which matched across all four domains, ie control, escape, style, behaviour profiles.
Table M. Number of database attacks per offender, UK (n sample 468), Table 2.1

<table>
<thead>
<tr>
<th>Number of attacks</th>
<th>Versus</th>
<th>Number of offenders</th>
<th>Number of rapes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 rape</td>
<td></td>
<td>129 offenders</td>
<td>129</td>
</tr>
<tr>
<td>2 rapes</td>
<td></td>
<td>31</td>
<td>62</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>19</td>
<td>57</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>9</td>
<td>36</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>3</td>
<td>15</td>
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<tr>
<td>6</td>
<td></td>
<td>7</td>
<td>49</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>81</td>
<td>339 Av’ge = 4.18</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>3</td>
<td>27</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>1</td>
<td>12</td>
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<tr>
<td>13</td>
<td></td>
<td>1</td>
<td>13</td>
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<tr>
<td>14</td>
<td></td>
<td>1</td>
<td>14</td>
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<tr>
<td>19</td>
<td></td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>210 Offenders</td>
<td>468 Offences</td>
</tr>
</tbody>
</table>

On a technical note it should be recalled that all 468 offences represent discrete attacks, and from a statistical point of view are independent of each other; this may not always be the case.

14. Ethnicity

The American experience is that rapes and sexual offences are more likely to be perpetrated by non-whites, i.e. Hispanics and Negroes. But in England & Wales no ethnic breakdown is available. However, where rape accompanies a homicide we do have a small insight. In this more violent subset it is more usually ‘whites’ who are the perpetrators (see Annex A, 1997 - 2000). Only one case is definitely listed as non-white although several are recorded as having no data as to ethnicity.

The data displayed in Annex A is of limited comfort inasmuch that the number of homicides related to rape appears to be falling (from 17 to 9 per annum).

The recent Home Office blunders reveal that non-white prisoners with sex offence histories have been released and have offended again.

The ethnicity dimension leaves us with many unanswered questions. For instance, are there any distinctive pattern in the ethnicity of those involved in rapes cases or in the manner in which a rape is undertaken? The public does not know the ethnicity of males accused of rape or the ethnicity of female victims. We are ignorant of any inter-racial dimension (Black, Asian White) or if it exists.

15. Forensic Diagnosis

Of the serial offenders on the UK database in this small sample, 83% were consistent in their offending in at least one of the four domains throughout their series. Those domains (factors) were defined as; control, escape, style, and behaviour profiles. Over a quarter (26%) of the sample had at least two offences within their series that matched across all four domains.
Where the forensic and physical evidence exists recognition that a single offender has committed a number of serious crimes is relatively straight-forward. With this first step agreed between crime m experts then it should not be an insurmountable task to analyse common denominators between such individual offenders within that subgroups serial offenders using the one or more of the key domains they have identified. (see Sects 22 and 23).

HORS 215 describes to what extent behavioural consistency is a regular feature of serial sex offending (against adult females) who did not known their attackers. We feel it should be this calm, scientific avenue that the Home Office should be pursuing rather than what could be described by some as a vindictive or knee-jerk and reactionary path. The study explored that behaviour may be used to identify a linked series of crimes and if such systematic linking is possible it holds out the prospect of better identifying potential serial rapists (as a matter of routine) and in turn a more efficacious and enlightened treatment than is currently available in prisons. Medical forensics and DNA sampling are dealt with in Sections 22 & 23.

16. Public Message Massaging

Rape is seen as a horrendously unwarranted act against the sanctity of another human being. No one would dispute that and we again take another opportunity to emphasise our agreement with this view. The crime of rape is firmly fixed in the public's psyche as possessing certain characteristics. However, as the Consultation Paper repeatedly states, myths do freely abound. One myth is that only human’s rape; they do not. All primates, mammals and birds rape.

A significant part of the stereotypical rape scenario can be demolished by an examination of the factual evidence. Previous sections have shown the occurrence of rape is comparatively unlikely, and by a stranger even more unlikely. What is not unlikely, however, is to be falsely accused.

Rape remains an emotional and highly charged issue, prone to volatility. Serious discussion is rarely possible. Newspaper and magazine articles reinforced by both politicians and Whitehall Deps, serve only to compound the volatility, and the fear - often by omission or distortion. Rarely do newspapers reveal that much of the research cited by Gov’t ministers is slovenly and comes from self-selecting or small sample sizes, which renders it very suspect. The differences between attitudinal (grave disadvantages) and longitudinal surveys (more reliable) are not distinguished.

In this atmosphere it becomes almost impossible to contain debate within the confines of rationality.

Newspaper invariably, and lazily, print the research cited by ministers which tends to have small sample sizes, and are usually methodologically sloppy making them suspect (attitudinal, rather than longitudinal). We are asked to accept that the ever-widening gap between convictions (roughly comparable with the "come to trial" trend shown in Fig 1 and Fig 3, and reported rapes, is real and therefore requires serious remedies. Few members of the public realise that the probability of being raped is the about the same as being in a Post Office during an armed robbery using shotguns.

Since arriving on this side of the Atlantic, the radical feminist and pamphleteer, Prof Betsy Stanko, has been influential in orchestrating funding and awareness for both rape and domestic violence victims (she is currently an adviser to the cabinet and the Met Police Service). 32

32 Stanko, is a criminologist and lecturer (Brunel and Royal Holloway). The book defines marriage to include cohabitation and ‘wife abuse’ to include abuse between cohabiting partners; the family is seen as the cradle of violence and oppression. Her book rejects objective measurements and frankly admits they use their own interpretations as feminists and women – which gives them a better and deeper insight in to what's going on. Stanko
In her 1988 book “Feminist Perspectives of Wife Abuse” (Chap. 3) Stanko writes of the "fear of crime" and how she once experienced it when a "serial rapist was loose in her neighbourhood" (the impression given was that she was alone, was not married and not living with a man at the time).

By regularly endorsing only one scenario of rape government and politicians needlessly heighten fear. It has now become such a staple diet in our politically correct world that exaggeration passes without criticism and produces no academic enquiry.

To take a few examples; in 1999, a Home Office press release briefings to editors stated that rape was Britain's fastest growing crime and only 6 in 100 reported rapes ended in conviction (Daily Mail, 2/7/99). Curiously, this was several weeks before the topics was formally raised and discussed with the External Reference Group of the Home Office’s Sexual Offences Review Team at the Sept 1999 seminar. Note too that no distinction or explanation was made to help the public distinguish between ‘reported’ and ‘recorded’ rapes.

In 1997 the same sort of claim was made in an article in the Sunday Times (16/3/97). Six years earlier, Clare Dyer's Daily Telegraph article (15/5/91), stated that, according to Home Office sources, 'reported' rape had risen 300% since 1979. In the decade from 1980 to 1990 when headlines failed to include the qualifying ‘reported’ caveat no one had stood up and queried the assertions (Table G).

We believe the public ought to be made more fully aware of the numbers and reasons why apparently so few rape cases come to trial. There ought to be a sensible debate, free of emotional manipulation.

The true picture far from causing disquiet for the population would actually allay their fears in very concrete terms.

More recently, and in the weightier HOS 196, similar dramatic claims were made but also included that women reported feeling more 'frightened' (HOS 191 and 196).

The past decade has seen the Home Office switch away from stranger rapes to those rapes it feels it should have more control over, namely rape by ‘intimates’.

17. Strangers Rapes

In recent years the Home Office has been at pains to convince the public that stranger rapes are very rare, that they are not the real problem and that rapes by people known to us should be our main concern. This goes hand in glove with laments that the conviction rate for rape offences is falling.

What is not underlined is that although the majority of rapes are perpetrated by persons known to the victim, the offence occurs usually once and the accused is quickly taken in for questioning. Serial rapes, in contrast, occur about 5 or more times affecting 5 or more different women before the perpetrator is caught and is more likely to fall into the ‘stranger rape’ category. That, we suspect, is rightly why the public holds ‘stranger rape’ in more dread (see Sect 13 above). To promulgate that rape by an intimate is worse than, or as bad as, stranger rape is a little curious when, besides everything else, homicide by an intimate is much less likely to occur. This appears all the more curious when it is realised that more than 90% of rape victims are said to know their assailant’s name and address. Given that the assailant’s name and address is known one would expect rape convictions to be much higher than the 6% that is the impression left in the public’s mind.

has influenced institutions, e.g. Home Office, Scotland Yard, into accepting 'fear of a crime' to be as serious as the offence itself. Her experience appears 'convenient'.
As we have seen elsewhere in this submission the average true conviction rate is around 50% - which is at the level one would expect if the majority of cases were fundamentally “He said versus she said” in nature (Annex B & C). But rather than focus on the crisp edged categories of serial and stranger rapes the Home Office chooses to incorporate the grey area of sexual relations between immature adults, i.e. 16 and 18 year olds, feel their way into full adulthood.

The SORT process of 1999 was not, in our view, “open, inclusive and evidence based” as it claimed. Some very definite difficulties we experienced in conveying another way of thinking and in getting essential data. We were unable to get straightforward answers and in fact, had to resort to a PQ (Parliamentary Question) to receive one item of information we sought.

In other ways the Home Office, in the form of their Statistical Directorate were most helpful and we were, with their assistance, able to build a counter view with data provided by them. Without their assistance we would not have been able to produce the table overleaf (Table N) or Annex A.

We should also not, however, forget that without the original invitation from Betty Moxon, who broke with tradition by inviting a father focused group to participate, we would not have been able to observe just what was going on or to offer alternative views.

The Sexual Offences Review circular of July 2000, suggested at para 0.10 that the review team had considered whether there should be a lesser degree of offence to deal with acquaintance rape (sometimes called ‘date rape’), “but was unanimous in rejecting this proposal”. We thought this was a mistake and our research a few years later for the Rape Sentencing Panel underlined this as a missed opportunity when we came to compare European sentencing practice (see page 56).

The same circular of July 2000, at para 0.3, stated that it wanted changes to “be fair and non-discriminatory in accordance with the ECHR and Human Rights Act.” This is echoed in the present Consultation Paper of 2006, but is this again simply polite rhetoric cloaking an ominous platitude?

The consensus found in both official circles and among women’s groups is that “The most common rapists are current and ex-husbands or partners”. 33 This is a contentious view given that evidence does not exist to differentiate between husbands, cohabiters or boyfriends. What is clear is that ‘single women’ are victims of rape and domestic violence more often than married or previously-married women. Data from women’s refuges confirms this clear disparity.

The table below (Table N) is taken from the two studies undertaken by the Home Office and shows the difference in reported rapes for 1992 and 1998. It shows an increase in the number of rapes that are reported involving intimates and acquaintances and a decrease in the number of reported stranger rapes. Between 1992 and 1998 ‘stranger rapes’ appear to have collapsed from 30% to 11% of all rapes. However, this may be a misleading picture. Examination of the ‘Acquaintances’ category shows an increase from 35 to 46 and numbers in the ‘Acquaintances for less then 24 hours’ group have risen from 54 to 99. We cannot see how someone known to the victim for as little as 3 hours prior to the offence can be called anything but a manipulative stranger. He / she cannot be an ‘acquaintance’.

It could be argued that the perceived decrease in stranger rapes is a result of alterations in the pigeon-holing of offences (moving the goal posts). For instance, the combined numbers total approximately 150 rapes for 1992 and 1998 (98 + 54 and 52 + 99 respectively), and when does a stranger become a friend or acquaintance? We would suggest that meeting a stranger within the last 24

33 http://www.truthaboutrape.co.uk/4898.html#who
hours or 48 hours does not constitute knowing them and they should still be categorised as a ‘stranger’. By not doing this the Home Office manipulates the picture.

Table N. Relationship between victim and suspect

<table>
<thead>
<tr>
<th>Category / Year</th>
<th>1992</th>
<th>1998</th>
<th>Vari'ce</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Stranger</td>
<td>30</td>
<td>98</td>
<td>11</td>
</tr>
<tr>
<td>Acquaintances</td>
<td>35</td>
<td>117</td>
<td>46</td>
</tr>
<tr>
<td>Acquainted within 24 hours</td>
<td>54</td>
<td>99</td>
<td></td>
</tr>
<tr>
<td>Acquainted prior to 24 hours</td>
<td>54</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>Known vaguely</td>
<td>8</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Hitchhike</td>
<td>1</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Prostitute and client</td>
<td>-</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Intimates</td>
<td>35</td>
<td>115</td>
<td>43</td>
</tr>
<tr>
<td>Parental figure</td>
<td>27</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Other relative</td>
<td>14</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Friend</td>
<td>38</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Current husband</td>
<td>2</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Former husband</td>
<td>5</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Current cohabitee</td>
<td>2</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Former cohabitee</td>
<td>9</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Current boyfriend</td>
<td>4</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Former boyfriend</td>
<td>9</td>
<td>44</td>
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</tr>
<tr>
<td>Work colleague</td>
<td>3</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Family Friend</td>
<td>2</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>330</td>
<td>100</td>
</tr>
</tbody>
</table>


This ceaseless redefining of rape boundaries might also account for the changes seen in figures for ‘current’ and ‘former’ boyfriends versus ‘current’ and ‘former’ cohabiters. Current boyfriends rose from 4 to 40 (1992 v 1998) and former boyfriends rose from 9 to 44 over the same time period. Conversely, current cohabiters fell from 2 to 4 while former cohabiters fell from 9 down to 1 in the former cohabiters’ category (1992 v 1998). This is not what one would have expected given the mean age differential between the two categories.

A complicating factor exists whereby over time a respondent to the questionnaire might have altered their perception of their sexual partner. A second complicating factor is in deciding where or when a boyfriend becomes a cohabitee and should the surveyor or respondent be the arbiter of such matters? ONS data routinely brackets cohabiters and spouses as one block. ONS surveys dating as far back as “Population Trends No.71” show that respondents (invariably women) are more likely to define their cohabitational status as one that is spousal.
If rape is to be accurately defined as “sexualised violence” then the patterns of violence by perpetrators could be expected to follow other norms such as domestic violence (DV). Boyfriend and cohabitee who tend to be younger than married couples feature strongly in those committing DV. Surveys in Britain, Canada, Australia and the US all indicate that DV between legal spouses is half the rate found among boyfriends and cohabitants. Therefore, it is an anomaly to find that this is only partially reflected in Table N where current husbands number 22 and current boyfriends’ number 40 but cohabitants feature far less strongly than the other two groups, e.g. 4 & 1 versus 40 & 44 and 22 & 8. This could due to accounting changes that occurred in that period.

As a result the importance we should attach to the rises and falls in the categories depicted in Table N is unclear. When DV (domestic violence) has been falling consistently over the same time period but muggings increasing, should we expect rapes to shadow the former or the latter? Or should invisible factors that arise from divorce manoeuvrings and bitter custody battles, that are enjoined well out of sight of rape statistics, be acknowledged as influential factors?

In our submission of 2002 we demonstrated, using the then available Home Office data, that stranger rapes far from dramatically decreasing were close to being the same. Figures released in the last 12 months from St Mary’s Sexual Assault Referral Centre (SARC) reinforce our heresy. St Mary’s in Manchester is one of the three ‘pioneer’ groups established in the late 1980s and early 1990s (REACH in Northumbria and STAR in West Yorkshire being the others).

A three accept rape self-referrals and police referrals allowing a more complete picture to be obtained. Of the three St Mary’s in Manchester has by far “the most comprehensive data base”

At Figure 3.4 is a table labelled “Relationship between victim and perpetrator 1987-2002”; it shows that stranger rapes still account for 25% to 33% of all rapes. The commentary is as follows:-

“Under 20-year-olds were more likely to report assaults by acquaintances, with assaults by current /ex- partners most common within the 20 to 45-year-old age group.

Looking at changes over time (see Figure 3.4), whilst there are shifts they are not of the order or nature that many commentators have suggested: the proportion of stranger assaults has only fallen by six to seven per cent from 1987 to 2002; and the increasing categories are current and former partners, and friends – neither of which can be termed ‘date rape’.

These data are different from those reported by Harris and Grace (1999), who argue that the fall in the conviction rate throughout the 1990s can be accounted for solely in terms of the different kinds of rape cases being reported.

Both the historic data from St Mary’s and a recent reassessment of attrition for the same time period as the Harris and Grace study (Lea et al., 2003) do not fully support this contention.”

When the national average age for marriage is 30, for women, then sexual assaults on women “Under 20-year-olds” and up to the age of 29, indicates they are most probably not married.

**18. Marital Rape**

In the "Intimate" category of Table N above, why should husbands and former husbands be compared with boyfriend and former boyfriends who rape? Why should their ‘act of rape’ be considered to be as serious as any other, e.g. rape by a stranger? Presumably, sexual

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34 Home Office Research Study 293, “A gap or a chasm? Attrition in reported rape cases”, page 21
http://www.homeoffice.gov.uk/ds/pdfs05/hors293.pdf#search=‘Figure%203.4%3A%20Relationship%20between%20victim%20and%20perpetrator%201987%2002’
intercourse was a common feature of their married life and presumably even of their pre-married status?

Which could be estimated to have the greater long-term psychological damage to a rape victim, the ill effects of sexual congress with one’s former husband or cohabitee versus a complete stranger in most stressful if not life-threatening circumstances?

The act of sexual union is the only common feature. We suggest that the dynamics of fear, heightened trauma and ‘conflict’ are most likely to attach to a rape by a ‘stranger’ than to someone intimately known to the victim. We suggest that only a minority of Britons would see it differently.

To paraphrase Melanie Phillips;

“the obsession in government with ‘equal opportunities’ which radiate outwards into the various institutions, like the police or judiciary, is in reality an agenda to enforce minority values over those of the majority and pillory anyone who dissents.

To dissent from these minority views incurs being stamped upon - not least because, when deviant behaviour becomes viewed as normal, normal behaviour inevitably becomes treated as deviant.

An upshot of this, for example, can be sexual encounters where a woman may have second thoughts afterwards is suddenly defined as ‘date rape’. And the traditional family, that bastion of security and safety, becomes stigmatised instead as a fetid stew of child abuse, marital rape and violence against women.” 35

While her assessment and ours may coincide and appear counter-culture to the present conventional wisdom, it has to be placed on record as a counterweight to the faintly ridiculous emphatic statement that declares, as the Sexual Offence Review briefing did in July 2000 that:

“…. evidence placed before the review that rape by acquaintances could not only be as traumatic as stranger rape …” 36

The source or basis for this assertion was never made available. Until such time as more information is available an objective assessment of the claim cannot therefore conclude that this assertion is necessarily reliable. Sources cited in Consultation Papers sometimes have puzzling or marginal relevance to the debate (see Addendums).

Most Home Office papers on the subject of rape are littered with the phrase ‘evidence shows’ but little of substance is divulged. This is true of HORS 237 (Home Office Research Study) but in regard marital rape it does cite one source namely Ms. Culbertson & Ms. Dehle (Idaho State University). The following quote carries a most telling final sentence:

It should be noted, though, that the differences reported here are not large. Culbertson and Dehle highlight several previous US studies suggesting marital rape is associated with more chronic ‘psychological disturbance and … upset’ than other forms of rape (2001:993) and their own study found survivors of attacks by spouses or cohabiting partners to be most psychologically affected (ibid:1000). However, their study did not include attacks by strangers. 37

This lack of any comprehensive comparison bedevils inquires in this area. Confident assertions are often found to rest on mere inferences drawn from other papers that when examined sometimes have only fleeting mentions of the topic. This is also commonly found in domestic violence literature.

To compound the confusion elementary arithmetic errors are made by authors. For instance, they might quote violence as occurring in 31% of the sample but omit to tell the reader that the

36 Such quoted ‘evidence’ is often little more than opinion. See also Footnote 45
sample was a sub-set and that arithmetically the component represents only 1.3% of the whole sample.  

Rape is held to be unrivalled in its traumatic effects and therefore deserves huge penalties. We suggest this is not entirely true. The sudden realisation of bigamy is one crime that arguably is more trauma inducing and has devastating effects on more family members at deeper levels. If this crime attracts a tariff of 18 months we see no reason why this should not apply to rape and sex offences.

HORS 196 is reticent in coming to any firm conclusions in the sphere of marital rape but does state that their sample size, taken over many years, while including married women who were raped produced only 22 cases of alleged ‘marital rape’, i.e. mostly were former rather than current spouses. It is the Southall Black Sisters who claim to have secured, in 1997, the first-ever conviction of a husband in a marital rape in the Asian community.

In our view the advent of ‘marital’ rape as a crime is a complete nonsense. A law that embraces marital rape undermines the meaning of marriage and attacks the most vital of the heads of policy.

It is symptomatic of society that has complexly lost its bearings and surrendered to ideologues. A working understanding of jurisprudence could not fail to inform the lowliest policy makers of where such a ludicrous ambition would lead.

Bearing in mind the political affiliations of the Southall Black Sisters cynics might suggest that was precisely the intention.

The philosophical nature of marriage seems to have been forsaken by present day policy formers. The common understanding is that marriage is the fusing of identities, or to quote more ancient sources, people who marry “become as one flesh”. In such a situation it is absurd to proceed along the lines of laying charges of rape when married. There are a multitude of options open to a complainant in English law, e.g. sexual assault, and we are bereft to understand why a charge of marital rape was conceived in the first place. Marriage is for the procreation of children - sex is inevitable. Divorce, by contrast, renders the two people who were once a couple as two distinct legal persons. Charges of rape in this context are more sensible. Perversely, sexual intercourse between unmarried adults might be construed as immoral/wrong (for both parties) but society sees it as no crime.

It would therefore have added clarity to the law - rather than heap disrespect and disrepute upon it -were action to be taken for ‘common assault’ in cases of rape between married spouses.

We suspect that most supposed cases of marital rape are not only rare but is a term used to describe what are, in essence, two estranged parties.

For instance, in M [1995] 16 Cr App R (S) 770, the Court of Appeal, through Lord Taylor CJ was forced into making a further distinction between cases of marital rape where the parties were ‘estranged’, and those where they were still living together: It is absurd that the man (the “victim’s” husband) living not only in the same house, but by mutual consent sleeping together in the same bed as the victim (his wife) should be charged with rape.

The mire into which the Court of Appeal by now had stumbled was all too apparent when the Rape Sentencing Panel (2002) tried to consider the minor differences it sought to distinguish

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38 Bacchus, Mezey & Bewley survey of DV among 771 pregnant women. The sample who were interviewed was reduced to 32 (4% of the 771), and later reduced to a final sample of only 10 women who had experienced domestic violence in the past 12 months

39 If a non-molestation and exclusion injunction is in place, then it is clear that the wife may need the protection of the criminal law. She always did have that even to the extent of an allegation of Rape - see the case of R v Smith 1954 which was the authority before R v R.
Berry from Billam, and between ‘stranger’ and other rape (para 54, page 15 of the Panel’s paper).
The Consultation Paper and the Rape Sentencing Panel implies that to suffer a sexual assault by one legal spouse or live-in partner – with whom she still lives – is as great an ‘aggravating’ factor as rape by a complete ‘stranger’? This is the muddle that policy makers fall into all too predictably once they, or government ministers, decide to re-define rape.
The effect of the few cases that have come to court is that rape by a husband is always to be regarded as equal or more aggravating and punishable than a stranger rape. This is nonsense.

19. France Falls Victim

France, writes Véronique Campion-Vincent, was once immune to newspaper stories based on ‘dodgy statistics’. Sadly, this is no longer true. France has finally succumbed to the Anglo-Saxon disease of being scared by numbers and dodgy statistics.  

Newspapers are reportedly full of fashionable assertions based on 'scary numbers', obtained through the most questionable manipulations of statistics. Known in Anglo-Saxon circles as Advocacy Research, which as Frank Furedi once observed, is less to do with exploring the unknown than to come up with some numbers to support a pre-existing dogma.

A 2003 report of the UNICEF, the Innocenti Research Centre opened with disturbing claims about child abuse. “Almost 3,500 children under the age of 15 die from maltreatment (physical abuse and neglect) every year in the industrialised world. Two children die from abuse and neglect every week in Germany and the United Kingdom, three a week in France, four a week in Japan, and 27 a week in the United States.”

However, the real surprise comes when the report's methodology is explained: the authors have decided to consider that all under-15s' deaths of 'indeterminate cause' are deaths from maltreatment.

In the report, the authors express 'a growing unease about the process, and a growing certainty that child deaths from maltreatment are under-represented by the available statistics... [They] attempt to overcome some of these problems in a novel way. To the national totals of child deaths from maltreatment, add all child deaths from "undetermined causes".'

At the level of the individual, the principle of 'innocent until proven guilty' applies but at the statistical level it seems the report assumes the opposite.

Amnesty International, once so much admired by a broad spectrum of the community, is increasingly seen as being captured by more radical elements and of losing its independent views.

By March 2004 its press release read like a women’s activist pamphlet, e.g. “At least one in every three women, or up to one billion women, have been beaten, coerced into sex, or otherwise abused in their lifetimes. One in five women will be a victim of rape or attempted rape in her lifetime.'

This prompted a French statistician to ask 'how do we know this?' - and his answer was: 'This figure is meaningless. It is only there to convince people that this is a serious issue for discussion.'

In Anglo-Saxon countries we have long been used to these assertion and answer in several key areas, e.g. domestic violence, rape, child abuse etc.

At the end of 2005, an enquiry into deaths from domestic violence in France used that fashionable method of counting deaths by timescale, which gave rise to headlines such as: 'A woman dies every fourth day in France, victim of spouse violence.'

Yet it pays to look more closely at the original report: the figure of 211 victims of fatal spouse violence consists of 164 female and 47 male victims. Among the authors of the violence, 19% of them (or 39 men) committed suicide. There were seventeen cases of euthanasia within couples, yet these were analysed separately. Why? the reason given was that these 'compassionate murders' did not fit with the commentators' agenda.

A glance at the numbers of suicides in France might help to put the domestic violence problem into perspective. There were 10,440 deaths by suicide in 2001 (the last figures available), which could have given rise to headlines such as 'A death by suicide every 50 minutes in France' or '29 inhabitants of France commit suicide every day'. Having posed the question regarding scaremongering headlines we shall have to wait and compare how the French government handles it.

20. Moral Panic and Advocacy Research

Frank Furedi puts it this way, “If you want to get a story circulating in the media, all you have to do is get some numbers, call it research and put out a press release.”

Political parties, charities, non-governmental organisations, lobby groups and other advocacy groups have perfected the strategy of promoting their cause through advocacy research. Advocacy research is the very opposite of scientific investigation. Sound science is devoted to the exploration of the unknown and the discovery of the truth.

Advocacy organisations don't have to discover the truth - they already know “the truth” and their 'research' is designed merely to affirm what they already know. 'Let's get some numbers to prove the cause' seems to be the motif of such research… …"

In 2000 the annual expenditure of the NSPCC was £75m but its annual report lists 8,912 children that were looked after - an averaged cost of £8,300 per child (and one wonders how their phone helpline can cost over one and a half million pounds a year). Frank Furedi notes: “With so much of its funds devoted to sophisticated propaganda campaigns, it is not surprising that providing real services for children no longer appears to be its main priority.”

But what specifically is so pernicious about advocacy research? Why should it be disparaged? The answer is simple. Advocacy research is the very opposite of scientific investigation which has been the bedrock of all academic achievement for several centuries Soundly based science has always been devoted to the exploration of the unknown and the discovery of the truth. Advocacy organisations don't have to discover the truth - they already know it! Their ‘research’ is designed to affirm what they already know.

Sound science has always been valued because of its objectivity and reliability, never its subjectivity. Yet feminist research makes a virtue out of subjectivity, as Prof. Audrey Mullender cheerfully confessed in her speech at the Regents Park Conference 9th Nov 2001.

The problem this poses is that a great deal of efforts has to be expended in tracking down these sources and analysing the methodology used. Prof Betsy Stanko’s domestic violence research is a prime example. The singularly remarkable feature about men’s and fathers’ groups is their deliberate effort not to follow the same path. Unlike radical feminists, they do not make wild assertions and then use the intervening weeks before they are taken to task attempting to backfill the argument.

41 ‘Spiked’, 7 July 2004, Professor of Sociology, University of Kent, England
But despite all the money donated to children’s charities and women’s groups the number of child homicides fails to fall and official reports avoid mentioning that child homicides are committed largely by mothers and/or her current boyfriend (sometimes referred to as the non-biological father).

21. US Prison Population

For every adventure there is, of course, always a downside. Every heroic act contains, by definition, dangers and many will have realised that the Home Office and the authors of the Consultation Paper have not given this aspect enough thought. The enterprise to increase rape convictions incurs the elementary problem of finding the jail space and the danger that ultimately the Home Office’s budget will be hit by not having that prison cell capacity. The capital cost of new prison building under the Conservative government cost many millions of pounds. At today’s prices it can be estimated almost in the billions.

Advocates of reform rarely have a grasp of Euclid Mathematics and are frequently confounded when costs spiral and policies impact areas never intended to be decimated. Between 1985 to 1994 the yearly Capital Expenditure for prisons doubled to £15,636,000. Over the 10 year period government spent over £60,500,000 on a prison building programme (see Table O). Ten years on, and prison over-crowding has still not been cured.

Additionally, if the Home Office wants more rape convictions there will, not unnaturally, be more claims for compensation not just from victims of rape but from prisoners wrongly. Compensation for injuries and time spent in jail may prove a new phenomenon. If, let us say, 10% of all rape prisoners are at present wrongly jailed then we should expect this to rise disproportionately if thresholds are lowered to secure more convictions.

The US Congress recognises that as many men could have been raped while in federal custody as there were women raped outside the prison service. The "Prison Rape Elimination Act of 2003" acknowledged that rape occurred among the 2,100,146 (mostly males) persons incarcerated in the United States at the end of 2001, and that 1,324,465 were in Federal and State prisons with a further 631,240 in county and local jails. Secondly, the US Congress went on the record of admitting that insufficient research had been conducted and insufficient data existed on the extent of male prisoner rape. However, experts have conservatively estimated that at least 13% of the inmates in the United States have been sexually assaulted in prison, i.e. a minimum of 273,000 rapes of men (i.e. 2,100,000 x 13%). It would be instructive to ascertain how much is currently paid annually in the US to men wrongly convicted of rape and paid those raped while in prison and compare it with Britain.

There is a suspicion that the path trodden by the Home Office in recent years seeks to bring it closer into line with the Canadian and American scenario of dealing with rape at first instance. Since the early 1980s the US "Sexual Abuse Reports" have followed an eclectic if not unique pattern. There are rapid rises followed by equally sudden falls (e.g. rising from 103 to 159 before falling to 78). This might possibly indicate some fashion or legislative change as the factor at work.  

http://www.spr.org/pdf/PREA.pdf#search='ons%20rape%20statistics'

Table O. Expenditure on Penal Establishments: - (£000) Home Office Table 4.19

<table>
<thead>
<tr>
<th>Year</th>
<th>1985</th>
<th>1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manpower Services</td>
<td>63,327</td>
<td>96,694</td>
</tr>
<tr>
<td></td>
<td>110,454</td>
<td>129,597</td>
</tr>
<tr>
<td></td>
<td>140,009</td>
<td></td>
</tr>
<tr>
<td>Prison Costs</td>
<td>5,480</td>
<td>6,834</td>
</tr>
<tr>
<td></td>
<td>8,446</td>
<td>10,274</td>
</tr>
<tr>
<td></td>
<td>11,679</td>
<td></td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>6,919</td>
<td>11,420</td>
</tr>
<tr>
<td></td>
<td>12,866</td>
<td>13,681</td>
</tr>
<tr>
<td></td>
<td>15,636</td>
<td></td>
</tr>
<tr>
<td>Gross Expenditure</td>
<td>75,726</td>
<td>114,948</td>
</tr>
<tr>
<td></td>
<td>131,766</td>
<td>153,552</td>
</tr>
<tr>
<td></td>
<td>167,324</td>
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</tr>
</tbody>
</table>
Over the same years, US “Rape Reports” (i.e. not Sexual Abuse Reports) rise only marginally from under 40 in 1980 to just over 40 in 1999. US “Rape Convictions” closely tracks reported rapes. Thus, the broader ‘sexual abuse reports’ cannot be said to be related to rape of conviction even in a country with strict Rape Shield laws – something we are fast approaching in the UK. The American figures for 1980 show rape convictions at 58% of Reported Rapes (not unlike the UK, see p 37). By 1999 the percentage had altered upwards by 10% - 12%. This trend, albeit at a lower rate, is mirrored in the UK. The trend line shows the effects of a modest rise in American Sexual Abuse and Rape Convictions (from 1980 onwards) resulted in a disproportionate explosion of the prison population. This necessitated a huge federal expenditure programme. Though the trend moves in sympathy with US Rape Reports and Rape Convictions, the loose definition of rape means that the number of inmates is disproportionate to the number of convictions. The USA has only 5% of the world's population yet it has 33% of the world's prison population.

Making contingency plans for this possible eventuality was urged on the Sex Offence Review Team in 1999 and planning for potentially huge capital expenditures must again be urged to in 2006. If we compare American rape reports figures with American rape arrest there is a ratio of approx. 2:1, i.e. 50% through the 1980s and 1990s. This isn't displayed in the UK scenario which sees the two trends separate radically as the 1990s progress. This again puts UK rape counting and collating at odds with the rest of the world. It will probably result in the Home office dictating that police forces should decrease the number of rapes they assess as fraudulent. This can most easily be done when the police forces are amalgamated and controlled centrally.

The American ‘Bureau of Justice Statistics’ (BJS report NCJ-151658) states that there are 2 rapes or attempted rapes reported per 1,000 US citizens. A calculated UK equivalent of this ratio would result in 120,000 reported rapes (60m / 1,000 x 2). Presently, Britain has only around 12,000. There are 15,000 rape convictions annually in the US resulting from 530,000 reported rapes. This represents a conviction rate of 2.8% - using the old Home Office criterion - and yet we consider our ratio of 6% lamentable. If we scale down US rape reports so that they are comparable to the UK's, by population size (a factor of 5), then we should expect to have 106,000 rape reports per year. Something in these figures then, is definitely amiss – either Britain has too few rapes or the US has too many. The reason for favouring the first proposition over the second is a comparison with rape tends in other countries. This leads to the conclusions that rapes claims are out of control in the UK and rapes convictions are out of control in the US. In the Minority Report an analysis was given of US to UK trends in numbers and proportions, i.e. per 100,000. It led us to the hypothesis that something was radically flawed in the present UK regime. We wrote then that, “Pressure to increase that ratio [of arrests and convictions] would compromise the level of justice we presently enjoy. Meanwhile in other countries, e.g. Japan, Italy, Germany, Norway and Greece, rape convictions and reports remain stable, negligibly increasing or falling. The US experience is of more arrests, more trial and convictions. A recipe now sought by the Home Office.”

Seeking to increase conviction rates of guilty men is laudable goal but the path is littered with miscarriages of justice. The FBI has recognised the problem and is now conducting DNA tests on all those incarcerated in prisons for sex crimes (see Sect 23). The latest evidence indicates that of those tested 30% do not have DNA that matches the crime scene. Overtures to the HO to implement a similar scheme in Britain has fallen on decidedly deaf ears.
There must be some recognition that wrongful imprisonment happens in Britain too. There must then be some mechanism to deal swiftly with those wrongly accused and subsequently wrongly convicted. There must be a review of why the parole system favours the guilty (who serves only 50% of his sentence) but penalises those innocent man wrongly convicted who must serve 100% of his sentence.

22. HM Crown Prosecution Inspectorate

A paper entitled “The Joint Inspection into the Investigation and Prosecution of Rape Offences in England and Wales” forcefully makes many of the points and misgivings found in this submission.  

The inspection team, at para 6.18, (p35) reports that it “…was surprised to find a relatively high figure for false allegations of rape and, as identified within the literature review, there is a scarcity of research by police into this area.”

This responsibility for this dearth, it concedes, can be laid at the official departmental door; “Indeed, with the competing pressures for resource allocation this may be understandable.” The inspection team also thought it worthy to comment that, “… this is clearly an area that could be pursued further to establish if this is an issue of incorrect recording, a workplace cultural issue, or what factors motivate those who make false allegations of rape, be they male or female.” In our view this cannot come soon enough. Under the heading “Background to the inspection” (para 1.2), the report states that:

“There are few offences that impact so severely on the victim. Whilst the number of reported rapes, 8,593, represents only 0.17% of all recorded crime, the enormity of the effect on victims and on the fear of crime amongst women goes to the heart of quality of life. As with other aspects of personal crime, there is undoubtedly substantial under-reporting. The Rape Crisis Federation of England and Wales in its Annual Report, for example, suggests that only 12% of the 50,000 women who contacted their services in 1998 reported the crime of rape to the police.”

If hurt and fear does go to the heart of the quality of life and is inflicted upon so many, we would argue that the estimate needs to be doubled to include those men wrongly accused but for whom their accuser feels no such hurt or fear. There are no offences - not even murder - that so severely impacts on the victim of a false allegation.

The report deals even-headedly with the victim and the accused’s need for justice. It does not underestimate that these can often be in conflict usually because of a lack of supporting evidence. This problem is further complicated by alcohol or drug misuse which features “… in over 50% of cases” (p.33).

The report says that offences, popularly known a ‘date rape’ (which should more properly be termed ‘drug assisted rape’) are likely to be far rarer than is popularly perceived. They conclude that victims (mostly young girls) who have no recollection, are confused, or pass-out have simply over-consumed alcohol and alcohol with ‘recreational’ drugs.  

The Inspectorate also sees room for forensic improvements – which we will detail later - and for improved case detail recording by the police. It transpires (para 6.16) that of the 1,741 rape cases held in the police report database, 80% (or 1,379) cases contained sufficient detail to

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44 2002, HMCPSI (Her Majesty’s Crown Prosecution Inspectorate), HMIC (Her Majesty’s Inspectorate of Constabulary)

45 http://www.hmcpsi.gov.uk/reports/jirapeins.pdf?search=“Investigation%20and%20Prosecution%20of%20Case%20involving%20Allegations%20of%20Rape"
assess why such a high number of complaints are withdrawn (Pareto’s law, i.e. a naturally occurring 80-20 distribution).

* In 343 cases (i.e. 1,379 x 25%) the victim withdrew the complaint. This is the largest percentage of those cases that did not end in prosecution.
* A total of 86 complaints (1,379 x 6.2%) were withdrawn by victims where the alleged offender was a ‘partners’.
* In 59 cases (1,379 x 4.2%) where the former partner was the alleged offender complaints were withdrawn by the victim (i.e. 2% difference where partners was current).

Perhaps surprisingly, in cases where victims withdrew their complaint more than a third (1,379 x 42.3% totalling 583) featured rape by a partner or former partner. This is a significant figure but we should be alive to the looseness of the term ‘partner’. It can refer to male or female partners and can mean boyfriend and not just cohabitees. British data repeatedly falls down is in its lack of precision. No where are we treated to hard evidence as to how many spouses (legally married) and how many long-term cohabitees are involved.

This illustrates the difficulties faced when attempting to quantify rape and victims. When pursing a complaint against an offender on who’s word should the police rely ? The accused, - who will probably deny everything - but then, he might be telling the truth. The accuser, who may be both economically and emotionally dependent on the accused ? Or chose to disbelieve the accuser, because she (or he) is obviously manipulative, deceitful or working to an agenda ?

In the Inspectorate survey of 1,471 reported rape and where relevant information was supplied, 208 rape by a ‘stranger’ were identified (14%). Of these only 26 (12% x 1,471) resulted in a prosecution but 119 instances (57%) were classified as ‘undetected’. Were they undetected because many were false claims ? The remaining 63 cases (or 30%) were categorised in the main as ‘no-crime’. The number of false allegations caused the Inspectorate to express surprise (para 6.18). They were equally surprised at the low level of detection rates for ‘stranger’ rapes despite these normally attracting significant police resources.

If ministers want more convictions then the option of trying offenders for lesser offences remains open. Alternative charges, such as attempted rape, unlawful sexual intercourse, gross indecency, sodomy, etc could all be considered (para 8.21). Putting alternative lesser charges could lead to a jury thinking that the prosecution was uncertain of the strength of the case, and failing to convict even on the less serious charge. However, it could equally result in a guilty plea to the lesser charge - this is a real danger where the accused is totally innocent. In these circumstances such a course would be inappropriate.

The example of Minnesota’s Department of Public Safety (Office of Justice Programs) is perhaps useful. Their Sex Offender Treatment Programme for Sexual Psychopathic Personalities, defined as ‘any person with a habitual misconduct in sexual matters, and utter lack of power to control their sexual impulses, therefore is dangerous to other persons,’ has an annual operating budget for 2004 of $22,660,620 (including direct and indirect costs) and a ‘per diem’ cost of care of $314.

National estimates for 1 year of intensive supervision and treatment in the community can range from $5,000 to $15,000 per offender depending on treatment modality, whereas the average cost of jailing an offender is $22,000 per year, excluding treatment costs. The trend has been for all sex offenders to spend more time in prison - from 1985-1993, the average time served by convicted rapists increased from 3.5 years to 5 years but with no apparent commensurate fall in offending. Under Minnesota law, criminal sexual conduct offences range from first to fifth degree, with first degree carrying the most severe penalties. First-through-to-fourth-degree criminal sexual conduct are felony-level offences and fifth degree is a gross misdemeanour-level offence; a distinction we feel Britain should adopt.
The ‘degrees’ of criminal sexual conduct are based on a combination of elements including:

- If there was sexual penetration or contact
- Victim’s age
- Relationship of the victim to offender (position of authority, significant other, therapist, etc.)
- Degree of injury or threat of injury
- Whether a weapon was involved
- Whether force was involved
- Mental impairment or incapacity of victim.

In Minnesota judges are not confined by any Billam guidelines but may depart from recommended sentences if circumstances permit.

Where Britain is following Minnesota is in the number of offences that could trigger registration of a person as a sex offender - in Minnesota this grew from seven in 1991 to 41 in 2003.

A further alternative would be for the creation of a new range of ‘assault’ offences which carried no sexual connotations in its title. We suspect that such views will not assuage government or women's groups. Objectively, we have some sympathy for their predicament. By weeding out those rape offences and offenders who do not pose an on-going danger the problem will shrink by about 90% and seem insignificant. If this does not happen the number of convictions may increase, but, the average sentence will probably fall and cause consternation. Rapes of a gross nature will still occur at the same frequency but the public will question why Billam-type tariffs also apply to lesser offences.

Analysis in the Inspectorate survey found 230 cases in the police sample had proceeded to court. In 42.2% of instances they had been submitted to the CPS (para 13.12). The subsequent ‘conviction rate was 60.8% of all prosecuted cases (including guilty pleas) – a far cry from the much publicised “6%” (see p. 34 & Annex B). Their sample showed that of the total (97), ‘not guilty’ verdicts were recorded in 38 cases, 43 who pleaded guilty were convicted and 16 who had pleaded ‘not guilty’ were convicted (para 13.15).

The attrition rate in their sample (NFA and no-crime) was 59.2%. This is similar to the rates quoted in the literature review, which varied from 36% to 67% (para 13.13).

The sample shows that 57% of cases (131 out of 230) were either the subject of CPS advice to take no further action, or were dropped by the CPS after charge. This is higher than the figures referred to in the literature review where the rate was said to be 33% - 50% of all cases referred to the CPS.

It is perhaps one of the gravest indictments of the present age that we are cowed by self-imposed guilt, self-imposed regulation, censorship and invisible pressures not to say directly what we mean.

Thus, somewhat apologetically, the Inspectorate refers to some occasions, where they found themselves evaluating the social status of the victim, and/or the circumstances of the offence. This they ‘confess’ sometimes determined the level of response from both the police and the CPS.

“There were examples where the police and CPS had made value judgements on the credibility of the victim as a witness rather than giving emphasis to the actual evidence that he/she could provide.”

We agree that ‘value judgements on the status or character of a witness should not deny access to justice’ but it would be naive and foolish not to use our judgment forming powers refined over many generations to influence our deductions and choices.

Procedurally, rape trials may be difficult to navigate but there is a recent development born of the increased in rape allegations – forensic resources. Increased rape claims will result in the need for improved training, advances in technology, greater spending in the forensic areas if
secondary bottle neck are not to result. Continuing technological improvements equates to continuing and increasing spending. Without more funding forensic bottle necks will become common place.

The crisis we predict that will hit forensics is in staff and outsourced companies where a lack of clinical governance may exist. When examining complainants of sexual assault it is no longer satisfactory to rely on the work being competently done by doctors recruited from overseas.

The fear is that they have no specific forensic medicine experience of or training in sex offence testing.

The US is finding that the consequence of increased rape reporting entails a huge administrative backlog – currently over 500,000 cases are waiting for forensic/DNA determination (‘Attorney General’s Report on the DNA Evidence Backlog’). Consequently, in the US, the average waiting time for DNA results is measured in months (23.9 weeks). In England it is a matter of days.  

The number of cases which have ‘not yet’ been submitted to a laboratory for analysis in rape and homicide by local law enforcement agencies was over 221,000, i.e. cases with possible biological evidence (Homicide cases - 52,000; Rape cases - 169,000, approx.).

The number of unanalysed DNA cases reported by State and local crime laboratories for the survey was more than 57,000 (State laboratories - 34,700 cases; Local laboratories - 22,600 cases approx.).

America with a population five times greater than Britain’s has ‘economies of scale’ on its side, yet the NIJ report finds that specially produced ‘rape kits’ cost about $1,000 per kit to process, per case. This does not compare favourably with DNA ‘paternity testing kits’, which cost around $400 per kit and are usually undertaken by private companies.

The present scale of reported rapes would cost Britain over £8 million per year, using US cost data, to process rape DNA samples from the rape kits alone (£700 x 12,000 = £8.4m).

Today, every American State is linked into CODIS which is a computer software programme that operates local, State, and national databases of DNA.

Every State has the ability to interrogate the databases of other states including the FBI’s for profiles from convicted offenders, unsolved crime scene evidence, and missing persons etc. - and without administrative form filling delays.

CODIS has a demonstrable track record of success in the thousands of matches that have linked serial cases, and to cases that have subsequently been solved by matching crime scene evidence to known convicted offenders.

Greater internal funding for ‘forensics’ and a simple, sturdy computer programme that works and speaks to every police forces would greatly enhance minister’s designs to increase conviction rates.

Government departments and computer contracts do not have an enviable reputation. In the light of this, we would advocate that funding support should firstly be addressed to the front line, first-hand experience of practitioners. Too often they witness cases being lost in court because data held by force is inaccessible and the inadequacy of the medical evidence.

Though it is impossible to accurately estimate the number of cases that are lost because of the medical evidence, not least because we can never really be sure what was in the jury’s mind when it acquits the commonest problems encountered by expert forensic witnesses can be identified as:

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1). Over interpretation – this may be born out of
   a). ignorance
   b). a lack of impartiality
   c). a failure to recognise that there may be alternative accounts of what took place
   d). simply an eagerness for the medical evidence to be granted greater importance than it
       actually deserves.

2). An inability to understand or to be able to withstand defence assertions that rape must
   cause genital injury (it need not).

The dangers of over-interpreting the presence, or absence, of genital injury are primarily two-
fold. When over-interpretation is exposed in court it can do serious damage to the Crown’s case
resulting in a guilty person going free. Conversely, if unchallenged, over-interpretation can also
lead to a wrongful conviction.

Genital injuries are seen in only about 30% of rape victims. Some doctors are unaware of this,
or are unable to explain to the jury that in cases of rape “normal” can be “normal”.

The police have learnt (by experience) and now doctors need to be trained to understand that
the medical evidence- even DNA- in rape trials is rarely ever conclusive.

‘They have to understand that their evidence is just a small cog in a much larger wheel,
necessary to keep things moving but that is all’. 47

23. Learning from FBI results

The FBI, though it has a smaller DNA pool than Britain’s, is far ahead of both the HMCPSI
(Her Majesty’s Crown Prosecution Inspectorate), HMIC (HM Constabulary) in many other
regards.

In the late 1990s the U.S. Department of Justice published “Convicted by Juries, Exonerated by
Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial (1996).
The study documents 28 cases which, “with the exception of one young man of limited mental
capacity who pleaded guilty,” consist of individuals who were convicted by juries and, then,
later exonerated by DNA tests. At the time of release, they had each served an average of 7
years in prison.

One riveting passage reads, “Every year since 1989, in about 25% of the sexual assault cases
referred to the FBI, where results could be obtained, the primary suspect has been excluded by
forensic DNA testing”. This is the very point made in the Minority Report rejected by Betty
Moxon and SORT in 1999. Specifically, FBI officials report that out of roughly 10,000 sexual
assault cases since 1989, about 2,000 tests have been inconclusive, about 2,000 tests have
excluded the primary suspect, and about 6,000 have “matched” or included the primary
suspect.

The task of releasing those falsely imprisoned has fallen most notably to Peter Neufeld and
Barry C. Scheck, prominent criminal attorneys who co-founded the ‘Innocence Project’.
These are the aspects found in “Rape Reform: When Justice Collides with Science” (June 2000)
which SORT and the Home Office have studiously rejected.

The Home Office’s view has consistently been that Britain does not make such glaring mistakes
but the successive farragoes in April 2006 and a history of wrongful imprisonment of suspected
Irish/IRA bombers discredits that theory.

There is much we could learn from the American experience. For instance, the report states that
“these percentages (25%) have remained constant for 7 years, and the National Institute of
Justice’s

47 Technical observations courtesy of Dr Guy Norfolk, LLM, FFLM (Pres.), MRCGP, DMJ. See also Annex C.
survey of private laboratories reveals a strikingly similar 26% exclusion rate.” The relatively low estimate of 25% to 26% is probably accurate, especially since it is supported by other sources.

However, if the foregoing results were to be extrapolated, then the rate of false allegations / reports is roughly between 20% (if DNA excludes an accused), to 40% (if inconclusive DNA is added).

Before analysing the competing figures, however, caveats regarding the above are necessary. Firstly, the category of ‘false accusations' does not distinguish between 1/. accusers who lie and 2/. those who are honestly mistaken. Nor does it indicate that a rape did not occur, merely that the specific accused is innocent. We may move to a point where DNA can only reliably exclude a suspect not identify one.

Thus, there is a drive by counter-reformers, like the Innocence Institute, to improve eyewitness identification techniques within police departments.

The Innocence Institute suggests, “Police should use a 'double-blind' photo identification procedure where someone other than the investigator - who does not know who the suspect is - constructs photo arrays with non-suspects as fillers to reduce suggestiveness.”

Secondly, if false accusations are as common as ‘1-in-4’, that still means 75% of reports are probably accurate or have substance meaning all accusations deserve a thorough and professional investigation. If this proves physically impossible then police will need to consider a screening device.

Thirdly, the 1-in-4 figure has extraneous aspects that could influence the results. For example, Neufeld and Scheck mention only sexual assault cases that were referred to the FBI where results could be obtained. It is not clear what percentages of all reported assaults are represented by those cases and what cases omitted or not referred to the FBI.

The interchangeability of the terms 'rape' and 'sexual assault' are as confusing and potentially as misleading as the interchangeability of the terms HIV and AIDS. When comparing studies it is not clear that they are always synonyms for each other. Nevertheless, the FBI data on excluded DNA is as close to hard statistics that can be found on the rate of false accusations of sexual assault.

In an article in the US magazine ‘Newsweek’ (Jan 1993) researcher Kevin Krajik wrote that "… the FBI tested the DNA evidence of men already convicted of rape and serving time (based mostly on verbal testimony from victims) and found that in one third of the cases the DNA evidence from the crime scene did not match the person convicted.”

DNA testing is now far more common than ten years ago and we should expect the total of wrongful convictions to fall to 25% or 20% (but that is still 20% too many). This trend may be confounded by the realisation that DNA is not the ‘silver bullet’ once believed. In recent months it has suffered from successive crises in confidence regarding its accuracy.

DNA, which is universally proclaimed as being totally reliable, simply is not. When determining guilt it is unsafe to use it as an ‘absolute’. Matching depends on calculating the probability of time, place and the closeness of the suspect’s DNA to that of the crime scene, e.g. the suspect could have been there an hour or a week ago. DNA relies on an original assumption about uniqueness and probabilities in order to calculate whether the DNA is that of the suspect being held.

Contrary to public perceptions fingerprinting and carbon-dating techniques are also dependent upon uniqueness and probabilities and have as a consequence become suspect with greater use. Men have been convicted of sex offences in cases where the probability was a low as 1 in 350 and as high as 1 in 500 million. With no agreed criterion this variance for conviction is 48

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48 A 73-year-old Waterford man has been jailed for seven years for raping a 12-year-old girl in or about July 1997. Forensic scientist Mr Michael Burrington said DNA samples showed a 350-1 probability that the man was the baby's father. - The Irish Times, Sat May 19, 2001,

http://www.ireland.com/newspaper/ireland/2001/0519/courts2.htm
Moreover, the inventor of DNA Professor Sir Alec Jeffreys now agrees with our earlier premise that the present regime of markers is insufficient to secure a safe conviction. He firmly believes “There is still a residual risk of a false match and about 15 markers should be used because otherwise it leaves open the possibility that the match from the crime scene sample is genuine but a fluke.” Under the present method only 10 different DNA markers are used on the database to distinguish between individuals. Professor Sir Alec Jeffreys said, "If you have a database of 2.5 million people you will start having matches” i.e. false positives.

The implications of this have yet to permeate down to front line police officers and defence counsels.

When Antoni Imiela stood trial for serial and violent rapes, only ‘partial examples’, or traces of DNA could only be found, surprisingly, on 3 out of the 10 victims. Denying, as one would expect, that he had committed the crimes the prosecution barristers mockingly asked ‘Are you suggesting there is someone else in the country with the same DNA?’

Had Imiela or his defence team known better they could have destroyed the prosecutions remark by responding in the affirmative. This fundamental and perhaps fatal weakness of DNA testing has not properly been exploited by defence counsels in the UK.

Professor Jeffreys also warned that if the police kept profiles of suspects who were later cleared - which they can now legally do - that could lead to a disproportionate representation of minority ethnic groups, especially in the major cities, on the database (yet another small erosion, among many in recent years, of our civil liberties).

The cases of both Antoni Imiela and the 73-year-old Waterford man are of special interest in this regard (and possibly future analysis).

The former was of mixed parentage, i.e. nationalities, and it is possible that his DNA could closely match the disproportionate terms that Professor Jeffreys warns. In the case of the latter, Irish, case there is a possibility that closed communities with distant relative inter-marrying will share many common DNA markers. If this proves to be so then the preponderance of the Asian / Muslim communities to inter-marry among cousins and clans, may pose future problems.

Another fundamental and equally fatal weakness appears at the other extremity of the spectrum. It is conservatively estimated by some psychologists that among the adult female population some 5% (i.e., 3 million) exhibit forms of Borderline Personality Disorder.

The corrupting influence of this on statistics is that the disorder’s features often include the habitual making of false accusations of some kind of ‘abuse’ - this can take the form of revenge for some perceived slight. Women with BDP, see themselves as victims; as perpetually persecuted by someone else's actions and in an almost permanent state of oppression.
24. Conclusions

Nobody wants to be seen as a defender of sexual deviancy or of “perverts’ rights” and yet in the stampede to terrify all women and brand all men as potential rapists someone must stand firm and say ‘enough manipulation - this is simply gross distortion’.

To criticise this stereotypical and authoritarian view, namely that ‘a rapist is a rapist’, and that all rapists are equal and therefore evil, invites abuse and scorn from zealots insisting that it does not go far enough. They have no doubt that anyone defending justice and the rights of mankind must, therefore, be guilty by association.

These are the tactics of a Stalinist regime and results in more time being spent defending the freedom to express dissent than in defending the injustice caused by the authoritarianism. The upshot is a *carpetbagging* of the topic by the shrill voices of vendetta and vengeance.

Over-prescriptive lunacy has led to the creation of, for example, defining consent found in Sections 74 and 75. Draughtsmen felt compelled to define that consent cannot be given when the person/victim is asleep or unconscious, drugged or has a mental or physical disability.

Government has been seduced by women’s lobbyists, and their political groupies, into imagining that there must be tens of thousands of sex criminals at liberty, at any time, just waiting to pounce.

The dysfunctionality of the Home Office has not helped the cause of better understanding but it has at least highlighted the price a Department has to pay for 20 years of political infiltration.

Social Engineering has marked out our era from any other. Its champions feel they have the grain of history on their side. But all eras come to an end and inevitably there is always a reckoning for folly.

At the forefront of the present wave of social engineering, particularly by the New Labour government, have been attempts to bring about ‘cultural shifts’. This has assumed Holy Grail status.

As the frequency of these imposed changes have increased so the more out-of-step with the public government has become. The rise of the BNP in local council elections is the latest manifestation of something deeply worrying. This, we pointed out in 2003. We also pointed to the possible emergence of a white working class ‘underclass’ allying itself with a young ethnic or alienated mixed-race underclass. This potential is only now being recognised inside the ‘Westminster bubble’.

Government has until now expected the public to change and not complain; to dance to government tunes and no other. The government may now have to learn to listen to the public and dance to its tune for a while.

The government may have to learn that it cannot impose its will via legislative change on the public but have to bring the public with it when reform is sought – something entirely missing in the last seven years. Future changes involving a significant cultural shift will become increasingly difficult and unlikely to be realised completely or immediately.

Government and Whitehall are unlikely to change voluntarily and will have to be forced into doing so. Government have to address the administration of government and how it treats all of its citizens, especially men. There can no longer be British citizens who are regarded as a Helot class (i.e. men) subject to capricious measures while women and non-British nationals are given rights denied to men.

To attain this, and to avoid ministers stumbling from one disaster to another, a reappraisal of how the law works is needed with particular emphasis paid to the meaning and perspective of jurisprudence.
To paraphrase Mr Justice Munby, when speaking of fathers and custody, we feel there are different views about how to handle sexual offences; “One might find differences of view on that subject amongst the judiciary. The basic problem is that experience teaches us that there is no "one size fits all" solution to these cases. One needs the widest possible range of remedies, and where appropriate, weapons, so that one has the best possible chance of finding in a particular case the particular technique, the particular remedy, or, if one wants to put it this way, the particular weapon that will best achieve the objective. Therefore, anything which gives us more weapons, more tools, is to be welcomed.”

We would argue that the "one size fits all" approach has been applied to rape cases and to custody cases. In the latter it has institutionalised the single mother custody award which research now tells us disadvantages the child. Until there is research to show that women never lie anyone arrested for rape should not be deemed guilty, should be allowed a vigorous defence and should not be expressly railroaded by shortcut procedures into jail. If false allegations are a large part of the problem the police should be encouraged to devise screening techniques to reduce the wasting of resources.

The reason why more gravity should be awarded in official circles to false allegations is because they are not a 2% or 5% minority but around 50% of all rape claims. This is an incredible figure for many people to grasp but we have to bear in mind that surveys in women's magazines have repeatedly shown that around 80% of women have lied to their partner about a serious matter. We have to recall too that “1 in 3 of the men (33%) named by a single mother as the father and who are then tested are revealed not to be the biological father” (NIJ, National DNA testing results).

For many years various interest groups have been at great pains to construct theoretical numbers for women who are raped but who do not report it to the police. Estimates vary wildly from 15 times to 19 times greater than the number of reported rapes. This would amount to estimates of 180,000 or 230,000 rapes per annum. If these assertions were true then it would man that every third or fourth woman one encountered in a supermarket had been raped in the last decade – some more than once. Despite these claims and innumerable surveys searching for hard numbers there is no indication that they are anything but wild guesses and every indication that they politically motivated. Some Green Papers speak of ‘research’ but as we have cited before in this paper, too often that so-called research simply amounts to the majority opinion of a focus group. So puzzled was Sara Hinchliffe in 2000 (’Should Women be Living in Fear ?’, pub. LM) with the estimate of 300,000 rapes pa from the Home Office that she phoned them;

”After two hours the Home Office press desk finally owned up - there was no new research. The figures had been culled, in the main, from a Home Office report published in 1999, and from a range of crime statistics. The press officer did know that the newspapers had reported new evidence, but felt it wasn't the government's fault that the press had told some little white lies.

Sara Hinchliffe found precisely what we found – when push comes to shove there is little substance to much of Home Office statistics these days. The public is scared by myths masquerading as fact.

51 Rape Crisis for instance stated one their website that over 90% of all disabled women have been raped (Sept 2001).
52 Sept 2001, Rape Sentencing Advisory Panel commissioned Surrey Social and Market Research, part of University of Surrey who used ordinary members of the public to allot significance of type of rapes and tariffs. ‘Justice For All’ (2002) and ‘Safety and Justice’ (2003) were Government Papers built on the input and opinions of one sex.
British newspapers, particularly the broadsheets (The Times, The Guardian etc), would not have reported that the Home Office had produced new research evidence, if they had not received press releases pushing them toward that conclusion.

Newspapers blindly and wrongly relied on Home Office produced rape figures. We can show they are false simply by multiplying the UK population by five to achieve parity with the US population. If we then examine both US reported rapes and actual rapes per 1,000 of the population it does not stand comparison with both in the UK.

To double check, if we divide US rape data by a factor of 5 so that they are comparable to the UK, by population size, then Britain should expect to have 106,000 reported rapes per year – but we don’t.

In terms of publicity what is certain and undeniable is that where a case of, say, child sexual abuse is under way it dominates newspaper headlines. But all coverage stops immediately once the evidence is challenged and the case collapses as happened recently in a Scottish trial. No one asks why so many cases suddenly collapse or how the accused is supposed to get on with his, or her, life afterwards.

Before 1976, a woman who publicly accused a man of rape could expect to have her picture splashed across the front pages of the newspapers. The Wilson Government, angered by tabloid excesses, put an end to this practice by introducing laws which banned publication of the identity of the victim and the alleged rapist. Labour prime ministers, Harold Wilson, and later James Callaghan, believed if victims of rape should be protected from identification then so should the accused. We are not in favour of returning to a scenario where newspapers splash the name and the picture of the victim across the front pages. But if the accused can be named then so too should his/her accuser.

A middle way of either anonymity for both or revealing names only of both should be uppermost on the reform agenda.

Allowing the accused to be identified according to the Home Office, taints their reputations and has not led to an increase in convictions.\(^53\) (2001).

Two frequently cited studies 10 years apart that show “… 85% of rapists motivated by displaced anger are from fatherless homes”\(^54\) and/or that “… 60% of repeat rapists grew up without fathers”.\(^55\) These depict statistical correlations not causations and are not as reliable as some advocates would suppose. Nevertheless, lack of joined-up-thinking means government is promoting, via its social policies, the very environment of fatherlessness that may be leading to more rapists being created.

The studies of Knight & Prentky (1987) where half to three-quarters of the 108 convicted and imprisoned rapists in the study were physically abused as children and many were neglected, certainly cannot be extrapolated to the population at large. However, it does point to an area in need of further exploration and one that should be considered whenever drafting legislative measures. It would be ironic if, in promoting ‘single mother households’ (SMH), society was intensifying the production of rapists and perpetrators of domestic violence. What we can say is that, in all probability, most fatherless children never become rapists, but those adults who do become rapists are in the main from fatherless children and/or were abused in single mother households’.\(^56\) If the supposition is true then as more children from fatherless households grow into adulthood we should see the trend line for rape and domestic violence increase in sympathy with the rise in SMHs. The apparent trend line for rape shows an increase

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\(^53\) ‘Rape’, By Robert Verkaik, Legal Affairs Correspondent, The Independent, 12 January 2001


\(^56\) Amneus D, “The Case for Father Custody”
this but the trend for domestic violence shows the very opposite – reported cases are decreasing.

Many popular writers and education reformers think ill of boys. Gang rapists and mass murderers become instant metaphors for everyone else's sons. A false and corrosive doctrine that equates masculinity with violence has found its way into every level of present day mainstream society. Only by raising boys to be more like girls, critics argue, can we help them become 'real boys'. 'Macho' is epithet for negativety and an overused derogatory slur whereas it has many positive, essential and constructive attributes. The willingness for self-sacrifice, to take on superior odds is the hallmark of macho behaviour and is the glue that kick-starts and then holds societies together. It is this patriarchy that protects women and allows ‘Women and children first’ in disasters and life boat places.

Recent Home Office publications have referred to ‘powerful stereotypes’ and ‘myths’ as barriers to convictions. This may be true in part but it is also equally true that such myths or prejudices have firmer foundations that some would like to accept and must exist for an equally good reason.

Home Office publications refuse to catalogue the powerful stereotypes women’s activists project in regards the role of patriarchy in rape and those accused of rape.

Activists with advertised feminists views, such as Lorraine Radford, Liz Kelly and Hester, for example, would prefer ethereal factors, i.e. ‘myths’ and ‘powerful stereotypes’ to be countered by striking at the enemy with concrete legislation. 57 The Home Office has become the creature of these women whims and their matriarchal views.

Their view of the, “cultural conceptions …. that functions to limit the definition of what counts as real rape”, discourteously portrays the public as poor judges of character. It insinuates the educated middle classes dutifully enlightening the proletariat working class what they should find acceptable and tasteful. The age profile of those pressing for rape reform is illuminating - they were all young in the 1960s. The public’s ‘cultural conceptions’ rightly act as a brake on their rape fantasies.

In other words, they are insinuating that the public is incapable of differentiating that football as a concept can embrace that which attracts both football fans replete with their young children in the same stadium with football hooligans. In plain words this is a disingenuous, dishonest and offensive use of power and influence.

The attempt to redefine language and definitions fools no one.
It will not alter anyone’s proper concept of what ‘rape’ represents. The legal lexicon may alter but the conviction rate will fail to be dependent upon it. Altering the law in this way is not only prosaic but pointless.

The transformation of ‘inappropriate touching’ into ‘rape’ has been the single biggest factor why alleged rapes has increased in the US - especially on university campuses (see ‘Lip Service’, 1997, by American feminist Kate Fillion).

According to the FBI’s "Crime in the United States" survey (2000), the number of reported incidents of rape on college campuses has dropped significantly over recent years. Other US studies have shown a similar trend.

However, there is a problem with not only the FBI survey but others (whether they indicate rising or falling trends) and that is that participation is 1). on a ‘voluntary’ basis, and 2). campuses may omit from their records certain crimes that occur off-campus.

Another salient problem confronts researchers in determining the true number of campus crimes.

Increasingly, fabricated reports are being uncovered across the US during 2000 and it would appear that school administrators are doing little to stop the hoaxes. 58

57 HORS 293, “Gap or chasm Attrition in reported rape cases” by Liz Kelly, Jo Lovett and Linda Regan
http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf#search="kelly%20A%20gap%20or%20chas%20E"
The same progression might happen in the UK where we are already seeing incidents categorised as domestic violence when the women involved do not classify the incident as domestic violence. 59

From the brood of feminist writers (Marilyn French, Andrea Dworkin, Catherine McKinnon, etc) come divisive and politicised assertion that, “All men are rapists, and that's all they are”. A cordon sanitaire must be created between the public’s wholesome values and the deeply disturbing and rather dysfunctional set of values held on the above ladies.

The Mike Tyson and Kobe Bryant cases have already revealed - and the Duke Uni. case probably will – that the next few years will see a normalisation in the US of the practice of using both criminal and civil courts to address the same offence in rape actions. We should brace ourselves for this in Britain (see Garfoot above).

There are at least three reasons why we should expect this trend to emerge Firstly, decades of political feminist activism (e.g. Emma Humphreys who stabbed boyfriend 1985; Sara Thornton who murdered 1989; Kiranjit Ahluwalia who torched her sleeping husband 1989 etc). Secondly, civil suits could prove lucrative for victims. Thirdly, cases are easier to prove in civil cases than in the criminal court where the standard of evidence and other legal protections are higher. however, the above could also result in a backlash by men seeking punitive damages against their accusers.

The pressure group ‘Women Against Rape’ (WAR), told the press that;

"False rape accusations are rare but receive disproportionate publicity. People wrongly believe that lots of women who claim rape are liars – a misconception that would be reinforced if men accused of sex offences got special rights to anonymity. Of course, it is a terrible ordeal for those wrongly accused. But the same can be said of murder, theft, fraud, or any other serious offence.” (13 Jan 2001)

We are pleased to hear WAR concede that, “it is a terrible ordeal for those wrongly accused”. But they utterly misunderstand the male psyche if they also believe (wrongly) that, “the same can be said of murder, theft, fraud, or any other serious offence.” It would be fair to say that the normal man would much prefer to be wrongly accused of murder than he would rape. Where we would passionately disagree with WAR is in believing that men accused of sex offences would get “special rights if anonymity was granted

As Deborah Orr pointed out, if anonymity can be provided for “… murder, theft, fraud, or any other serious offence” then why not rape and logically extend anonymity for the accused?

Reidivism

It can often be difficult to find any bright spots in the murky subject of sexual offences – but re-offending is worth examination. The Home Office has undertaken occasional surveys of re-offending but all too frequently the grossest forms of sexual abuse are aggregated with much less serious offences and re-offending data are rendered useless. We again have to turn to the United States for larger and less aggregated samples of re-offending by sex offenders.

‘Reidivism’ is the term applied to the tendency to relapse into previous criminal behaviour. For sex offenders this specifically means sexually offending whereas ‘re-offending’ by a sex offender can mean offending in some other criminal category.

A study undertaken by Minnesota Bureau of Justice Statistics (2003) of almost 9,700 sex offenders released from state prison during 1994 found that In terms of Reidivism: 60

59 See Introduction, ref. Mick Hume.
60 Level 1 - 3 http://www.dps.state.mn.us/OJP/cj/publications/FS-2004-001_Sex_Offenders.pdf
• sex offenders were more likely to be rearrested for a sex offence than non-sex offenders (5.3 percent versus 1.3 percent), but less likely to be rearrested for any offence (43% versus 68%) within 3 years of release from prison,

• Before serving time in prison, most offenders had been arrested for various crimes. The more arrests, the greater likelihood of re-arrest for another sex crime after leaving prison.

• Within 3 years of release from prison, 38.6 percent of sex offenders were returned to prison, as a result of a new crime or technical parole violation.

• The older the prisoner at the time of release, the less likely they were to re-offend; the lowest recidivism rates were for sex offenders aged 45 or older.

A study of sex offenders by the Department of Solicitor General of Canada identified factors strongly related to recidivism. Sexual offence recidivism was best predicted by measures of sexual deviancy (i.e. deviant sexual preferences, prior sex offences).
Overall, recidivism rate was 13.4 percent (out of 23,393 offenders). Offenders who fail to complete treatment programs are at increased risk for both sexual and general recidivism.

Various studies suggest that recidivism among sex offenders is lower than popular belief (and myth) and that treatment is a positive factor in reducing recidivism.
In a meta-analysis of treatment outcome studies (1995), there was an 8 percent reduction in the recidivism rate for offenders who participated in treatment.
A review of 43 studies (9,400 sex offenders) examined effectiveness of treatment. Overall recidivism rate was lower for treatment groups (12.3%) than comparison groups (16.8%).
Current treatments were associated with reductions in both sexual recidivism (17.4% to 9.9%) and general recidivism (from 51% to 32%). We can speculate that the significantly low recidivism rate (i.e. for a sex offender to repeat a sex offence) tells us we are looking at a binary crime category; one group which will never pose a problem in the future and the relatively less attractive group where some sex offenders might pose a danger but who are blended with a minority sub-set who do pose a real danger.

**Life Sentences**

It could be argued that the prospect of a 5 year mandatory sentence, or possibly life, would weigh on the mind of the accuser and create as much trauma for her as it would for the accused who faced the prospect of 15 years, or life, for ‘one moment of madness’. Schoolboys as young as 13 can face sentences of 7 to 12 years. This should not be the answer from an ‘enlightened’ society. Such children need treatment, not incarceration. It must surely rank as obscene that a first time offender aged 15 can be given the same sentence as a serial rapist.
Juveniles committing rape is not an epidemic that makes individual treatment impossible. In 1999, of the 40 juveniles tried for rape 37, or 92.5%, were sentenced. *If we exclude life sentences*, the average length of custodial sentences for young offenders (in 1999) was 42.3 months (3½ years), and 93.7 months (7¾ years) for adults.[emphasis added].

We argued to the Sentencing Advisory Panel that it would be better to adopt tiers of fines and suspended sentences to firstly secure a conviction and secondly to reduce the burden on the taxpayer – given that the estimated cost of secure prison accommodation is put by some at £1,000 per week.
Using Feltham jail (England), as the standard, the average cost of jailing a rapist in England is £52,000 per annum (£1,000 per prisoner per week). When the average sentence is 7 years and one month the average cost is therefore, £369,000 per prisoner per sentence (Annex A-1).
In 1999, when there were 515 persons convicted of rape, the total cost of jailing rapists for 7 years was £190 bn [515 x £369k].

Measured against modern social values, rape should attract a lesser sentence than it did in the 19th century. We need to remind ourselves that those convicted of running Extermination camps and of organising the ‘ethnic cleansing’ of thousands received sentences less or comparable to, that for rape.

It was irresponsible, in our view, for the Sentencing Advisory Panel (SAP) to ask the University of Surrey to undertake opinion sampling from ordinary members of the public (‘to explore whether people do in fact see acquaintance rape and relationship rape as less serious offences than stranger rape’), and to allow that to influence decisions. In our opinion, the nuances and punishments for sexual offences are too complex and it is unfair to burden inexperienced members of the public who are not au fait with the subject.

We differ from the SAP in that the practice of cautioning for the offence of rape should, we feel, be used more often but without the need to technically imply guilt as at present. The practice should be counted outside the sentencing guidelines and collating system for rape. However, it could be listed under a general ‘sexual offences’ category (see para 5.11). This would benefit Whitehall in that the more ‘hard core’ offenders would be quantified and identified.

There is the additional burden on the taxpayer of a life time of surviving on benefit payments once released as future employment chances will be minimal.

With regards teenage offenders, SAP did feel able to accept part of our recommendations. The number of juveniles sentenced for rape was 37 out of 40, or 92.5%, in 1999. The average length of custodial sentences in 1999, excluding life sentences, was 42.3 months for young offenders and 93.7 months for adults.

Many adult offenders do not pose a danger to the public and there is no reason why more in this category should not receive shorter sentences, e.g. 2 to 3 years, or, where reasonable, suspended sentences, or be paroled earlier (without having to go through HMP brainwashing programmes).

This would address the other concern of SAP, and shared by the Youth Justice Board, namely the shortage of adequate accommodation and treatment programmes for young sex offenders.

Support for our sentence reforming views come from studies of sex offenders in the United States.

- In 1998, about were 265,000 convicted sex offenders under care, custody or control of the US prison service. Of these nearly 60% were under conditional supervision in the community.
- In 2001, there were about 118,500 individuals in American state prisons for rape or other sexual assault.
- Rape and sexual assault offenders account for nearly 5 percent of the correctional population.
- Only about two-thirds of convicted rape defendants received a prison sentence,
- Bureau of Justice Statistics show that 19% were sentenced to a term in a local jail, and 13% received a probationary sentence.
- The average sentence for rape defendants sent to prison was nearly 14 years, average jail term was 8 months, and average probation term was nearly 6 years.
- About 2% of convicted rapists received life sentences.

61 Of the 515 sentenced 17% were juveniles aged between 10 and 17. The average sentence for them was 3 years 9 months.
62 In all, 503 persons received a custodial sentence for rape in 1999.
Minnesota appears to embrace a far more flexible sentencing regime. An offence does not bring an automatic prison term. However, that could hinge on differences in scope or definition of a sexual offence. The idea of a probationary sentence as an alternative to incarceration is attractive and should, we feel, be closely examined for adoption in the UK. Long sentences, favoured by some, do not appear to answer the problem. In the case of Minnesota, the prospect of an average sentence of nearly 14 years appears to be no deterrent.

The ‘Billam guidelines’ which oblige judges to impose mandatory minimum sentences for rape were formulated in the 1980s. They were revised by the Sentencing Advisory Panel in 2002. The guidelines mandate a minimum sentence of 5 years increasing to 15 years and up to life imprisonment. Billam was devised for stranger rape scenarios and this was extended in 2002 - wrongly in our view - to include relationship rapes, i.e. acquaintance and intimate rapes (Annex A-1).

We attempted to alert the SAP to the resistance that ever greater prison terms would provoke from jurors. Our submission in 2002 to the Sentencing Advisory Panel (SAP) asked that we should look more closely at continental practice. There, fines and light sentences predominate. Only Portugal and Russia have rape regimes approaching the punitive nature of our laws.

In a recent rape case, the House of Lords agreed that five women should be allowed to give evidence against 39-year-old Nicholas Edwards. All five women were allowed to tell the court how they had made separate allegations against Edwards in the past but which had not resulted in convictions.

This evidence helped establish that Edwards had used the same defence to similar rape charges on a number of occasions. This time, he was found guilty of rape and jailed for life. Without the evidence of these five other women, he would most probably have been able to convince another jury that the case against him was not proven.

In 1998, Leslie Bailey was cleared of repeatedly raping a 14-year-old girl. It later transpired that he'd already received six previous convictions for rape, one for attempted rape and three of indecent assault. These two cases justifiably stretched procedures in order to obtain a conviction, but it is an option that should not be used routinely.

To allege rape is to allege a most repugnant crime and it behoves the prosecution to allow the defendant every opportunity and all avenues to clear his name.

The European Convention on Human Rights - fought for long and hard by pressure groups - must be allowed to protect the right to cross-examine of victims regardless of the alleged crime.

**Complaint Window**

The consultation paper properly raises the topic of whether any time limit should be placed on a complainant to report a sexual offence.

This area can perhaps be conveniently sub-divided into child abuse and adult abuse/rape. Presently, it appears as if the sexual abuse of children presents no time limit, and that may be thought wise. However, it is disquieting to learn of what exactly police ‘trawling’ involves and the part money plays in getting victims to come forward after, say, 20 years. The cascade of cases that have subsequently ‘collapsed’ show this route to be potentially dangerous and casts doubt on the value or veracity of any trial that begin life in this manner.

How long should an adult be allowed before making a complaint of sexual abuse is presently also open ended. Traditionally, bodily assaults have had little or no time limits (e.g. manslaughter, death after ‘a year and a day’) but the politicisation of rape, which this Consultation Paper epitomises, points to a potentially dangerous situation of leaving matters as they stand.
Public debate has yet to start on this topic but we can learn from other jurisdiction how they handle it. Currently, Californian law provides protection for victims of spousal rape. In order for the state to prosecute a spousal rape charge, the accuser need only to have mentioned the violation within a year of its occurrence to any of a wide variety of medical, law enforcement, clerical, legal or psychological personnel, or there must be corroborating, independent, court admissible evidence. Parties should initiate discussion of this topic in the British context.

However, Senator Sheila Kuehl (Dem, Los Angeles), is sponsoring a change to the above in the form of SB 1402. Ms. Kuehl – an ardent lesbian – wants to eliminate the distinction between spousal rape and other rapes, thus allowing for spousal rape prosecutions six years later, even if there was no mention or independent evidence of the crime in previous years. Under SB 1402, when aggravated spousal rape is alleged, there would be no statute of limitations (which implies there currently is). This view is to be expected from radical feminists and lesbians. They see no value in marriage and unsurprisingly seek to compromise its virtues and advantages whenever possible.

Contradictions abound in the homosexual and lesbian *demi monde*. They disparage heterosexual marriages yet crave normalcy by campaigning to have same-sex unions recognised as comparable to marriages for tax, adoption, inheritance, income and welfare rights. And given that they are a dominant force in domestic violence issues they seem curiously unfazed by (or unaware of) the levels of interpersonal conflict which are far greater and more frequent among lesbian and male homosexual couples.

**Recommendations**

The following are recommendations that we believe will lead to safer and better prosecutions for those accused of rape.

Now more than ever, we need to demonstrate a consummate fairness and a total lack of any inherent prejudice.

We need to protect the rights of the innocent and the wrongly accused - not simply the rights of the victim.

Only by adopting these measures will we restore confidence in the judicial process; give greater credibility to the law and enable more convictions to be safer.

**Right to a fair trial**

If murder and rape are comparable in many ways with regard their impact and severity, as many maintain then the standard of proof required for murder must be extended to rape cases.

**Cross-examination**

If British law is to be enviously regarded then the same degree of manoeuvre and cross-examination of witnesses permitted in murder trials must be allowed for the defence in rape trials.

**Innocent until proven guilty**

This has been the first causality of a programme of alleged reform stretching back some 10 years.
Personal history
If it is right and equitable for the House of Lords to allow five women (victims) to give evidence against 39-year-old Nicholas Edwards regarding their earlier but failed allegations against him, then cases where serial claims are made by women should be publicised to the jury.

Anecdotal
The above case, Nicholas Edwards, highlights a serious endemic problem. Much sexual offence law in Britain is initiated by, and premised on, a few ‘hard cases’. Firefighting grievances from pressure groups is no solution to the better approach to law making that stems from employing checks and balances and a cool, dispassionate consideration of the issue.

Kangaroo courts
There is a danger that proposed legislation outlined in this Consultation Paper will push the judiciary away from fair trials and towards the perfunctory justice associated with Kangaroo Courts (ref. militant left wing trade unionists of the 1970s).

Anonymity for defendant.
Anonymity for the person accused of a sexual offence must be re-introduced to level up the playing field. Commentators, lawyers and the DPP agree this measure would not be harmful to the prosecution.
Only in exceptional cases, for example, where serial rapists is abroad or a particular individual is on the loose and cannot be traced in the usual manner, is there a need to disclose the identity of the accused.

Devastated lives
The government must stop refusing to recognise that men who have been falsely accused also have their lives devastated. They must begin to appreciate that the lives of these innocent men’s families are as equally and as needlessly wrecked as any rape victim’s.

Checking DNA for guilt
Two years ago Home Office statistics showed there we 2 prisoners sentenced to life but for whom no crime or charge was recorded. The very recent fiasco of non-British prisoners released incorrectly underscores the internal problems besetting the Home Office.
DNA testing by the FBI show that 30% of men jailed for rape ought not to have been convicted.
Intransigence by the Home Office means that Britain has no idea how many men are wrongly incarcerated. The Home Office must begin a pro-active retrospective programme of testing.

DNA validity
The police, judges and barristers must be informed of the severe limitations of DNA reliability that are now appearing on the radar screen. We may come to realise in the near future that DNA can prove a negative but not affirm a positive identity.

Sentencing alternatives
The move away from longer sentences (and towards fines, probations options etc) must be considered on the basis not only of cost to the taxpayer but of effectiveness and recidivism. We should look overseas to learn how to tackle our uniquely ‘growing’ rape problems and seek the equilibrium enjoyed by other nations in the number of rapes reported.

Statistical failings
The Home Office by not divulging age, ethnicity and sex of victims or of perpetrator perpetuates a highly unsatisfactory situation where perennial incompleteness permeates British public statistics. No adequate conclusions can thus be safely reached. Aggregation of data and slovenliness in methodology, per haps the result of political targeting, results in facts and figures that are not entirely or consistently dependable.

**Serial rapists**
We suspect that the Home Office has no separate criminal coding index for serial rapists. If this is true, we urge that one be implemented immediately.

**Distinguishing types**
We have tried to point to the very great differences between rapists; the various categories and their characteristics. It is to be regretted that to date no serious attempt has been made to understand differences but to instead sentence all rapists as if they were from one homogenous bloc. The unspoken concept that ‘a rapist is a rapist is a rapist’ is not true. All rapists are not the same. Some can share pathologies but the various sub-types and causes should push us towards an acceptance that deep differences do exist. The general notion of one-size-fits-all should be rejected at every level.

**Lifestyle choices**
If government wishes to seen acting responsibly then it must be honest with women for whom fear of violence is more keenly felt than among men. It should be made known to the public that the lifestyle choice of being an unmarried, single women aged under 30 brings with it a greater prevalence of both rape and domestic violence.

**Police resources**
False allegations of rape jeopardises public goodwill, divert police resources and undermine the legitimate claims of real victims. We suggest a screening mechanism be considered. If reported rapes are to be dealt with the seriousness they deserve - and conviction rates raised - time wasting by frivolous and false allegations must be reduced.

**False allegations**
Those that make false or malicious rape allegations usually face no deterrent and at worse no more than a small fine or a short period of probation. This situation should be tackled forthwith by custodial sentences of a mandatory minimum sentence of 12 months.

**Forensic barriers**
Stretched police resources are not the only barrier to prompt and accurate processing of rape claims. With so many rape claims now being made a bottleneck has developed with forensic departments reporting an overload and unable to keep up with demands.

**Compensation culture**
New Zealand (and Germany ?) have seen the number of rape claims fall when monetary rewards for victims has been withdrawn. There could be an element of this phenomenon in UK rape figures. Consideration ought to be given to a trial period of 5 years when compensation payments to all rape victims aged over 16 was withheld. This could tease out how great a multiplier compensation really is in UK rape dynamics.

**IQ of victims**
The police should have made available to them a devise to determine/screen false allegations and some basic training in identifying Bi-polar disorders and/or multiple personality traits.

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More attention should be paid, in our view, to the phenomenon of age-incompatible sexual intimacy / behaviour, i.e. between the very young and the very old (either of which can be the victim or the perpetrator). Abnormal immaturity and impaired mental abilities should be more openly discussed.

**Childhood sex abuse**

Twenty five years ago the suggestion that ‘mother abuse’ gave rise in later life to rapists was first raised. If we are to understand more about the triggers of sexual aggressions then this is an area that needs to be fully explored and explained to the public. Examination of sexual offending literature suggests that offenders' can be divided into categories. Possibly two of these causes could be construed as broadly-based anger-hostility and or social-sexual incompetence. This topic needs to emerge into mainstream discussions.

**Home Office honesty**

The Home Office must recognise that its Research and Statistical Dept have been significantly compromised. It is seen as a safe berth for radical feminism and only now is the price being fully felt for ideology-over-pragmatism and spin-over-content. When research is undertaken and grave shortcoming discovered the problem should be flagged up to interested parties via their website and remedial action taken, e.g. the sex offender register.

**Home Office research**

Funding must be made available to researchers who do not have compatible, complimentary or complicit political leanings to those found among Home Office staff. ‘Politics of the personal’ and of ideology must give way to a reinstatement of classical empirical research. The Home Office must once again begin to deal with policies that rise above base political considerations. There is a need to restore a sense of proportion and a degree of honesty. This can be achieved by undoing administrative changes made at the behest of political interests. For instance, there is no good reason why mere ‘reports of rape’ which were always listed as “notifiable” offences should be given a greater gravity by being accorded ‘recorded’ offence status.

**Statistical Quirk**

The front cover of this submission depicts a graph that is unique in rape reporting. The Home Office must accept that the graph casts doubt on the veracity of their rape figures or, at the very least, to discuss why they are so atypical of world trends which are either holding steady or actually declining.  

**Abandon Sex Offenders Register**

We recommend the scrapping the Sex Offenders Register (SOR) in its present form. Set up in 1997, it is based on a failed 40-year-old US model. Indeed, in the same year (1997) the Home Office published a paper on the failings of the American system. A new register should be created with a new title (for instance, “Dangerous Sex Offender List”). It should be limited to sex offenders who represent a ‘public danger’, e.g. serial offenders, paedophiles and those who use physical violence.

To have created a Sex Offender Register was a positive, re-assuring step but to then include those with any type of sex offence, i.e. minor, completely negated any benefit.

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64 The Washington Post, June 29, 2006 “ …. since the 1970s, rape has diminished in frequency by some 85%” ….. the best evidence comes from the Justice Department's annual crime victimization survey [based on interviews with some 75,000 Americans, rather than from police reports]. The survey found that in 1979, the rate of rape was 2.8 per 1,000 people over age 11. In 2004, it was 0.4. … That translates into hundreds of thousands of rapes that didn't happen.”


The SOR snuffs out any glimmer of an ex-offender resuming his normal life. Thinking outside the box of retribution we are needlessly manufacturing a social cripple if he is afterwards unable to find work and becomes dependent on ‘benefits’ for the rest of his life. The wording of the 2003 Act encourages a whole array of relatively minor infractions to be registered. The present Sex Offenders Register has overreached itself and fallen in disrepute.

Limiting the scope of any new sex register would enable closer tracking and monitoring given that governments departments and police forces have only limited manpower. Reformers and legislators are persistently over-ambitious in believing that the agencies of the Crown have the manpower, time and resources to fully fulfil what is asked of them. There is already a gulf between enacted legislation and the ability to discharge it without the addition of further legislation and yet more obligations.

**Billam hurdle**
The Billam guidelines are defective in that they take into account aggravating circumstances but not mitigating ones. The amendments announced in 2002 have pleased the small politicised cabal of activists but are not helpful in securing safe convictions.

**Parole farce**
The practice of rewarding a guilty plea (because it saves taxpayers’ money and allegedly shows remorse) means that a predatory sex offender sentenced to a 7 years sentence can be released onto the street after serving only 3 years. An innocent man wrongly convicted will, in contrast, serve a full 7 year tariff. The only way he can speed up his release to that of a guilty sex offender is to bogusly ‘confess’ his guilt while in jail and agree to undergo crude and repugnant (North Korean style) ‘re-education’ designed specifically for repeat offenders and predatory rapists.

**The Portia syndrome**
It is a paradox that the nation that gave the world common law should now have lost its moral and legal compass. The vigour and certainty that was once the hallmark of English law has given way to confusing layers of compromise created to assuages minority interests. The whole purpose of Jurisprudence has been ignored.

The Portia indulgence (“The quality of mercy is not strain’d … .. etc”) has besieged law making in the courts since Lord Denning's era. It has slowly destroyed certainty and thus our legal system. This fashionable but tainted law has, to paraphrase Lord Justice Dunn, become a tide, “which was flowing inexorably up the creeks and rivers of the common law of England.”

In seeking his vision of justice, Denning, considered himself fully entitled to circumvent - or even change - any rule of law that stood in his way. For him there was no need to wait for legislation.

In his biography (by Edmund Heward) Denning is quoted as saying; “Parliament does it too late, .... It may take years and years before a statute can be passed to amend a bad law. .... The judge ... should make the law correspond with the justice that the case requires.”

By ‘wanting to do right in each and every case’, Denning effectively defied precedent and introduced uncertainty where once certainty and consistency reigned. Making the law correspond with the justice that the case requires offers only subjectivity. The level playing field offered to all is removed for privileged outcomes in a few ‘hard cases’. The penalty for this free spirit approach has been a destructive erosion of the law and public respect therein.

Denning’s prejudices demonstrate the risks of allowing one person to monopolise one division of the law for too long and to dispense an eclectic vision of justice.

There may have been room to accommodate such views in the 1980s but the advent of advocate research and gender lobbying, witness the present Consultation Paper, now

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66 ‘Sword and Wig’, Robin Dunn LJ, p 243.
renders such a position dangerous. Consultation Papers if they are to continue to function into the future cannot allow themselves to become the creature of any vested interest group. Until a grasp of jurisprudence is regained at all levels of the judiciary - and in the creeks and streams of the civil service - we will continue to suffer poor quality law making which will include sacrificing the notion of ‘innocent until proven guilty’.

**Hormonal Instability**

In unconnected debates the topic of hormonal instability, PMT and mood swings are deeply analysed and dispassionately articulated. Yet these factors are curiously absent in debates about rape and rape sentencing.

We are asked to consider every single women as a stable, rational, sentient being, gifted with good judgement, not given to exaggeration, nor suffering from low self-esteem or a sense of inferiority.

Throughout this submission we have touched on the mental instability, psychological and psycho-social problems that some offenders and victims experience. It is regrettable that in official discussions these factors are not just dismissed but the concerns are never raised.

We cannot legislate sensibly if that is the given ‘norm’.

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**Response to Questions 1 - 14**

**Question 1. ‘Does the law on capacity need to be changed?’**

No. In our view’ *R v Dougal* [2005] Swansea Crown Court’, is an exemplary example of good law and good administration. The prosecution could prove nothing conclusively and a ‘not guilty’ verdict was the only logical and just outcome.

However, it does point up another concern and that is the amount of unwholesome political pressure now exerted on the police and CPS. If a guilty verdict had been reached it would have proven that the 2003 Act had successfully abolished the presumption of innocence in criminal courts and replaced them with Kangaroo Courts.

Those that would like to see Kangaroo Courts are grasping at straws when they suggest that the capacity to consent was not addressed.

The history of rape reform from 1982 onward has been on the one hand to claim equal rights with men but on the other to always be the victim; and to take away from men their rights to defend themselves. Women can’t have both ways; they cannot have equality and preferential treatment.

Every change since 1999 has been to ‘infantilise’ women. The result is that they are now not allowed to make decisions that can be relied upon and to have to live with them afterwards as an adult.
For defendants to have to assess (and accurately) just how intoxicated an alleged victim is before sexual congress begins is a sure sign of desperation. It never occurs to the authors that though inebriated the women may positively seek out sexual intercourse several times in one evening and regret it only when they sober up in the morning. A visit to Spain’s Costa’s or to Ibiza would soon disabuse anyone harbouring 19th century notions of female vulnerability.

‘Liberation’ for women means that it is no longer a simple matter of unsatisfactory sex with a single unknown party but sex with several unknown parties – all in one night. For this reason some single mothers genuinely don’t know who the father of their baby is or from whom they caught a STD. The Consultation Paper just hasn’t grasped the modern moral mores of young women today. And it is these same young women, aged under 25, who are most likely to have these sexual adventures from which they might feel a tinge of regret or dissatisfaction.

‘Alcohpops’ were created for the young single woman in 1995. Lacking the restraining element of bitterness found in traditional alcohol, ‘Alcohpops’ were not only intoxicating but attractively sweet. A television programme survey revealed that 70% of young women said they drank to excess. The same survey it was found that 66% of young women had no recollection of what had happened the previous night. In others words, the women themselves were of the opinion that they spent Friday and Saturday nights “legless”.

After deploring ‘powerful stereotypical myths’ the Consultation Paper falls into its own trap. It unconsciously takes the position that all modern day women are as virtuous and chaste as was they were in, say, 1937. In not addressing the modern sexual mores the resulting proposals appear designed to meet the demands of yesteryear rather than fit in with today’s requirements (see Sect 2. Victorian Entrenchment’ above).

**Question 2. ‘Should there be a statutory definition of capacity’**

No. Defining capacity other than it is presently defined, might lead to an apartheid regime in criminal law – one for rape victims and one for everything else.

There is every reason to believe – given past experiences- that a redefinition today would prove unworkable in two years hence. To learn that R v Dougal has raised some concerns about the effectiveness of the Sexual Offences Act 2003 simply validates our 1999 predictions. The confused thought processes that led to flawed elements being inserted into ‘Setting the Boundaries’ is again in evidence by the content of these 14 questions.

It is a slippery slope toward greater disrespect for the law if you have to ask ‘how intoxicated is intoxicated’ and then legislate on the answer given.

If you have to ask, ‘Is this adult woman really a child’ because she chose to become stupefied to a greater or lesser degree by drink or drugs, then we ‘infantilise’ her as a woman. The answer should be that she is over 18 (or over 16), and therefore as an adult, she was or should have been fully responsible for the consequences of her actions, commissions and omissions in the same way a man would be.

Where is the logic that says that it is the accused – an unskilled ordinary man in the street - that is responsibility for ascertaining the type and severity of inebriation ? Why should he be responsible for not only his own actions but that of others ?

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67 ‘Sky Three, April 2006.'
Why should the accused be deemed to know how much the victim had drunk or drugged herself before meeting her halfway through the evening and misrepresenting herself to him? (Am I my brother’s keeper?).

The desire to depict any future legislative changes as definitive (akin to the prescriptive nature of dogmatic tax law), would lead to a situation where the threshold might be so low that crossing it would be inevitable no matter what happened thereafter. Moving thresholds is dangerous, as the case against Sir Roy Meadow bears witness. The High Court in setting the threshold unrealistically high deterred other paediatricians from offering opinions in abuse cases. It gave comfort to guilty mothers that their case would be reheard and public opinion was agitated to expect a flood of wrongly convicted mothers being released from jail.

The majority of ‘alleged rape’ victims who visit police stations are in the under-20 age group. Given modern drinking habits it would be foolish to imagine that all of them are sober teetotters.

It is a pity that frivolous rape claims are so high (60%) and compromise the validity of the remaining rape claims that are valid and need sensitive and prompt action.

The Sex Offences Review Team (SORT) was advised in Sept 1999 and again in June 2000 that they were trying to achieve something that could easily backfire. Ignoring dissenting voices, SORT pressed ahead with their re-definition of rape and its attendant principles. Careless consideration of these attendant principles has now resulted in collateral damage now jeopardising the primary legislation. The issuing of this Consultation Paper appears to confirm our reservations.

In the plenary sessions the majority showed itself content to be intellectually directed by Home Office staff. However, a dissenting minority took the view that SORT was too prescriptive and that philosophically their case did not stand up. In part this was born of the overly prescriptive language used by HO staff and the worryingly emphatic intention regardless of circumstances of “not let[ting] one man slip through the net”.

According to published Home Office thinking, all that was needed was a tightening of the rules and an erasing of ‘loopholes’. Numbers arrested would automatically shoot up and this would ‘magically’ increase the conviction rate. This gullibility is shared by the Consultation Paper. It is the American experience that shows us that there is not the supposed linkage between the factors.

It is left to a woman, Melanie Phillips, to air our suppressed concerns, “….. Yet the government wants more men to be convicted of rape and does not much care how it is done.” (Sunday Times, Feb 20th 2000).

Ms Phillips followed up her article with another in ‘The Spectator’ (June 10, 2000, “The Rape of Justice”), when she wrote that there was a deliberate policy to make men victims of a sexism that is not only been legalised in Britain today but made mandatory:

“One of the many mysteries of our age is why the British establishment has declared open season upon half the human race. Men are being systematically robbed of their reputation, their children, and their purpose in life. The people responsible for this sexual warfare are sober women and men in suits - pin-striped, rather than boiler - not to mention wigs and gowns. If what is routinely thrown at men was directed at any of our fabled victim groups - women, black people, gays - society would stand condemned of the most vile prejudice, discrimination and even persecution.

….. Through judicious leaks, the government has indicated that it wants to toughen up the rape laws because not enough men are being convicted. So it intends to skew court proceedings against them to make them less able to defend themselves against prosecution.
…… The government intends to change the definition of consent to sex, the common defence against the charge of rape, so the defendant will have to prove that the woman did in fact consent. Lawyers are divided over whether this would technically mean reversing the burden of proof. All agree, however, that it would make it much more difficult for a man accused of rape to defend himself. And that’s because the government assumes that all men accused of rape are guilty.”

To confuse the public with new legal phrases and trick them into proving their innocence is surely the dividend of desperation and a recipe for rebellion. Whenever a fit of reforming zeal hits the Home Office a crucial aspect the public is perennially overlooked. The acknowledgment and definition of a crime are built up over generations and become ingrained in both the collective subconscious and institutions.

Reformers might think themselves astute by attacking or restricting the scope of a definition, for example, capacity or consent. However, the average man in the street can quickly detect when someone is being ‘fitted-up’. To expect a jury to convict on a charge of rape when a ‘rape’, as they understand it, has not (on the admission of both defendant and accuser) taken place, e.g. oral sex, is too much to expect.

Part of the argument made by reformers is that expected convictions, on occasions, fail to materialise. We have some sympathy for this, but don’t blame the system, blame the quality of the evidence given the jury. Out of sheer cussedness, resentful juries will illustrate their independence by denying convictions. We have no doubt that this already plays a part in some jury verdicts where the mandatory sentencing rules of the Billam guidelines make it too intolerable for a jury in a liberal democracy to be seen to be complicit.

Given the above and with references to the pre-2003 legal position (and at common law) it therefore becomes unnecessary to legislate for substances given without consent if the Diceyan view of the law was deeply held. We would advocate a return to a more Diceyan approach to the law, where certainty and adherence to clear-cut rules would reinvigorate respect in the law. According to Prof. Keeton (‘The Passing of Parliament’), Dicey comments that;

“ … the twin pillars upon which our system rests, are the sovereignty of Parliament and the supremacy of the common law, administered in the ordinary courts, independent of the executive over everyone within the realm, whether public official or private citizen.”

Concern for the protection of individual freedoms within our State centre upon ”Diceyan assurances” of civil liberties within our constitution which relate to a State that has undergone radical change. The concept of Human Rights legislation is that the law was needed not to protect the interests of Parliament against the crown, but rather to uphold the concept of the rule of law by giving legal protection to the interests of individual citizens of the State from the machinations of the State.

Dicey was very much concerned about “the modern threat to freedom in the incursions that were being made into The Rule of Law”. At the core of the Anglo-Saxon conception of rule of law is the idea that the discretionary power of the government should be limited. “Whenever there is discretion there is room for arbitrariness, and . . . in a republic no less than under a monarchy discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects” (Dicey, 1982, p. 110).

To emphasise the bedrock principle, Dicey’s rule of law means, “ … in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even wide discretionary
authority on the part of the government" (Dicey, 1982, p. 120). This desire to curb the corrupting influence of judicial discretionary powers puts him at loggerheads with Denning.

**Question 3. ‘Would the introduction of general expert evidence be justified in principle?’**

No. We see it as a measure that would pervert the natural course of justice. It would give politically correct activists another avenue to lobby a jury and unduly influence the unfamiliar with the agenda of such activists. Justice would fall victim to fashion in the same way as the Met Police Service is pulled in all directions by political aspirants.

Whether this is a good idea or not can be gauged by posing the opposites scenario namely, ‘Would you permit – and would it be seen as fair - experts for the defence to be admitted to court proceedings to discount the prosecution’s experts?’

If the prosecution is to be allowed to present expert evidence concerning certain characteristics of behaviour and psychological reactions those victims then it follows that the defence must equally be allowed to present expert evidence as to why some women fantasise why some rape claims display certain behaviour and psychological characteristics that indicate a falsehood.

We are not impressed by the selective choice of citations and deplore the absence of counter citations.

Only in the world of Women’s Right activists is the notion that myths and stereotypes are without foundation and have to be rigorously dispelled. The dysfunctional ideology that binds many of these groups together is their abhorrence of happy heterosexual relationships. For their paradigm to operate they have to believe that conduct and behaviour should not be considered a contributing factor in any crime; that primal, animal courtship is an irrelevance; that we should be gender-stereotyped not sexually stereotyped; and that women’s deep and abiding need to procreate doesn’t exist.

If this were really the case there would be no demand for all the dozens of women’s magazines “groaning” as Melanie Phillips points out, “under the weight of cavorting and provocatively clad” nymphets aimed at the various age groups.

The public is not so stupid as to believe that adolescent behaviour and animal mating rituals are nonsense or than is can simply be dismissed are an irrelevance.

This Consultation Paper address a situation and values that was current 30 years ago.

The fact that attractive (and not so attractive) women know exactly what senses they are manipulating when they dress to attract men is conveniently never mentioned. They have an intolerance that believes courtship rituals are only for animals – not for higher primates. No matter how sincerely these views are held there is not a new dress fashion or the advent of an effective face cream that removes facial wrinkles that will not sell to women.

The same dysfunctional ideology postures that women are calm and rational under all manner of stress and strain and it assumes they will not buckle but always come to logical, fair-minded and impartial conclusions about events and their predicament.

Factors such as PMT, being ‘in denial’ over female culpability, female immaturity and vindictiveness are omitted from the sober consideration of the issues surrounding the rape debate whereas, in reality, they are the nuisance drivers in many instances.

If we are wise enough to trust people to vote for one government or another we should respect their views when it comes to other matters. An Amnesty poll of both sexes found that two thirds (66%) of respondents thought that wearing sexy/revealing clothes does not necessarily make a woman responsible for being raped. However, a fifth (20%) thought it makes them ‘partially’ responsible, while 6% thought it makes them ‘totally’ responsible.
Over a quarter of those polled (26%) had views that conflicted with the Consultation Paper and advocacy groups. Men were more likely to think this makes a woman ‘partially’ responsible compared to females (men 22% and women 17%, a significant 1 in 6).

This brings us to the role, or rather non-role, women choose to play in their own protection, culpability and in educating themselves to look at events from a perspective other than their own. The self-denial in the initiating of domestic violence (67%) might be projected onto getting situations where rape allegations are subsequently made (See ref. to Spain’s Costa’s and Ibiza in Question 1 above).

Enthrallingy, the Consultation Paper wants to hold us spellbound by citations from an Amnesty poll and the British Psychological Society. The presumption is that no one will actually track down the original research. Unfortunately, some of us do exactly that and in looking behind the headlines we find a completely different picture to that transmitted by the Consultation Paper. For instance, the quoted Amnesty poll of Nov 2005 does not indicate the age or sex of the groups questioned. We have to infer that it was of both men and women. The full text rather than the press release for Editors tells us that it was a survey of 1,095 adults aged 18+ and that it was a telephone survey. Surveys of only 1,000 tend to be termed ‘attitudinal’ and can be notoriously unreliable. The fact that interviews were by telephones adds to the unreliability. Nonetheless, it was interesting to read that the first question, “How many women do you think are raped in the UK on average in a year ?” resulted in more females believing there were less than 100 rapes of women per annum in the UK (6% of the sample of 1,095), compared to 3% of men, indicating that men are harsh critics of themselves and of rape.

The 6% and 3% must have been disappointing for the activists after so many years of lobbying but it can be explained and rationalised. There is a propensity for (advocacy) researchers to relabel or reclassify data given to them after collation. An example of this is rape on US college campuses where the rate was unbelievably high. American feminist Kate Fillion in her book, “Lip Service” (1997), lifted the veil on researchers who were labelling inappropriate touching and kissing as “rape”.

“Lip Service”, tracks the rise of ‘date rape’ surveys. She plots the early years when female students on college campuses where questioned. She reveals how petting and touching of legs etc, though not considered rape by the respondents were re-classified by the survey researchers as unwarranted and distressing sexual advances. At a later point in time they were re-classified again and grouped under the heading of Date Rape. Numbers ‘boosted’ in this way appear very attractive to women's rights lobbyists. Soon the practice spread to nearly all college campuses in the US and all had consistently ludicrous statistics for rape.

So thorough was Kate Fillion’s evidence that she demolished much of the ‘date rape’ myth that had been built up over many years. But only a woman and a feminist could get away with stating such things in an atmosphere that is intensely poisonous and paranoid to non-conformist thought.

The problem therefore lies with the advocacy ‘researchers’ for distorting data and with lobby groups who re-define the word rape. England & Wales has experienced the same statistical manipulation seen most clearly in domestic violence numbers where the respondents themselves do not see an incident as a crime or as domestic violence and the definition broadened so widely as to include almost everything.

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So thorough was Kate Fillion that she highlighted information never before revealed, namely that according to the criteria used for girls, more college boys were raped by girls than girls by boys.

The other interpretation to be placed on the 6% and 3% figures is that they and many more perhaps see rape as being from a stranger rather than an intimate. If this is the case it lends more support to our 2002 proposal of a non-judgemental, non-rape crime category for unwanted sex between intimates or acquaintances.

In answer to another question the Amnesty poll found that “only 4% of respondents even thought the number of women raped exceeds 10,000 per year”. It goes on to assert that “when the true figure is likely to be well in excess of 50,000”. But is it? The 50,000 is only an estimate and by authors with an interest in seeing a greater rather than a lesser number. They do not remove the false claims which are almost certainly comprise 66% of the annual number leaving only 17,000 rape claims with substance enough to bring prosecution.

Confusion is increased when the fuller text is examined. There it asserts that there are more likely to be not 50,000 but 80,000 rapes a year and cites the source as the BCS (British Crime Survey) but gives no year and does not disclose that the BCS is a ‘best guess’ based on an estimate from a sample survey that is extrapolated.

The Amnesty poll makes same basic arithmetic error that the Home Office has been guilty of for many, many years. It states that “real figures showing the actual percentage of convictions at 5.3 percent” and cites again the British Crime Survey (again, no year specified).

We therefore have to repeat that this is not the ‘convictions rate’ and refer the reader to the Credibility Gap (see Fig 6, Sect 6. New Zealand, above).

The politicisation of institutions, once revered for their independence, should give us cause for concern. The British arm of ‘Amnesty International’ has taken the first step towards dropping its neutral stance on abortion. The ever-reasonable Amnesty campaigner, Bruce Kent, has expressed his grave reservations. Many members have threatened to leave if Amnesty enshrines abortion as a human right.

Last year Amnesty adopted a campaign to stop violence against women but not against men. Its website now prominently features radical feminists (‘Stop violence against women’, http://web.amnesty.org/actforwomen/index-eng).

The British Council is another once-esteemed institution. Charged with promoting ‘Britishness’ and cultural values around the world, during the Helena Kennedy years (1998 – 2004, the Labour peer, women’s campaigner and criminal QC) it become an adjunct to the women’s rights programme.

Unfortunately, the British Council is funded by government (£164 million pa) and unlike Amnesty has no AGM where the membership could vote in protest.

However, we do agree with Ms Kennedy's conclusions in her 2004 book that currently there is a retreat from the rule of law and civil liberties. She argues, as we do, that the last 20 years have seen a steady erosion of civil liberties by extraordinary legislation that wholly undermines our long-established freedoms (see Dicey above).

Deborah Harman the solicitor who acted for Roy Burnett (jailed for life in 1986 for rape but case quashed in 2000) reports how she was “… absolutely stunned to discover that every record of Roy’s trial had been shredded five years after his conviction” …. “Had the Metropolitan Police not kept a copy of the original police report and a copy of the photographs of the victim’s injuries, there would not have been the slightest chance of proving his innocence”.


Deborah Harman also said, “.... I find it abhorrent that changes to the criminal law can be contemplated on the basis of statistical conclusions that not a high enough proportion of charges result in conviction. ....”

Deborah has warned us.

**Question 4. ‘Do you agree with the proposal outlined in this chapter ?’**

Absolutely not.

Our concerns focus on the potential for bias in court proceedings and our reservations that are listed above in our responses to Question 2 and Question 3.

Some serious cases fail to get to court when they deserve to, while other frivolous rape claims cases are mounted by the CPS perhaps because they think they are obligated to the Home Office. Neither situation is to anyone’s best interests. The prospect of CPS meeting quotas set by central government is one that must be resisted.

For example, earlier this month, a judge called for a racism case against a 10-year-old boy to be dropped because, he said, it was “political correctness gone mad”. The boy, from Greater Manchester, was accused of calling a classmate names.

The judge asked prosecutors to reconsider whether the case was in the public interest, but was later criticised by the National Union of Teachers for not taking the abuse seriously enough.
A spokeswoman for the CPS said on Wednesday that the Chief Crown Prosecutor for Greater Manchester, John Holt, had now decided not to continue the prosecution, adding that the boy had been given a warning.
The case centred on an incident in January in which the 11-year-old Asian boy suffered a bruised leg.
An 11-year-old boy originally arrested over the incident was reprimanded for section 39 assault, while a 10-year-old boy was given a warning.
But a second 10-year-old boy refused a warning and was summonsed to court, accused of a racially aggravated public order offence.
Mr Holt [CPS] added: "Mr Finestein made remarks about the decision to prosecute which were highly critical of the CPS.
"He was not aware of the full history of the matter, in particular the prior disposal of the allegations against the other two boys.” - BBC on-line, 26 April 2006.

The above shows the inclination of the CPS to prosecute because they have the powers, not because it makes sense.
It takes the judge to remind them that regardless of the case or its strengths, there are some things that are plainly ridiculous.

**Question 5. ‘Are there alternative ways to present juries with a balanced picture concerning the behaviour of victims ?’**

The question implies that there is already an imbalance with how juries picture a victim’s behaviour. Why should this perception be articulated ?
While we would agree there may be an imbalance it is the reverse contemplated by the Consultation Paper.
The present regime is barely acceptable in its even-handedness and we would like to see it seriously altered back in favour of the defendant. We would like to see a return to the 1970 era of examination and cross-examination.

69  [http://feeds.britainnews.net/?rid=9041ed10515d45ce&cat=fad6c6ce3bc72160&f=1](http://feeds.britainnews.net/?rid=9041ed10515d45ce&cat=fad6c6ce3bc72160&f=1)
Any further modifications to how a person may defend themselves in court will, we predict, have significant ECHR implications.

Brenda Hoggett (Lady Justice Hale) and Lord Justice Latham ruled in a 2003 rape case that there was "an appearance of injustice" from the way the hearing had been conducted. 70 We see more challenges to government authority ahead (see Blunkett, ‘Sect 3. Demolishing Legal Safeguards’).

We cannot see why questioning a person in order to make him or her appear unreliable or untruthful is something worthy of eradication. It is far from clear what the supposed benefits will be other than an adulterated and inferior form of justice (see Question 1 and Kangaroo courts above).

The purpose of the defence is to probe and test the evidence of the prosecution – not to roll over and play dead immediately the prosecution has presented its version of events. It is in the interests of justice that testing the evidence should continue and the new proposals buried.

There are alternative ways to present juries with a balanced picture concerning the behaviour of victims but they would be unpalatable if not anathema to the political cabal. This faction are obsessive in proposing an idiocy that would see unrestricted prosecution powers but highly restricted defence powers.

There is a very quick, fair and simple way to increase rape conviction rates legitimately and in no way compromising the quality of justice, but while the present mind set at the Home Office remains it is useless to propose it.

To suppose there are always other explanations for why a victim omits detail, reports the offence late and/or exhibits other puzzling behaviour” is to ‘infantilise’ the woman concerned. If rape is as serious as everyone appears to concede then it is serious enough to make a serious effort at producing the evidence and the counter-evidence.

While we do not doubt that it is not uncommon for a person who has suffered a traumatic event(s) may present with some psychological reactions, it is not a factor overwhelming in frequency or severity to prevent a successful prosecution when the evidence merits. The casualisation of sex would point to a lessening of traumatic reactions to rape in 2006 than in 1926. We do not see any merit in yet again legislating for a tiny minority of instances when courts already have discretionary powers that would cover any eventuality posed by a traumatised victim.

Traumatic cases involving bigamy (see p.30) proceed without preferential treatment of the offended party.

There is a slow realisation, even among feminists, that the officially broadcast figures for rape might be far from genuine. Legitimate concerns have been raised by the editor of “tfeminists.com”, Wendy McElroy, who is also a research fellow for The Independent Institute in Oakland, Calif.

In May 2006 she wrote that “For a long time, I have been bothered by the elusiveness of figures on the prevalence of false accusations of sexual assault.” Politically correct feminists, she writes, claim false rape accusations are rare and only 2% of all reports whereas men's rights sites point to research that places the rate very much higher, e.g. 40% or 55%.

One news item “that riveted [her] attention” was a quote from Peter Neufeld and Barry C. Scheck, prominent criminal attorneys and co-founders of the Innocence Project that seeks to release those falsely imprisoned” who stated that, ‘Every year since 1989, in about 25% of the

http://www.guardian.co.uk/crime/article/0,,877219,00.html
sexual assault cases referred to the FBI (and where results could be obtained), the primary suspect was excluded by forensic DNA testing. Specifically, FBI officials report that out of roughly 10,000 sexual assault cases since 1989, about 2,000 tests have been inconclusive, about 2,000 tests have excluded the primary suspect, and about 6,000 have "matched" or included the primary suspect.

Neufeld & Scheck also state that 'these percentages have remained constant for 7 years, and the National Institute of Justice's informal survey of private laboratories reveals a strikingly similar 26 percent exclusion rate.'

Second, even if false accusations are as common as 1-in-4, that means 75 percent of reports are probably accurate and, so, all accusations deserve a thorough and professional investigation.

Wendy McElroy usefully points out that Neufeld and Scheck mention only sexual assault cases that were ‘referred to the FBI where results could be obtained’ - not where they could not be found and so concludes that there is a degree of ‘fuzziness that could influence the numbers.

Wendy McElroy also underlines as we have that, namely, “the terms 'rape' and 'sexual assault' are often used interchangeably, especially when comparing studies, and it is not clear that they are always synonyms for each other.”

In the US it is common currency in official and media circles to state that false accusations of sexual assault account for only about 2% of reports. Wendy McElroy has tracked down this assertion to an attribution by the ultra-feminist Susan Brownmiller in her book on sexual assault entitled "Against Our Will" (1975). “Brownmiller claimed that false accusations in New York City had dropped to 2 percent after police departments began using policewomen to interview alleged victims.”

“Elsewhere”, McElroy continues, “the 2% figure appears without citation or with only a vague attribution to "FBI" sources” and so it is therefore gratifying to find her experience is identical to ours in that citation often have a faintly unsubstantiated basis and are being made and no one checking on their veracity.

Her article ends with the comment that the “legal scholar Michelle Anderson of Villanova University Law School reported in 2004, ‘no study has ever been published which sets forth an evidentiary basis for the 2% false rape complaint thesis.’” And that research by Eugene J. Kanin of Purdue University has merit. Kanin’s study found that of 109 rape complaints in a mid-western city (between 1978 and 1987) “45 were ultimately classified by the police as "false.”

To her credit Wendy McElroy concludes that false accusations are not rare, they are common, “even a sceptic like [her] must credit a DNA exclusion rate of 20% that remained constant over several years when conducted by FBI labs” and that this was “especially true when another 20% were found to be questionable.”

Over the last 5 years as DNA testing has become more common a slow trickle of men wrongly jailed are being set free. One, Roy Burnett, aged 56, was freed in April 2000 after serving almost 15 years for the alleged brutal rape and assault of a student nurse. 71 The Old Bailey jury in 1986 accepted the evidence from the 20-year-old nurse and as Mr Burnett refused to admit his guilt, his applications for parole were unsuccessful, and he had no grounds for trying to have his case reopened. (this is what should be addressed long before we turn our attention to getting more men ‘banged up’ in jails).

The crimes of which he had been convicted "almost certainly never happened" were only re-opened when in 1998 the same woman made a false complaint of rape to Devon police. Quashing Mr Burnett’s convictions as unsafe, Lord Justice Judge said that if nothing else the "profoundly disturbing case" provided a "salutary reminder" that an allegation of rape was not

71 "Man is cleared of rape after 15 years in jail", By Terence Shaw, Legal Correspondent, Daily Telegraph, 8 April 2000
always true and that the accused was "not necessarily guilty". The case should "serve to ensure that proper safeguards against the wrongful conviction of innocent individuals are preserved".

Not only does Britain not have an equivalent to the Innocence Project but we are drafting rape laws in a vacuum. By excluding magnetic north, air pressure, mass and gravity we expect to come to sensible conclusions. This depth of ignorance leads only to the layering of more misconceptions upon an existing litany of previous deliberate fallacies and then wondering why the reformed rape regime fails to work as anticipated.

**Question 6. ‘Which is your preferred option ?’**

To assist, some examples of how each of the options might operate in practice appear below:

We have no concrete comments to address to this question simply because the question exhibits an unseemly desire to limit a fair trial and the options we would chose are, not unnaturally not listed by the authors who are, to paraphrase Melanie Phillips, ‘more concerned with jailing more men and not really caring how that end is achieved.’

We are therefore not interested in anything that smacks of a witch hunt.

**Question 7. ‘What are the reasons for your preference ?’**

See our answer to Question 6 above.

**Question 8. ‘Do you agree that the legislation on special measures should be amended to make video recorded statements by adult complainants in serious sex offences cases automatically admissible as evidence in chief, subject to the interests of justice test ?’**

No. If prosecutors need to be able to use the best evidence available when prosecuting rape cases so does the defence in defending a persons rights.

Female rape claimants have in the past been described as ‘actresses’, some have very good, i.e. very believable, and some poor. By enabling a jury to only see and hear a rape victim on a video recorded statement with the necessary eye contact and body language is short circuiting a fair trial.

If the evidence becomes more compelling and coherent than evidence given in court as is believed by the Consultation Paper where is the counter balance for the defence ? Or are the proponents feigning interest in justice while their true agenda is merely to legally suborn fair trials ?

Video borne evidence teeters towards usurping the pre-eminence of trial by jury. It undermines jury independency; is prejudicial to defence by inferring that the defendants is dangerous; and is proposed at a time when the Prime Minister, Tony Blair, admits the criminal legal system is crumbling.

**Question 9. ‘Do you agree that victims of sex offences generally should continue to have the choice NOT to receive assistance from special measures ?’**
Yes. Video recorded statements relating to serious sex offence complainants from children, i.e. minors, should be permitted but not for adult complainants.

**Question 10. ‘Do you agree that guidance should be issued to promote the use of the existing provisions for limited additional questions for the purpose of “warming up” the witness, particularly in serious sexual offence cases?’**

No, not even for children. The authors of the Consultation Paper must realise how this smacks of contaminating the evidence.

**Question 11. ‘Should the prosecutor be given a broader discretion to ask supplementary questions of the complainant in serious sexual offence cases?’**

No, not if it remains the case that defence counsel is proscribed from putting certain questions to the accuser and cannot explore the history, sexual, emotional or otherwise, of the accuser. The present prescription for proscribed questions should be removed for the defence - not increased.

Both the prosecution and the Defence team should, in our view, have the right restored to ask questions of sexual history of the two parties. In what must now be regarded as a highly promiscuous society enquires into each person’s sexual history should now be considered fair game, indeed, essential.

If sexual history is deemed essential in cases involving the transmission of AIDS and HIV to others then it is contradictory not to have the same standards of integrity and safeguards in rape trials.

In California the right to disclosure has been enshrined for over 20 years. People who don’t know they have the AIDS or HIV virus but who lead high-risk lifestyles are held strictly liable for telling partners about possible exposure.

**Question 12. ‘If so, should this be achieved by: (a) relaxation of the present restrictions but with some safeguards or criteria; or (b) by a repeal of the present restrictions?’**

There is already a lack of a level playing field tolerated in rape cases but not in murder or other serious cases.

In our view it is not so much a matter of relaxation of the present restrictions for the prosecutor or prosecution or for ‘some’ (whatever they may prove to be) safeguards or criteria to the benefit of the prosecution case but an acknowledgment that something resembling that proposal ought to be advanced to aid the defence counsel.

In answer to part (b) our reply would be to repeal of the present restrictions for the defence counsel.

**Question 13. ‘Do you consider that either Option (a) or Option (b) in Question 12 should also apply to vulnerable witnesses, including children and other witnesses in fear or distress and to all offences?’**

No. Coaching witnesses and tainting evidence is to be deplored and should always be deplored.
We should be aiming for higher and better standards - not lowering threshold for guilt simply to suit political ambition. What is proposed has the whiff of the Star Chamber about it.

We do not have an *Innocence Project* nor is the Home Office yet receptive to retrospective DNA testing. (see Question 5 above and Sect 10. US Air Force and Sects 22 & 23 above). We suspect one reason is that money is being chosen to be spent in other more media friendly areas and partly because the prospect of potential compensation claims could reach staggeringly proportions.

In regard this question and the ones immediately above, the comments by Melanie Phillips, (Daily Mail, 23rd October 2004) are very telling:

> As a result of decades of propaganda, intimidation and spinelessness, the ‘long march through the institutions’ urged by revolutionary thinkers has been achieved. The evidence is on display all around us: academics producing bent research projects, zealot feminist civil servants in the Home Office, or judges whose hearts bleed for burglars rather than their victims and permit the demands of gypsies to ride roughshod over the planning laws that bind the rest of us. Wittingly or unwittingly, such people are helping promote an agenda for legislating against virtue and in favour of vice; against self-restraint and for irregularity; against domestic order and for disorder. It is a corruption of our liberal values. The demonising of men as potential rapists, child abusers and woman-beaters is a crucial part of that agenda, and the lamentable questioning of pregnant women but its latest manifestation.

Why are we talking as if the only vulnerable people are witnesses, accusers and children? Isn’t the most vulnerable person of all, the person wrongly accused of rape? His ordeal could last years, not minutes. Home Office figures show that 60% of rape reports are either suspect or false in some way, and that only 30% of cases get as far as the CPS? (see Sect 9. England & Wales, above). Other rape studies point in the same proportion of false claims (see Sect 8 Canada and Sect 6 New Zealand, above). In England & Wales approximately 9,000 men’s lives are therefore negatively and irredeemably impacted.

We began this submission by citing parallels with the awful treatment of second class citizens in segregationist America. We alluded to how Harper Lee’s book “*To Kill a Mockingbird*” closely maps on today’s situation. The only difference, we maintain, is that today’s ‘niggers’ can now have white skins.

The inexorable increase in ‘reported rapes’ should ring the alarm bells in any thinking person’s mind. Anyone with a grasp of numbers realises that such an escalation calls into question the very veracity of the collating, collecting and offence defining processes presently in play at the Home Office. Equally, the apparent gap we define as the “Credibility Gap should spark intense debate (see Sect 6, above) as the growing chasm is set to increase further. The penny must have dropped in the reader’s mind of a possible link between that series of events and pressures exerted on both the police and Crown Persecution Service to get more convictions.

**Question 14. ‘If so, do you consider that there should be any particular safeguards for other categories of witness, such as children if these proposals applied to them and if so, what would you suggest?’**

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Again, we have to ask why are we solely talking as if the only vulnerable people are witnesses, victim/accusers and children? If the reader were facing a false rape charge don’t you suppose for a moment you might also consider yourself somewhat vulnerable?

Or put it this way; which offence would you prefer to be charged with murder or rape? If your answer is murder, the next question would be would you like your rights to answer those murder charges to be restricted in the same manner that they are in rape cases? Would you, if innocent, feel confident or only marginally confident that you would be found to be innocent?

Isn’t the most vulnerable person of all the person wrongly accused of rape?

We agree with ‘Women’s e-News’ (28th October 2001) in their sentiments surrounding child abuse allegations. We believe this is equally applicable to situations where rape is alleged. Women's eNews’ believe:

“….. it is more than essential to differentiate cases with insufficient evidence, mistaken allegations or ‘fishing’ expeditions, from those that involve deliberate fabrications. Keeping these distinctions in mind is difficult because the legal system imposes a ‘true-false’ way of thinking, leaving little room for grey.”

"Mistaken but good-faith misperceptions" can result from a range of circumstances not related to child sexual abuse, including misperceptions about a child's behaviour, non-sexual contact, an ambiguous statement from a very young child or a psychiatric disturbance of the parent or the child.”

"Fabricated allegations" are consciously and deliberately contrived to gain a more favourable custody or visitation placement for the accuser or to hurt an ex-spouse. Unlike most of the child sexual abuse literature, which uses "false" or "fictitious" with little or no definition, this terminology uses the term "fabricated" to indicate only those cases in which an allegation is deliberately contrived by an adult or child to hurt the accused parent or to benefit the accusing parent. "Fabricated" is not a blanket term for all sexual abuse allegations that are not confirmed.

This answers those critics that insist that women never invent stories or ‘fabricate allegations’. The real world experience is that when the stakes are high enough or the prize too tempting, women will consciously and deliberately contrive to gain a more favourable situation at the expense of someone who was once close to them.

Over the last 10 years it became a fashionable for feminist writers to clam to have been beaten up by their spouses. To be taken seriously a perverted pecking order in martyrdom has emerged. However, anyone who has met these women and their supposedly brutish spouses soon realises that the men are dominated by overly strong-minded women and the prospect of them even thinking of hitting ‘their women’ is too distant to seriously contemplate.

However changes are underway in the martyrdom stakes. Journalist Zoe Williams for one cites the case of Naomi Wolf's rather over-blown case of her sex-pest accusations against Harold Bloom, which “in the barometer that runs from "misunderstanding" to "act of violence", leans irrefutably towards the former.”

The alleged incident(s) took place so many years ago (20 years), that Zoe Williams is dismissive of the credibility and severity. “The timing and content of a famed feminist's sexual allegations smack of outdated and regressive gender politics”, said Zoe Williams.

Other feminist ‘commentators’ continues Williams, “have unleashed a weird level of spite, specifically Camille Paglia, who raged: "It really grates on me that Naomi Wolf for her entire life has been batting her eyes and bobbing her boobs in the face of men and made a profession out of courting male attention.”

73  http://www.womensenews.org/article.cfm/dyn/aid/700
74  'Always the victim’, February 2004  http://www.guardian.co.uk/Columnists/Column/0,5673,1154683,00.html
“An assessment of that kind has to be based upon personal intimacy – in other words, Paglia needs to have observed Wolf exhibiting that behaviour, at close range and over a period of years. Otherwise, all she's saying is: “This woman is pretty, and that disqualifies her from reasoned thought.”

This more than makes our earlier point, namely that regardless of what we would like to think regarding how unaffected we consider ourselves to be, women’s bodies, behaviour (‘bobbing her boobs and batting her eyes’) and clothing etc, etc, can and are, used for strictly manipulative sexist purposes (see Question 3 above). Combine this with inherent male chivalry and ‘the balances’ that concern this Consultation Paper are well and truly weighted against any male defendant.

In conclusion, when legislation has sunk to nothing more than a political tool, the difference between "rule by law" and "rule of law" is all the more important to recognise.

Under the rule "by" law, law is an instrument of the government, and the government is above the law. That is where Britain is today.

In contrast, under the rule "of" law, no one is above the law, not even the government. At the core of "rule of law" is an autonomous legal order. Under rule of law, the authority of law does not depend so much on instrumental capabilities, but on its degree of autonomy, i.e. its ability to be unaffected by interested parties. This permits the law to be distinct and separate from other normative structures such as politics and religion (temporal and spiritual).

As an autonomous legal order, rule of law has at least three meanings. First, rule of law is a regulator of governmental power. Second, rule of law means equality before law. Third, rule of law means procedural and formal justice.

In our view, the proposals contained within this Consultation Paper sound the death knell to all three safeguards. The existing legal landscape cannot be ignored when inserting reforms.
THE CURRENT PATTERN OF SENTENCING  
(Eng & Wales)


A1. In 2000, the latest year for which figures are available, 515 offenders were sentenced for rape in the Crown Court, of whom 481 (93%) were aged 18 or over and 34 (7%) were aged 10-17. A total of 503 offenders (98%) received a custodial sentence.  
A2. For the 503 offenders sentenced to custody in 2000, the distribution of sentence lengths is set out below.

- 2 years and under: 4% (9 offenders, of whom 6 adults and 3 juveniles)
- 2-3 years: 4% (23 offenders, of whom 12 adults and 11 juveniles)
- 3-4 years: 6% (40 offenders, of whom 32 adults and 8 juveniles)
- 4-5 years: 11% (63 offenders, of whom 59 adults and 4 juveniles)
- 5-6 years: 16% (69 offenders, all adults)
- 6-7 years: 13% (64 offenders, of whom 62 adults and 2 juveniles)
- 7-8 years: 12% (66 offenders, of whom 65 adults and 1 juvenile)
- 8-10 years: 16% (88 offenders, all adults)
- 10-12 years: 5% (27 offenders, all adults)
- over 12 years: 2% (14 offenders, all adults)
- life imprisonment: 10% (40 offenders, of whom 39 adults and 1 juvenile)

A3. The average length of determinate custodial sentences, for all offenders, was 7 years 1 month.  
For offenders aged 18 or over the average was 7 years 4 months, and for those aged 10-17 it was 3 years 9 months.

A4. For offenders of all ages who pleaded guilty, the average sentence length was 6 years 7 months, and for those who pleaded not guilty it was 7 years 4 months. The average sentence for offenders aged 18 or over pleading guilty was 6 years 10 months, while for those over 18 pleading not guilty it was 7 years 6 months.

A5. In the same year, 2000, 93% of rape victims were female, and 7% were male. Two thirds of male victims, and 42% of female victims, were aged under 16.
ANNEX B

Extract from:
‘A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape’

Anonymous, i.e. no authors listed (April 2002)


Acquittals after trial (page 97)

13.15 Our sample shows a conviction rate of 60.8% of all prosecuted cases (including guilty pleas):

<table>
<thead>
<tr>
<th>Offence</th>
<th>Total Cases Proceeded to Court</th>
<th>Found Not Guilty</th>
<th>Convicted at Court - Guilty Plea</th>
<th>Convicted at Court - Not Guilty Plea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>88</td>
<td>35</td>
<td>30</td>
<td>14</td>
</tr>
<tr>
<td>Unlawful Sexual Intercourse</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Incidental Assault</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>97</td>
<td>38</td>
<td>43</td>
<td>16</td>
</tr>
</tbody>
</table>

13.16 The sample shows an acquittal rate of 39.2% of all prosecuted cases. The acquittal rate is even higher (70.4%) if guilty pleas are excluded

[Note:- the following suggestions are made to pre-load the dice].

13.17 The introduction of specialist prosecutors, and use of experienced prosecution counsel, will improve the preparation and presentation of cases. This needs to be coupled with continuity of prosecutor, caseworker and counsel. The proper approach to special measures to help witnesses give evidence, and the linked meetings with victims, should also assist.

13.18 A more determined effort by the prosecution team, listing officers and indeed the trial judge, is also needed to ensure that the victim is properly treated, both before and in court, and is not subjected to unnecessary, or intimidating, cross-examination.

13.19 It is clear that there are wider issues involved than simply how the police and CPS handle cases. As we have stated, the level of acquittals did not reveal any pattern which might reflect on the prosecution. Our file sample included cases which appeared to have been handled properly by the police, CPS and prosecution counsel and yet still resulted in an acquittal. The new provisions dealing with vulnerable witnesses have the potential to improve the quality of evidence given by victims. This report has focussed on the performance of the police and CPS but, in our view, the criminal justice system as a whole needs to reassess the way it approaches cases involving allegations of rape.

NB. Of course, there will be fewer acquittals if judges are coerced and if victims can make assertions that cannot be challenged, i.e. “not subjected to unnecessary, or intimidating, cross-examination”. Where we do agree with the inspectorate is that “the criminal justice system as a whole needs to reassess the way it approaches cases involving allegations of rape”.


ANNEX C

Extract from
‘A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape’ (April 2002)

Trends in acquittal

8.44 Our interviewees were generally of the opinion that the level of acquittals does not reveal any pattern which might reflect on the CPS. Allegations of rape by current or former partners were said to result most frequently in acquittal, followed by allegations of rape by acquaintances, or where the victim had been drinking.

8.45 The view is that jurors tend to acquit in cases where the evidence consists of one person’s word against another’s. In other words, an acquittal is likely where there is only the evidence of the victim and defendant, and no supporting or corroborative evidence. Interviewees also said that the result of a case could depend on how the victim and defendant each appear when giving evidence. More than one interviewee referred to this as being how each party “performs” in court.

8.46 Other comments made were that jurors may have a preconceived notion of what rape is, and there is a reluctance to convict of anything short of a rape committed by a stranger. Reference was also made to jurors perhaps being concerned about making mistakes because of the serious consequences of a conviction.

8.47 Prosecutors should proceed with cases where they consider that there is a realistic prospect of conviction, that is, in cases where a jury, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. They should not be deterred from prosecuting cases on the basis that they think a jury may not convict, and we are pleased to record that no prosecutor expressed such a view.

ANNEX D

The bias and preconceived ideas about rape and rapists are rampant in Home Office material and corporate thinking. For instance, suspects and alleged offenders, for detection codes purposes, are simply categorised as “offenders” even before their trial:-

Extract from:
‘A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape’

HOME OFFICE DETECTION CODES [Annex E]

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>The offender has been cautioned or informally warned by police.</td>
</tr>
<tr>
<td>D1</td>
<td>The offender dies before proceedings could be initiated or completed.</td>
</tr>
<tr>
<td>D2</td>
<td>The offender is ill and unlikely to recover or too senile or too mentally disturbed for proceedings to be taken.</td>
</tr>
</tbody>
</table>
Annex E

On several occasions throughout this response we have categorically stated that the alleged 'evidence' in government documents, e.g. the Consultation Paper, is counterfeit. It is at best 'opinion'. At other times it is as irrelevant as the Coxell citation found at Chapter 1 of the Consultation Paper (page 5).

The Government seeks to legitimate its need to reform and consult by citing references that appear to link capacity with the lack of freedom to give 'consent'. Curiously, for this exercise in reforming rape shield protection for women the research evidence invoked (Coxell, King, Mezey & Gordon 1999) is one that relates specifically to men being sexually molested at a young age.

When it is realised that this research is being used by the British Gov't to justify increased jail sentences the absurdity becomes overwhelming.

This is a summation of the evidence cited by the Consultation Paper:

"Lifetime prevalence, characteristics, and associated problems of non-consensual sex in men: cross sectional survey."


OBJECTIVE: To identify the lifetime prevalence of non-consensual sexual experiences in men, the relationship between such experiences as a child and as an adult, associated psychological and behavioural problems, and help received.

DESIGN: Cross sectional survey.


SUBJECTS: 2,474 men (mean age 46 years) attending one of 18 general practices.

MAIN OUTCOME MEASURES: Experiences of non-consensual and consensual sex before and after the age of 16 years—that is, as a child and adult respectively—psychological problems experienced for more than 2 weeks at any one time, use of alcohol (CAGE questionnaire), self harm, and help received.

RESULTS: 2,474 of 3,142 men (79%) agreed to participate; 71/2468 (standardised rate 2.89%, 95% confidence interval 2.21% to 3.56%) reported non-consensual sexual experiences as adults, 128/2,423 (5.35%, 4.39% to 6.31%) reported non-consensual sexual experiences as children, and 185/2,406 (7.66%, 6.54% to 8.77%) reported consensual sexual experiences as children that are illegal under English law.

Independent predictors of non-consensual sex as adults were reporting male sexual partners (odds ratio 6.0, 2.6 to 13.5), non-consensual sex in childhood (4.2, 2.1 to 8.6), age (0.98, 0.96 to 0.99), and sex of interviewer (2.0, 1.2 to 3.5). Non-consensual sexual experiences were associated with a greater prevalence of psychological problems, alcohol misuse, and self harm. These sexual experiences were also significant predictors of help received from mental health professionals.

CONCLUSION: Almost 3% of men in England report non-consensual sexual experiences as adults. Medical professionals need to be aware of the range of psychological difficulties in men who have had such experiences. They also need to be aware of the relationship between sexual experiences in childhood and adulthood in men.

Key findings:
- Almost 3% of men report non-consensual sexual experiences as adults
- Over 5% of men report sexual abuse as children
- Non-consensual sexual experiences as a child are predictive of non-consensual sexual experiences as an adult
- Medical professionals should be aware of the potential range of psychological difficulties found in men who have had these experiences

Introduction

In Europe there are no epidemiological data on the prevalence of non-consensual sex in men or on differences in psychological health between men who report having non-consensual sex as adults and those who do not. In 1995, 3,142 indecent assaults and 227 rapes (an increase of 51% from 1994) were recorded in men. Very few sexual crimes, however, are reported to the police by men or women, and research is needed to assess accurately the prevalence and effects of such crimes on victims.

To our knowledge, there have been only two population studies on men's non-consensual sexual experiences as adults. Of a sample of 1480 men in Los Angeles, 7% reported being "pressured or forced to have sexual contact" after the age of 16. A British study of 930 homosexual men reported that just over a quarter had been "subjected to sex without . . . consent" in their lifetime and that 99 of these men had been raped.

Results

Seventy eight men (3.15%) reported being gay or bisexual, or heterosexual but sometimes having sex with men. Young men were significantly more likely to report having sex with men (Mantel-Haenszel $\chi^2$ test=6.33, 1 df, P<0.02).

Non-consensual sex in adulthood — The mean age of the men at their first (or only) non-consensual sexual experience was 20 (SD 5) years; 40/70 men (57%) reported having had non-consensual sex with other men and 32 (46%) reported having had non-consensual sex with women (a man and a woman in two cases). Men who reported having had sex with men were more likely to report having had non-consensual sex with men (Fisher's exact test, P<0.05). Data from 37 of the 40 men who reported having had non-consensual sex with men showed that seven (19%) had been raped (table 3). Overall, only two men reported their experiences to the police.

Non-consensual and consensual sex in childhood with a person at least 5 years older — Male perpetrators were responsible for 100/124 (81%) cases of sexual abuse in childhood, and women perpetrators were responsible for 26/124 (21%) cases (a man and a woman in two cases).

Consensual sex as a child with a person at least 5 years older was reported by 185/2406 (7.69%) men; 24 (13%) with a man and 169 (91%) with a woman (a man and a woman in eight cases). The mean age at the first (or only) consensual experience was 14 (SD 1.9) years. Men who reported being gay or bisexual, or heterosexual but sometimes having sex with men, were more likely to report having had these experiences (odds ratio 2.5, 1.3 to 4.7, P<0.004).

Psychological problems, at risk drinking, and self harm — Cumulative experiences of sexual abuse are associated with severe psychopathology. Thus, we predicted that reported psychological problems might be most common in men who report non-consensual sexual experiences in adulthood and sexual abuse as a child. Evidence also exists that the effects of non-consensual sex in childhood are severe and last into adulthood. Men regard non-consensual sex as an adult with women less negatively than non-consensual sex with men.
effect of consensual sexual experiences in childhood is unknown. Thus, we ranked the reported sexual experiences in order of severity to investigate associations with reporting psychological problems.

**Ranking of sexual experiences from most to least severe**
- Non-consensual sex as an adult and as a child (irrespective of consensual experiences)
- Non-consensual sex as a child (irrespective of consensual experiences)
- Non-consensual sex with a man in adulthood, but no history of non-consensual sex as a child (irrespective of consensual experiences)
- Non-consensual sex with a woman in adulthood, but no history of non-consensual sex as a child (irrespective of consensual experiences)
- Consensual sexual experiences as a child
- No non-consensual or consensual sexual experiences

*Association between non-consensual sex in childhood and in adulthood* - Non-consensual sexual experience in childhood was a significant predictor of non-consensual sexual experience in adulthood. Research on sexually abused boys has focused on the possibility of them becoming perpetrators as adults. The possibility that such abuse can lead to further victimisation as adults has been relatively neglected. 17 Although there are a number of theories about how sexual abuse of girls might lead to re-victimisation in adulthood, 18 there is little empirical evidence.

**References:**


**Annex F**

C.S.A. (child sexual abuse) – Australia.

While much of the rest of the world is reporting fewer instances of child sexual abuse Britain is doggedly maintaining the facade of a static if not increasing danger.

‘Is child sexual abuse declining?’

Evidence from a population-based survey of men and women in Australia


**Abstract**

**Objective:** Substantiated cases of *child sexual abuse* (CSA) in the United States have declined significantly over the past decade. This may, or may not, reflect change in the underlying rate in the general population. This study examines age-cohort differences in the prevalence of self-reported CSA experiences of men and women aged 18–59 years in a community-based sample from a comparable western nation.
Method: In April 2000, we completed a cross-sectional, telephone-based survey of a randomly selected national sample of men and women in Australia. Volunteers (876 males, 908 females) answered a range of questions about health status and sexuality, including unwanted sexual experiences before the age of 16 years. Of selected adults with publicly-listed telephone numbers, 61% agreed to participate. There were few differences between the volunteers and the Australian population on demographic variables and health indicators.

Results: Non-penetrative CSA was twice as common among women (33.6%) than men (15.9%). Approximately 12% of women and 4% of men reported unwanted penetrative experiences. CSA was reported significantly less often by younger males, with a linear decline from the oldest to youngest men. Among all females who had intercourse before age 16, older women were much more likely than younger women to say they were an unwilling partner on the first occasion. If first intercourse occurred at age 16 or later, there were no age-cohort differences in risk of first-time abuse. Self-reported “openness” and “comfort” during the telephone interviews was not systematically related to prevalence of CSA.

Conclusion: These population-based findings provide evidence of a decline in the underlying rate of CSA in Australia. Although every measure of CSA inevitably is flawed to some extent, these trends in self-report complement official statistics that show substantial decline in recent years.

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Introduction

Recently, Jones, Finkelhor, and Kopiec (2001) identified a significant reduction in the incidence of substantiated child sexual abuse (CSA) in the United States. The decline of 39% in cases reported to the National Child Abuse and Neglect Data System during the 1990s is encouraging for people working in prevention and care services, although it raises some important questions. Foremost among these is whether the reduction in cases recorded in official statistics reflects a genuine change in the underlying rate of CSA, which mostly is not reported to authorities (Leventhal, 2001; Wyatt, Loeb, Solis, Carmona, & Romero, 1999). Any major improvement in the sexual safety of children and adolescents should be evident in self-reports of people recruited from the general population. There are several ways of looking at this question. Feldman et al. (1991) compared studies by Kinsey and colleagues in the 1940s and 1950s with various surveys conducted in the 1970s and 1980s, and found no appreciable differences in prevalence of CSA. Wyatt et al. (1999) compared data from two similar surveys of young women in Los Angeles County conducted 10 years apart (1984 and 1994), and found the rate of CSA to be constant across that decade. Studies of women in the USA, UK and Canada conducted in the 1980s and early 1990s found CSA to be least common among older women, suggesting an increase in more recent decades (Baker & Duncan, 1985; MacMillan et al., 1997; Vogeltanz et al., 1999). A total of 1,784 people (876 males and 908 females) participated.

Interviews were conducted in a Computer-Assisted Telephone Interviewing (CATI) laboratory.

Conclusions

Until recently, the accumulated evidence suggested that the prevalence of CSA in the general population was either remaining stable or increasing. The finding that substantiated cases of CSA declined fairly dramatically in the USA across the 1990s (Jones et al., 2001) gives some grounds for optimism that there has been a real reduction in the underlying risk of abuse, although there are plausible counter-arguments against simple interpretations of declines in official statistics (Leventhal, 2001).

The present study suggests that, in a comparable western country, risk of CSA may have declined in the general population. Although it is optimistic to believe that the imperatives to
perpetrate abuse can change rapidly, it is quite possible that children are becoming psychologically and socially less vulnerable in recent decades. Further research should examine whether decline is measurable in other populations, and then ask the most important question of why this may be occurring.

Annex G

Behind the scenes a plethora of action plans, programmes, seminars for judges and departmental initiative are underway. They all have just one target in their sights – the male offender.

One agency the Crown Prosecutor service is deeply involved.

‘CPS CONSULTATION ON THE HANDLING OF RAPE CASES’

http://www.cps.gov.uk/publications/prosecution/rapepolicy.html

Extract:

On receipt of a file from the police, the case is reviewed by a Crown Prosecutor in accordance with the Code for Crown Prosecutors. There are 2 tests which must be satisfied before a decision is taken to prosecute. The first is the evidential test to determine whether there is sufficient evidence to provide a realistic prospect of conviction. A realistic prospect of conviction means that a jury, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is sufficient evidence, the prosecutor must consider whether the evidence can be used and is reliable. The second test is the public interest test. However if the case does not pass the first test, the evidential test, it must not go ahead, no matter how serious or important it may be. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. However, the more serious the offence, the more likely it is that a prosecution will be in the public interest. CPS believes that rape is so serious that a prosecution is almost certainly always required in the public interest, provided that there is sufficient evidence.

5. Approach to retractions

Sometimes a rape victim will ask the police not to proceed any further with the case, or will ask to withdraw or retract the complaint. If the victim has decided to withdraw, the prosecutor should explore the issues behind the retraction, particularly if the victim is under pressure or frightened to proceed. The prosecutor will usually ask the police officer in the case to offer further support and advice to the victim. However, the prosecutor must consider the reason why the victim wishes to withdraw the complaint, the strength of the evidence and the views of the police officer in the case. The guidance here will address the following:

- How the prosecutor will deal with a victim who wishes to withdraw;
- The circumstances when a prosecutor should consider seeking a witness summons if, for example, there is a history of abuse;
- If the victim confirms her account is true but still wishes to withdraw, whether there is sufficient evidence to continue without the victim;
- Whether we should continue a case against the victim’s wishes;
- Any other ways in which a victims may be supported

6. Is it in the public interest to prosecute?
If the evidential test is passed, we believe that rape is so serious that a prosecution is almost certainly always required in the public interest.

7. The acceptability of pleas
There may be occasions when, for a number of reasons, the prosecution may consider accepting a guilty plea from the defendant to a different charge. This might arise for example, if a defendant wishes to plead guilty to some, but not all of the charges, or because the victim may not wish to proceed, or because there are changes in the evidence which later comes to light.

In December 2000 the Attorney General issued guidance to prosecuting authorities on the approach to be adopted when considering the acceptance of pleas to a reduced number or less serious charges. The Guidelines emphasise the importance of ensuring that save in the most exceptional circumstances, the acceptance of pleas should be conducted in public with the prosecution able to explain their reasons for accepting the pleas in open court. The guidelines also emphasise the need to keep victims and their families informed and to reflect their interests when considering acceptability of pleas.

11. Sentencing and unduly lenient sentences
There are guidelines for judges when sentencing defendants convicted of rape. Revised sentencing guidelines in rape cases were issued on 9 December 2002, when the Lord Chief Justice gave judgment in 3 linked cases dealing with appeals against sentence in rape cases. The following points can be drawn from the judgment:

- relationship and acquaintance rapes are to be treated as being of equal seriousness to stranger rape, with appropriate sentence dependant on mitigating or aggravating factors;
- male rapes are as serious as those between a man and a woman and the same guidelines should apply;
- there should be no inherent distinction made for sentencing purposes between anal and vaginal rape – where a victim is raped in both ways, this should be treated as repeated rape.

However, in the event that a judge passes a sentence which the prosecution consider is unduly lenient in the light of the facts on which the defendant was convicted, The CPS can ask the Attorney General to review the sentence and, if in his view the sentence is unduly lenient, he may make an application to the Court of Appeal to have the sentence reviewed. However, it does not have to be The CPS who refers it. If The CPS does not refer it to the Attorney General, the victim, the victim’s family or a member of the public may do so.
Annex H

Excerpts from

Joint Inspection into the Investigation and Prosecution of Rape Offences in England and Wales

The purpose of the investigation by the combined forces of the Inspectorate of Constabulary and the Crown Prosecution Service Inspectorate are given as follows:

1.1 This inspection was conducted jointly by Her Majesty’s Inspectorate of Constabulary (HMIC) and Her Majesty’s Crown Prosecution Service Inspectorate (HMCPSI). Its purpose was to analyse and assess the quality of the investigation, decision-making and prosecution by the police and the Crown Prosecution Service (CPS) of allegations of rape. In doing so, its aim was to ascertain, if possible, the reasons for the high attrition rate, and to identify good practice and make recommendations to address this.

1.2 There are few offences that impact so severely on the victim. Whilst the number of reported rapes, 8,593, represents only 0.17% of all recorded crime, the enormity of the effect on victims and on the fear of crime amongst women goes to the heart of quality of life. As with other aspects of personal crime, there is undoubtedly substantial under-reporting. The Rape Crisis Federation of England and Wales in its Annual Report, for example, suggests that only 12% of the 50,000 women who contacted their services in 1998 reported the crime of rape to the police.

[ NB. in common with other women's groups, eg WAFE, caution has to be exercised with the numbers offered. 50,000 calls may have been received by Rape Crisis but this does not mean 50,000 different and separate women, i.e. there will be a high level of repeat calls which will not be disclosed by the agency].

3.9 We acknowledge the difficulties faced by the police, which are in part supported by key statistics that highlight the problem. However, it is our view that these problems support the need for a more professional approach at the outset if the criminal justice system is to secure more convictions and greater support for current and future victims. We consider that a more concerted approach in the areas of statement taking and interviewing of alleged offenders, together with a better application of the forensic disciplines, can help to achieve this. Closer monitoring of investigative activity by officers with relevant experience should also assist in developing the skills of investigators.

3.34 Analysis of the 1,741 police crime reports showed an attrition rate similar to that of other research. Cases reported to the police resulted in a charge/summons or caution rate of 28.3%. 59.2% did not result in a charge, compared with the research rate of between 36% to 67%. Of the 230 cases in the police file sample, 42.2% proceeded to court. 57% did not proceed to court, a higher figure than that of between 33% and 50% referred to in the literature review, and higher than the CPS national average for all cases. Cases which were

http://www.hmicsi.gov.uk/reports/jirapeins.pdf#search='Investigation%20and%20Prosecution%20of%20Case%20involving%20Allegations%20of%20Rape'
prosecuted resulted in a conviction rate of 60.8% (including guilty pleas). 39.2% resulted in an acquittal. Cases which proceeded to trial resulted in an acquittal of 70.4%.

3.35 We consider that if the steps outlined in the report are adopted, and if there is a concerted effort, and joined up approach, on the part of all those involved in the investigation and prosecution of rape offences, the attrition rate could be reduced. However, acquittals occur even where cases are properly investigated, prepared and presented. It cannot be overlooked that wider issues are involved that require an effort on the part of the criminal justice system itself. Changes have been made over the years about the need for corroboration and restricting the extent to which a victim’s previous sexual history is relevant. Further provisions to be introduced to support vulnerable victims should enhance the quality of evidence in some rape cases.

5.11 Recent research carried out on behalf of the Sentencing Advisory Panel at the Home Office contends that the practice of cautioning for an offence of rape is outside of sentencing guidelines. We are of the view that such practice should be adopted only in extreme circumstances.

Convictions

6.21 Amongst the 230 police files examined, there were 54 convictions for rape (23.5%) and a further six convictions for other sexual offences (2.6%). A higher proportion of cases resulted in the conviction of the accused party for rape where the victim was male (37.5%) than was the situation where the victim was female (21.8%). The conviction rate by sex of victim is detailed below.

8.31 We examined 16 judge ordered acquittals, and considered that the decision to stop the prosecution was in accordance with the Code in every case. There was insufficient evidence to provide a realistic prospect of conviction in ten cases, and the victim was unwilling to give evidence in a further four cases.

8.42 One case was illustrative of our concerns about the lack of a comprehensive review note, and the instructions to counsel did not deal with all the issues. The defendant was 43, with previous convictions for indecent assault and gross indecency; the victim was 14. There was dispute about penetration and the medical evidence was incomplete. A proper review would have led to further enquiries being made. The defendant pleaded guilty to a charge of indecent assault, although the trial proceeded on the charge of rape. There was no evidence of a considered review, no proper consideration of the medical evidence, and a failure to consider the issues in the instructions to counsel.
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