It is trite to observe that thoughts of rape and other sexual assaults give rise to the expression of strong feelings among victims of this and those concerned for them. But while we are entitled to expect that academics, policymakers and criminal justice professionals with an interest in the field are balanced in their quest to effect improvements to the investigative and forensic processes, it is unfortunate – and contrary to the advantage of true victims – that some do not always appear to be able to address the reality and to avoid the perpetration of myths which are apt to arise through slanted academic research and publications, and political initiatives which ignore what really happens at the coal face. Perhaps this is because, due to choice or circumstance, they haven’t been there. For the reality involves not what some people want it to be but true-life incidents out of which complaints arise, the investigative process and what happens in first-instance and appeal courts, in all of which – subject to a 14-year interlude between leaving primary school and commencement in practice – I have had direct experience since the age of 11. Thus those who ought to know better constantly and without qualification refer to complainants as victims,\(^1\) suggest that jury acquittals are too frequent\(^2\) and that this is attributable to jurors’ ignorance,\(^3\) unqualifyingly accuse investigating police officers of undue scepticism and prejudice in relation to rape complaints\(^4\) and minimize the extent to which false complaints are made;\(^5\) and in their reactions to those who endeavour to introduce an element of balance and realism into the debate they may even publicly accuse them of having ‘awful attitudes’.\(^6\)

**Complaints of rape**

Of course complaints of rape – currently running at at least 13,000 a year and, certainly in London, rising dramatically\(^7\) – must be investigated thoroughly, conscientiously and through a consistent approach, and perpetrators of sexual assault should, where this is feasible, be convicted in court. And, yes, it is alarming that our attrition rate – at something over 6% the lowest in Europe – is so poor and right that this should be reduced and the conviction rate properly and fairly increased – and I anticipate that this will, in part, be achieved through the implementation of Baroness Stern’s recommendations. Nonetheless, progress will continue to be hampered if those in authority persist in failing to acknowledge such realities – apparently unwelcome to them – as are clearly apparent to those who experience life on the ground, as opposed to up in the clouds. And we must not forget the steady and unremitting flow through police stations, courts and prisons of those falsely accused of rape, as, perhaps, reflected in the fact that, at the very least, a third of applicants to the Criminal Cases Review Commission have been convicted of sexual assault offences.\(^8\)

**Conviction rates**

Are conviction rates ‘far too low’, as the Solicitor-General has argued?\(^9\) The implied suggestion that the acquittal rate in rape and sexual assault cases is significantly higher than in other cases involving allegations of serious violence has been effectively and finally challenged both through our own research\(^10\) and, much more emphatically, through that conducted by Professor Cheryl Thomas on behalf of the Ministry of Justice\(^11\) who concludes that, in fact, jury conviction rates in sexual assault cases are, at 62%, significantly higher than in those involving non-fatal injury against the person (at 52%) and comparable with homicide-related offences (at 63%).

**Juror attitudes**

The government has placed pressure on the Judicial Studies Board to cause jurors to be educated concerning rape victims’ atypical behaviour\(^12\) (although the Board had already taken the initiative on this through the promulgation of various balanced specimen directions), and judges are now invited to give model directions concerning, e.g., delay in making complaints, compliant behaviour/allowing
something unwelcome to continue/failure to resist or protest, inconsistencies and related issues such as the affects of trauma, with the approval of the Court of Appeal Criminal Division. Notwithstanding this, Professor Thomas’s study reveals that:

‘Offence types with the lowest jury conviction rates (non-fatal offences against the person and sexual offences) appear to be the ones where the jury has to choose between conflicting versions of events often in the absence of strong corroborating evidence . . . Juries appear to try cases on the evidence and the law. Offences where the strongest direct evidence is likely to exist against a defendant appear to have the highest conviction rates. Cases where a jury must be sure of the state of mind of a defendant or complainant appear to have the lowest jury conviction rates. . . . [The conviction rate] suggests that a jury’s propensity to convict or acquit in rape cases is not necessarily due to juror attitudes to female complainants’.14

Given the limitations of the value of witness demeanor as a pointer to reliability and truthfulness as expressed by no less an authority than Lord Bingham, the immediate past senior Law Lord, these conclusions are hardly surprising. What is especially valuable about Professor Thomas’s findings is that these were based on real cases and the opinions of real jurors who were doubtless ‘deeply involved in their case and care[d] about both the complainant and the defendant’ as opposed to ‘simulated jurors who will not provide accurate research because there is nothing at stake’. In spite of this, it appears that the government persists in its proposals that jurors need to be still further educated about how what are said to be ‘victims’ (on undeclared criteria and data) may, atypically, behave – even to the extent of this being achieved through the evidence of psychologists claiming expertise in the field (one hopes of those who are victims in consequence of convictions of their assailants). But even supposing that real jurors are as ignorant as is claimed, judicial directions and psychological evidence clearly need, as a matter of essential fairness to possibly innocent defendants, to be balanced by that relating to the known behaviour of false complainants who, as extensive forensic experience has shown, may present themselves as typical victims to investigators and juries in the most plausible way, occasionally involving fabrication of evidence through self-injury and the planting of exhibited material, attributing these to their alleged attackers. One of the most disturbing features of some of these instances is that the complainants’ lies have been fortuitously uncovered only after the unjust conviction and imprisonment, occasionally for several years, of their victim – for example through the Criminal Cases Review Commission demanding unfettered access to the Individual Nominal Index, relevant social services records or the archives of the Criminal Injuries Compensation Authority.

False complaints and their prevalence

The Solicitor-General has asked the Judicial Studies Board to cause judges to direct juries that there is no reliable evidence to support the proposition that false complaints of rape are any more frequent than in other cases. While peremptorily rejected by the Board, this proposition, doubtless designed to cause jurors to be made sceptical about claims by defendants that their accusers’ claims are false, calls for careful examination. It has been academically questioned and, in any event, estimates of the proportion of rape complaints which are false range between 2% (the ‘official’ figure) and 50%, the higher being typical among investigating police officers – not all of them men – among whom I have conducted a straw poll during sexual assault cases in which I’ve defended over recent months. It is, therefore, unfortunate that our efforts to discover relevant statistics – the proportion of convictions for relevant offences such as perverting the course of justice based on false rape complaints – through a Freedom of Information Act request and a parliamentary question, as well as Baroness Stern’s own initiatives, have been thwarted by the Ministry of Justice claiming that achieving this would be disproportionate on, among others, cost grounds. In the absence of official figures, one is left to fall back on media and law reports and the opinions of police investigators – not official police spokespersons, who appear keen to play down the prevalence of false complaints. Leaving aside this controversy, there can be no doubt – as the Lord Chief Justice has frequently emphasized – that faced with two conflicting accounts and no corroborating (by no means unusual in the majority of rape cases, where consent is the issue) jurors will find it difficult to be sure that the complainant is wrong and the defendant is right, bearing in mind, other considerations aside, their knowledge of the extent of false complaints as reported in the press. The calls for detailed and statistically based research on the extent and affects of false complaints ought, for the government, to be hard to resist.

A prosecutor’s myth

An associated myth concerns what is often the subject of cross-examination of defendants and comments in prosecutors’ closing speeches, occasionally adopted in judges’ summings up, i.e. ‘Why would s/he lie/got to all the trouble and trauma involved in making and pursuing her/his complaint if it wasn’t true?’ Disapproved of in Antipodean jurisdictions, this fails to take account of the extensive range of often extraordinary explanations which drive false complaints – attention or notoriety seeking, fear of partner or parental censure, embarrassment, reaction to rejection or a sexual obsession with the accused, financial gain. As to this last example, statistics obtained from the Criminal Injuries Compensation Authority are noteworthy: in the year 2008–2009 approaching 8000 claims were made for compensation in relation to sexual offences, of which by November 2009 about 4500 had been successful and involved a total of £40m+ in awards – so an average of just over £9000 per claim. Of the thousand or so claims disallowed only a minute proportion, a small fraction of 1%, failed on evidential insufficiency grounds. What message does this give to false claimants when the word gets around – as it must do – remembering that of the 13,000+ rape complaints made to the police each year
only about 800 result in a conviction? That making a claim for compensation is a safe bet, regardless of the likelihood of any successful prosecution, so long as one plausibly sticks to one’s guns and has police support.31 Continuing, then, with the explanations for false complaints: mental ill health or disorder,32 diversion of attention from the complainant’s misbehaviour or criminal activity,33 loneliness,34 disappointment over previous alleged victimization not being responded to,35 infantile/juvenile confabulation,36 naked malice,37 false beliefs engendered through intoxication,38 false memories implanted by therapists or those in authority,39 the list goes on and on and is supported by a wealth of material – law reports and press cuttings – cited in the ‘References and notes’, likely to be only a fraction of what is available since I only read The Times and, if I get the chance, Metro and The Sun.

Furthermore, some research establishes that a proportion of false accusers, whether witting or unwitting, may display symptoms of emotional distress consistent with victimization which can be as equally indicative of this as those exhibited by true victims. This might be particularly convincing where the false complainant had come to believe that he/she had been victimized through, e.g., the affects of alcohol intoxication or false memory implantation.40 This, as well as my catalogue of proven false complaints and their consequences, highlights the fundamental difficulty for all involved – police investigators, prosecutors, judges, jurors, medical professionals and researchers – in assessing whether a complaint of sexual assault is truthful and accurate, especially in the absence of supporting evidence.

**Investigators’ attitudes**

Senior police officers who speak in public41 tend to exhort investigators to ‘believe the victim’. Whereas it’s unlikely that many hardened sex offence investigators will take this seriously, it’s important to point out, if only to remind some politicians and blinkered rape lobbyists, that the investigator’s role is to pursue all reasonable lines of enquiry, whether these point to or away from the guilt of the suspect and, necessarily, to maintain an open mind throughout – not to accept a complaint at face value without more. Belief or otherwise, assuming guilt is denied, is a matter for the jury. Of course courtesy goes hand in hand with open-mindedness and complainants are, naturally and for various reasons, anxious to be believed when they complain to the police, but this should not prevent a thorough investigator questioning a complainant by reference to prospective evidence which might throw doubt on his or her claim, nor to treat what an interviewed suspect says as being possibly true. Thus, it is no less discourteous to openly accuse a complainant of lying than it is to accuse a suspect of being a rapist – and, as an interrogative tool, this device is, anyway, valueless.

**Strategies for improvement**

Without wishing to tread on Baroness Stern’s toes, I have some additional suggestions designed to increase the likelihood of justice being done – the avoidance of the pursuance of false complaints, the guilty being prosecuted to conviction and the innocent acquitted:

(a) The current rule against oath-helping of complainants should be relaxed to allow any evidence of their good character and reputation to be adduced in some circumstances, notably when a defendant introduces evidence of his or her own good character or when an attack on the character of the complainant goes beyond what is necessary to establish the defence case;

(b) The current Judicial Studies Board specimen directions on witness consistency/inconsistency should be amended to take better account of the workings of human memory and perception and the tendency of the police to sometimes misrepresent what a complainant has – or has not – said when being interviewed for the preparation of a section 9 Criminal Justice Act (CJA) 1967 witness statement.42

(c) When interviewed by the police complainants should, routinely, be given the opportunity to respond to records of what they have previously said to others concerning their allegations and those of what others, including the suspect, have said about relevant events. This might need to involve further interviews with the complainant;43

(d) Where a complainant is ABE interviewed the import of the section 9 CJA declaration should be explained to them at the start of the interview;

(e) Where the investigating police have justifiable doubts about the veracity of the complainant’s account, the complainant should be allowed a cooling-off period, with appropriate language used in the expression of this, before the complaint is further acted upon;

(f) In all contested cases involving allegations of sexual assault judges should be required, as an obvious balance to directions concerning ‘atypical’ victim behaviour, to warn the jury of the risk of false allegations being made by reference to past experience of this;44

(g) The limitations of the criminal justice system in the protection of and provision of assistance for victims of sexual assault should be more readily acknowledged.

**ACKNOWLEDGEMENTS**

The author is most grateful to Roy Palmer and The Academy for giving him the opportunity to deliver this address, honoured to be sharing the platform with Vivien Stern and Fiona Mason and, especially, hugely indebted to his co-author David Wolchover and his colleagues Daniel Sternberg and Sam Clyndes for their contributions to the preparation of this paper.

**REFERENCES AND NOTES**

1 See, e.g., Letter to The Times from Baroness Scotland of Asthal, Attorney-General, 19 May 2009 and the report of Sarah Payne, The Victims’ Champion, Rape: The Victim Experience Review. Home Office, November 2009 at p. 8, et al.; ‘...no system can deliver a conviction in every case and sadly [my emphasis], in some cases, there is simply not the evidence needed to provide a realistic prospect of conviction’, p. 19; her assumption that the withdrawal of complaints by complainants is necessarily attributable to factors other than that the complaint is false, pp. 5 and 7

2 ‘...but the fact is conviction rates are far too low’ – Vera Baird QC, MP, Solicitor-General, press release of The Government Equalities Office, 22
September 2009, responding to the announcement of Baroness Stern’s Review of Rape Complaints
3 See Beware rape myths judges to tell jurors. The Times, 15 June 2009
5 Op. cit., at 3
6 See Vera Baird, letter to The Times, 20 October 2009 and, in a letter to the author dated 18 November 2009, Dr Guy A Norfolk, David Jenkins Professor of Forensic Medicine: ‘The feminist lobby exerts a great deal of control over the rape agenda and this can stifle proper debate, particularly when it comes to false allegations of rape’
7 Rape cases rise by 500 in a year. Evening Standard, 25 February 2010, quoting Sir Paul Stephenson, Commissioner of the Metropolitan Police. It has been mystifyingly suggested, on unidentified criteria and data, that between 75% and 95% of rapes are thought to be never reported, and that of those reported nearly one-third are not recorded as crimes by the police – see Frances Gibb, The Times, 31 January 2007
8 Professor Graham Zellick QC, when Chairman of the Criminal Cases Review Commission, at The British Academy of Forensic Sciences’ Lund Lecture, 22 November 2006
9 Op. cit., at 2 and 3
11 Are Juries Fair?. Ministry of Justice Research Series 1/10, February 2010
12 Op. cit., at 3
13 For examples of these, see the specimen directions given to juries by His Honour Judge Khatkuda (communicated to the author on 18 February 2010) and in a lecture at The Central Criminal Court given to the Criminal Bar Association on 13 June 2009 by His Honour Judge Peter Rook QC, JSB lead on sexual offences. The new JSB Judges’ Bench Book, drafted by Lord Justice Pitchford and published in March 2010, incorporates all those specimen directions concerning the dangers of stereotyping witnesses which have been approved by The Court of Appeal Criminal Division
16 Ben Morris, letter to The Times, 20 October 2009, see also, op. cit., at 3, above
17 See, e.g.: Rape claim was utterly fanciful and concocted. The Times, 13 July 2006; R v Fletcher [2006] 2 Cr. App. R. (S) 167 (24), C.A. (02 December 2005); R v Warren Blackwell [2006] EWCA Crim. 2185; Girl’s rape lie destroyed taxi driver’s life. The Times, 25 April 2007; Jail threat over woman’s rape lie. BBC online 05 October 2009; Mother ‘cried rape’ to stop feeling lonely. Metro, 11 January 2010; Woman jailed for false rape claim. See www.thissomerset.co.uk, 25 February 2009; R v Burnett, 2000 WI 362481
18 See: R v Burnett, op. cit., at 17; Teacher who died in jail is cleared of raping pupil. The Times, 22 April 2006; R v Blackwell, op. cit., at 17; Teenager is locked up for ‘wicked’ rape lies. Metro, 14 November 2006; Man is cleared of child rape claims. The Times, 15 December 2006; R v Carrington-Jones [2007] EWCA Crim. 2551
19 The ‘INI’, a nationwide police register of complaints of sexual assault made by individuals
22 Letter to Sam Clyndes from The Ministry of Justice, dated 5 November 2009:
23 In, e.g., R v Carrington-Jones [2007] EWCA Crim. 2551 at paragraph 26
24 As in, op. cit., at 21 and, as suggested in Dr Norroll’s letter to the author, op. cit., at 6
27 See: Prison for the cheating wife who made up rape attack as an alibi. The Times, 07 June 2005; personal account concerning case at Doncaster Crown Court provided to the author by defence counsel Donald Rogers: Mother is jailed over false rape. Metro, 12 February 2008; Waitress made up attack by gay boss. Daily Telegraph, 22 October 2009; Sex fantasy woman raped. See www.thissomerset.co.uk, 11 November 2009
28 See R v Thomas [2008] 2 Cr.App.R(S) 434; R v McKenzie [2008] EWCA Crim.2301; Woman jailed over false rape allegation. See www. northamptonchron.co.uk, 6 December 2009
29 See Mother and daughter are guilty of false rape claim. The Times, 4 April 2006; R v Fletcher [2006] 2 Cr.App.R(S) 167; Rape claim was ‘utterly fanciful and concocted’. The Times, 13 July 2006; 3 August 2006, 20 September 2006; Rapes liar named. The Times, 04 November 2006; Spurned woman cried rape in revenge against ex-boyfriend. The Times, 3 February 2007; Psychologist was stalked for 16 years. The Times, 12 July 2007; Cry rape teen escapes prison. Metro, 28 August 2008; Cry rape ex ‘has never said sorry’. London Lite, 22 July 2009, Rape liar jailed. The Times, 22 July 2009, Prison ‘indefensible’ for false rape claims. See www. telegraph.co.uk (30 October 2009); Rape lie girl jailed. The Sun, 28 July 2009
30 Statistics supplied by The Criminal Injuries Compensation Authority in communications to Sam Clyndes and the author dated 11 November 2009 and 16 December 2009, following a Freedom of Information Act request
31 See: R v Blackwell, op. cit., at 17; R v Carrington-Jones, op. cit., at 18; Jail threat over woman’s rape lie. See www.news.bbc.co.uk, 5 October 2009; Woman jailed for false rape claim. See www.thissomerset.co.uk, 25 February 2009
32 See: Teenager’s lie about gang rape (undated, in author’s cuttings file): Teacher jailed for sex with boy. 14, The Times, 29 June 2006; Girls lied about paedophile. London Lite, 20 September 2006; Tears of ‘sex film’ teacher. Metro, 9 November 2006; Rape lie rap. The Sun, 10 September 2008; Girl held over gang rape claim, 6 October 2009; Cruel mother fooled doctors as her ‘sickest boy in Britain’ brought a fortune in benefits. The Times, 17 October 2009 and see www.news.bbc.co.uk, 22 January 2010; Former royal aide goes on the run from prison. Metro, 24 November 2009
33 See: Mother’s ‘cried rape to stop feeling lonely’. Metro, 11 January 2010
36 See: Ruling backs false rape claim man. See www.newsvote.bbc.co.uk, 13 May 2009
38 See: The Times, 15 December 2006, op. cit., at 18
39 See: Laney C, Loftus EF. Emotional content of true and false memories. Memory 2008;16:500–16

My suggestions at 8(a) and (c) have, also, been made to Baroness Stern during the course of her review by His Honour Judge Philpot.

This need not involve a breach of the requirements of Section 32(1)(a) of the Criminal Justice and Public Order Act 1994, which removes the previous obligation for judges to warn the jury about convicting the accused on the uncorroborated evidence of a complainant making an accusation of a sexual offence [my emphasis]. The following form of words are apt:

‘It is within the experience of the Court that in matters of sex people do sometimes behave bizarrely and unexpectedly, in ways that might cause great surprise to those who know them well. You may think that certainly some body has been behaving very oddly in this case either because the defendant has done what s/he is accused of having done or because the complainant has made his/her allegations falsely. Bear in mind that it may be easy for someone to make a sexual allegation against another person but that it may be difficult for the person accused to rebut the allegation beyond saying “it did not happen”. Experience of the Courts over many years has shown that men and women, boys and girls sometimes, and for a variety of reasons make up false allegations for what may be rather obscure and bizarre reasons. I am not suggesting for one moment that the complainant is making it up but making it up is something which has happened in the past in cases involving allegations of sexual misconduct and this is a factor of which you should be aware.’

This is the text of a direction which His Honour Judge Katkhuda gives in all cases involving allegations of sexual assault. The conviction rate in such cases which he tries is at least comparable with, if not higher than, the norm.