

# *Policing Male Rape and Sexual Assault*

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*Abstract* This article examines an issue that has been largely ignored in the growing literature on the treatment of sexual offences within the criminal justice system, i.e. the treatment of adult male rape and sexual assault complainants by the police. This analysis is based upon a series of interviews with men who have reported their experiences of rape and sexual assault. It considers issues of victim care and satisfaction with the performance of the police, along with other criminal justice professionals. These experiences are placed in a broader research context that indicates some of the features of men's treatment by the police, along with recurrent themes that are also seen in the treatment of female complainants. Finally, this article critically considers claims that the criminal justice's treatment of male and female rape is influenced by gender bias.

Since the early 1990s there has been a significant increase in research that has examined the problem of adult male rape and sexual assault. This research has examined such issues as the problem of male sexual victimisation within institutional settings,<sup>1</sup> within the general population,<sup>2</sup> during wartime<sup>3</sup> and has also examined the nature, dynamics and impact of male victimisation.<sup>4</sup> This work has cast light on a problem that has remained largely hidden from public view and like female rape, continues to be shrouded in ignorance and misconception. This is also a problem in the context of the treatment of adult male victims who have sought help from the criminal justice system. Some research has examined male complainant's experiences of the court process<sup>5</sup> and in some of the earlier literature there are suggestions that the police treatment of male complainants was poor. For example, 18 years ago Richie McMullen stated: '[male] victims are rarely believed [by the police], are

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1 S. Banbury, 'Coercive Sexual Behaviour in British Prisons as Reported by Adult Ex-Prisoners' (2004) 43 *Howard Journal* 113; I. O'Donnell, 'Prison Rape in Context' (2004) 44 *British Journal of Criminology* 24.

2 A. Coxell *et al.*, 'Lifetime Prevalence, Characteristics and Associated Problems of Non-consensual Sex in Men: Cross Sectional Survey' (1999) 318 *BMJ* 846.

3 S. Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 *European Journal of International Law* 253.

4 See, e.g., G. C. Mezey and M. B. King, *Male Victims of Sexual Assault*, 2nd edn (Oxford University Press: Oxford, 2000); S. Allen, 'Male Victims of Rape: Responses to a Perceived Threat to Masculinity' in C. Hoyle and R. Young (eds), *New Visions of Crime Victims* (Hart: Oxford, 2002); J. Walker *et al.*, 'Effects of Rape on Men: A Descriptive Analysis' (2005) 34 *Archives of Sexual Behavior* 69 (hereinafter Walker *et al.* 2005a); J. Walker *et al.*, 'Effects of male rape on psychological functioning' (2005) 44 *British Journal of Clinical Psychology* 225.

5 P. Rumney, 'Male Rape in the Courtroom: Issues and Concerns' [2001] *Crim LR* 205 (discussing the experiences of male rape and sexual assault victims who have given evidence in the court). See also: P. Rumney and M. Morgan-Taylor, 'The Construction of Sexual Consent in Male Rape and Sexual Assault' in M. Cowling and P. Reynolds (eds), *Making Sense of Sexual Consent* (Ashgate: London, 2004).

assumed to be gay and thought to be responsible for not being man enough to fight off an attacker . . . many male victims report that the treatment they receive by the police and in the courts is worse than the offence itself'.<sup>6</sup> While some work has been done domestically and in the USA on police treatment of male rape,<sup>7</sup> thus far there has been no specific in-depth domestic study of men's experiences of the police that has brought together the existing literature, as well as original material.

The purpose of this article is to begin to fill this evidence gap. This is an area that is of growing importance due to the significant increase in the numbers of allegations of male rape being reported to the police.<sup>8</sup> To assist this analysis, the article will consider the experiences of five male complainants, four of whom reported sexual victimisation to the police,<sup>9</sup> along with discussion of evidence that has been gleaned from a range of other sources. Through such an analysis it will be possible to begin to identify trends in police responses to adult male rape and sexual assault, along with areas of strength and weakness.

### **Police responses: a brief overview**

Since it became first legally recognised in 1994, there has been a very significant increase in recorded offences of male rape. In 1995 there were 150 offences of male rape recorded by the police,<sup>10</sup> for 2004–05 the number was 1,135.<sup>11</sup> The most recent figure shows 1,150 recorded offences of male rape.<sup>12</sup> This increase in reports over the last decade has, at least in part, its origins in measures taken by the police service to improve the treatment of male victims since the early 1990s,<sup>13</sup> including the use of specially trained officers to work with male complainants.<sup>14</sup>

6 R. J. McMullen, *Male Rape: Breaking the Silence on the Last Taboo* (Gay Mens Press: London, 1990) 114.

7 See, e.g., below n. 14 and M. Scarce, *Male on Male Rape: The Hidden Toll of Stigma and Shame* (Insight Books: New York, 1997) 216–18, ch. 10.

8 For the increase in the number of recorded offences of male rape, see below nn. 10–12 and accompanying text.

9 For the current study, five men disclosed their experiences by phone, in person or by letter to the author between 1998 and 2004. Contact with the men was achieved by a variety of means. Three contacted the author, initially for advice or for further information. Another made contact following a radio interview given by the author. The other interviewee was a man the author had met at a conference. All the interviewees agreed to participate in this research on condition of their anonymity and with a right to withdraw their cooperation with the research at any point in the process. They were also provided with details of local Victim Support and Survivors' groups.

10 Home Office, *Crime in England and Wales 2001/2002* (2002).

11 S. Nicholas *et al*, *Crime in England and Wales 2004/2005* (Home Office: 2005) Table 7.01.

12 S. Nicholas *et al*, *Crime in England and Wales 2006/07* (Home Office: 2007) 36. Of these, 413 involved males aged 16 and over. Additional forms of male sexual victimisation are covered by a range of other sexual offences: (p. 37).

13 For example, between 1990 and 1993 the number of recorded offences of non-consensual buggery on males in the Metropolitan Police area rose from 17 to 50. This followed attempts by the Metropolitan police to improve its response to male victims, along with increasing cooperation with support groups.

14 S. Lees, *Ruling Passions: Sexual Violence, Reputation and the Law* (Open University Press: Buckingham, 1997). Attempts to improve police responses are obviously not

Since that time, awareness of the problem of male rape and sexual assault and the needs of victims has undoubtedly grown within the police service.<sup>15</sup> A number of constabularies produce information in the form of leaflets or on websites that explain how they respond to the needs of male victims. For example, the Metropolitan Police's 'Sapphire Project' emphasises support for all victims of rape, including male victims. It has produced a leaflet that specifically targets male victims. It contains important information for victims, family members and friends, along with contact details for support groups. It discusses how men respond to rape and sexual assault and also covers some of the myths associated with male sexual victimisation. For example, it challenges the myths that 'male rape is a gay crime' and 'male rape doesn't happen'.<sup>16</sup> Similarly, the Cheshire Constabulary provides information on its website for male victims along with an explanation of the investigatory process. It also explains the support available from local agencies such as Victim Support and the role of 'Sexual Offence Investigation Trained Officers'.<sup>17</sup>

As well as the improvements in the police awareness of male rape and sexual assault, there are several other factors that may have contributed to this increase in recorded offences. For example, it may result from greater societal recognition of male rape following legal reform in 1994 and the reclassification of certain non-consensual sex acts as rape in 2003.<sup>18</sup> However, given the lack of previous domestic research, it is not possible with any degree of precision to judge the extent to which the police response to male rape and sexual assault has improved, and in what ways, since the early 1990s. The next section examines reporting of male rape and evidence concerning the recording of male rape by the police.

## **Reporting, recording and the early stages of attrition**

Early small-scale domestic studies of male rape and sexual assault suggested that between 12 per cent<sup>19</sup> and 20 per cent<sup>20</sup> of victims reported to the police. The most recent research findings by Kelly *et al* found a

universal. In an international context, police in Australia, for example, have been criticised for not encouraging men to report sexual victimisation. S. Crome *et al*, 'Male Rape Victims: Fact and Fiction' (1999) *Law Institute Journal* 60, 63. In the context of the USA, see S. Estrich, 'Male Rapes Occur, and It's Time to Address Them', *Pocono Record*, 24 December 2006. This story can be viewed at <http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20061224/NEWS04/612240301>, accessed 22 November 2007.

15 See below n. 30.

16 Metropolitan Police, *Male Victims of Sexual Assault*, available at [http://www.met.police.uk/sapphire/sapphire\\_malerape.htm](http://www.met.police.uk/sapphire/sapphire_malerape.htm), accessed 23 November 2007.

17 See <http://www.cheshire.police.uk/showcontent.php?pageid=623>, accessed 23 November 2007.

18 Sexual Offences Act 2003, s. 1. For the first time, this legislation included penile penetration of the mouth in the *actus reus* of rape. Prior to this, such sexual assaults were classified as indecent assault.

19 R. J. Hillman *et al*, 'Medical and Social Aspects of Sexual Assault of Males: A Survey of 100 Victims' (1990) *British Journal of General Practice* 502.

20 G. Mezey and M. King, 'The Effects of Sexual Assault on Men: A Survey of 22 Victims' (1989) 19 *Psychological Medicine* 205 at 207.

reporting rate of 69 per cent for men, compared with 75 per cent for women.<sup>21</sup> The 2002 HMCPSP/HMIC joint inspection report noted that in the year 2000, of 586 callers to the support group for victims of male rape, Survivors UK, only 11 per cent had reported to the police.<sup>22</sup> Based on research from Survivors UK, the report suggests various reasons for non-reporting by males, including: 'not knowing that it is a crime', 'fear of not being believed' and 'concerns that sexuality may become an issue'.<sup>23</sup> In the survey by King and Woollett it was discovered that men: 'found it difficult to give reasons why they had not reported to police. Six were too ashamed, 2 were trying to forget the assault, 2 were too frightened, 1 could not talk about it, and 1 saw no point in reporting'.<sup>24</sup> Indeed, the emotional complexities, fear and other potential implications of the decision to report are such that many men feel unable to do so. One interviewee in this study, Geoff, who was indecently assaulted by a man whom he had befriended while homeless, was concerned about the impact of reporting on his mother:

I have a history . . . do you know what I mean? Drugs, suicide attempts . . . a pretty sad life. I know it would all come out sooner or later. It'd kill my mum.

A male victim who participated in research by Sue Lees also expressed concern of what an allegation of rape might mean to his family. He stated:

I threatened to go to the police. He told me he was a solicitor and the police would believe his story rather than mine, also that they would think I was a rent boy. I was terrified not just for me but for my family who would be named in the papers . . .<sup>25</sup>

Despite continuing evidence that significant numbers of male victims do not report to the police, or indeed, confide in anyone,<sup>26</sup> the increase in the reporting rate is encouraging and does suggest greater confidence by victims in police responses than in the past. The increase in reports may

- 21 L. Kelly *et al*, *A Gap or a Chasm Attrition in Reported Rape Cases*, Home Office Research Study 293 (2005). All estimates are prone to variation based on individual sample size and composition, along with study methodology. Kelly's study involved men and women who attended Sexual Assault Referral Centres (SARCs). Earlier research by Lovett *et al* indicates that many victims attending SARCs were likely to have been referred by the police: *Sexual Assault Referral Centres: Developing Good Practice and Maximising Potentials*, Home Office Research Study 285 (2004) 19 (noting that the 'majority of referrals to the SARCs came from the police'). Consequently, Kelly's particular sample is likely to over-represent the number of victims who report to the police.
- 22 Her Majesty's Crown Prosecution Service Inspectorate/Her Majesty's Inspectorate of Constabulary, *A Report on the Joint Inspection into the Investigation and Prosecution of Cases Involving Allegations of Rape* (2002).
- 23 *Ibid.* at para 6.20. See also: P. L. Huckle, 'Male Rape Victims Referred to a Forensic Psychiatric Service' (1995) 35 *Med Sci Law* 187, 190; McMullen, above n. 6, 114–15, Scarce, above n. 7.
- 24 M. King and E. Woollett, 'Sexually Assaulted Males: 115 Men Consulting a Counselling Service' (1997) 26 *Archives of Sexual Behavior* 579 at 585.
- 25 Lees, above n. 14 at 93.
- 26 For discussion, see Walker *et al* 2005a, above n. 4 at 74 (noting that many victims delayed telling anyone of their assault for anything up to 20 years. 12.5 per cent of the sample 'said that they had never told anyone until they participated in this study').

also reflect a 'changing social climate' of which the specific legal recognition of male rape is a contributory factor.<sup>27</sup>

Compared to evidence concerning female victims, the current literature on how cases of male rape and sexual assault progress through the criminal justice system is limited. Some studies of rape-case attrition have deliberately and inexplicably excluded cases of male rape.<sup>28</sup> Recent research has given a better, albeit limited, understanding as to how the police record allegations of male rape. In research by Lea *et al* it was found that of 19 recorded offences of male rape and two of attempted rape, none resulted in conviction.<sup>29</sup> The Metropolitan Police recently published statistics on the recording of allegations of male and female rape. It was found that of 677 allegations of rape reported in London between April and June 2005, 511 (75.5 per cent) were recorded as crimes, with 32 (4.7 per cent) being 'no crimes' and 134 (19.8 per cent) recorded as 'not crime'.<sup>30</sup> This study also found that '[w]hilst only 23% (143) of female complainants' allegations were recorded as 'No Crime'/'Not Crime', 41% (24) of male complainant allegations [were] recorded as 'No Crime'/'Not Crime'. In cases involving male victims, charges were more likely to be reduced from rape to another lesser offence and 'a higher number of false complaints linked to mental health issues were recorded with male complainants'.<sup>31</sup> The linkage of mental illness to 'no criming' is also a striking feature of studies involving female complainants.<sup>32</sup> One of the questions raised by these findings is the extent to which the use of the no-crime/not crime designation is appropriate. In other words, are men and women with mental health problems more likely to make false allegations or are the police inappropriately labelling reports by such people as false? As the report notes, this issue requires further research.<sup>33</sup>

Further cross-over between cases of male and female rape appears in situations where allegations of female rape are 'no-crimed' for reasons of complainant behaviour, for example, where the complainant delays reporting or where she withdraws a complaint.<sup>34</sup> While we know that men do make false rape allegations,<sup>35</sup> there is also limited evidence to

27 B. D. Forman, 'Reported Male Rape' (1982) 7 *Victimology: An International Journal* 235 at 236.

28 J. Harris and S. Grace, *A Question of Evidence? Reporting Rape in the 1990s* (Home Office: London, 1999) 1.

29 S. J. Lea *et al*, 'Attrition in Rape Cases' (2003) 43 *British Journal of Criminology* 583 at 592. This study does not provide any explanation as to why these reports did not result in conviction, though in any case, the numbers are very small for meaningful analysis.

30 Deputy Commissioner's Command, Directorate of Strategic Development and Territorial Policing, Project Sapphire, *A Review of Rape Investigations in the MPS* (2005) para. 4.3. For definitions of 'no crime' and 'not crime,' see p. 40.

31 *Ibid.* at para 4.6.

32 For discussion, see P Rumney, 'False Allegations of Rape' [2006] 65 *CLJ* 128 at 156.

33 Above n. 30 at paras 4.6, 4.9.

34 Rumney, above n. 32.

35 See, e.g., P. Laurie, 'Action Follows False Rape Claim', *Essex Police Newslines*, 14 October 2004 (referring to a man aged 23 who was given a formal police caution after he had made a false allegation of rape); 'Man "Lied" about Rape', *The Times*, 17 October 1992, 2.

suggest that the police may equate a man's unwillingness to pursue an allegation with an assumption that it is false. This suggestion comes from an investigation that examined *inter alia* the handling of an allegation of male rape made by one of Prince Charles's staff, Mr George Smith. The subsequent report that examined the response to this allegation found '[n]o-one believed Mr Smith's rape allegation', including members of the Royal Household and Hounslow police.<sup>36</sup> While concluding that there had been no 'improper cover-up' the report did find that:

A serious allegation of this sort should not, in our opinion, have been treated so dismissively, even though there was universal disbelief in its veracity, without (at minimum) full and documented consideration of the decision not to investigate. It might have been different if Mr Smith had unequivocally and apparently rationally confirmed that the allegation was not true. This is . . . not, however, what he did . . . he only indicated that he did not wish to pursue it . . .<sup>37</sup>

The extent of this particular problem of 'dismissive' treatment is a matter that requires further examination. There is, however, further evidence of this problem following a recent investigation by the Independent Police Complaints Commission into the initial police response to an allegation of male rape and sexual assault investigated by the South Wales Police. The investigation found *inter alia* that officers had failed to preserve and secure the crime scene and evidence in the case. The report concluded that one of the officers working on this case 'failed to be conscientious and diligent in the execution of his duties'. Another officer, according to the report, failed to 'recognise the seriousness of the alleged stranger rape and sexual assault'.<sup>38</sup>

## **The experience of men who report**

For those men who do decide to report to the police, the existing literature indicates that there are significant differences in men's individual experiences. Some measures of this experience have been somewhat crude and limited. Early research conducted by support group Survivors UK found that of 62 men seen at the Wharfside Clinic at St Mary's Hospital Paddington in 1993, 11 per cent reported to the police with three reporting a positive response and four a negative response. In 1992, 70 men were seen at the clinic, eight (11.4 per cent) reported to the police, six indicated a positive response and two reported a 'very negative' response.<sup>39</sup> In a study involving 115 male victims of rape and sexual assault, King and Woollett found only 17 reported to the police: 'In 8 cases the police's reaction was reported as helpful, whereas in 5 it

36 Sir M. Peat and E. Lawson QC, *Report to His Royal Highness the Prince of Wales* (2003) para. 1.199.

37 *Ibid.* at para. 1.201.

38 Independent Police Complaints Commission, *Report into a Complaint by Geoffrey Vincent Cole against South Wales Police Regarding the Initial Police Actions Following His Alleged Rape and Serious Sexual Assault on 18 October 2005—Executive Summary*, 3–5, 10, available at [http://www.ipcc.gov.uk/coleexecutive\\_summary\\_3\\_7\\_07.pdf](http://www.ipcc.gov.uk/coleexecutive_summary_3_7_07.pdf), accessed 23 November 2007.

39 Private correspondence from Survivors, 8 November 1994 (on file with author).

was perceived as negative. Seven men were glad (for three of whom the assailant had been apprehended) that they had reported to police'.<sup>40</sup> Finally, in the most recent study of 40 British male rape victims Walker *et al* found that five reported to the police. They noted:

Of those who did report, only one man said that the police were responsive and helpful. The other four found the police to be unsympathetic, disinterested, and homophobic. They felt that their complaint was not taken seriously and all four regretted their decision to tell the police.<sup>41</sup>

Some caution has to be shown when considering whether these specific findings prove a continuing problem in police responses to male rape. According to Walker *et al* the 'mean time between the assault and participation in the study was 10 years'.<sup>42</sup> Consequently, we do not know when the five men reported. Clearly, a male reporting rape<sup>43</sup> 10 or 15 years ago might have received very different treatment than one reporting more recently. This point is also made in recent research into men and women's experiences of reporting same sex abuse to the police. Researchers found that victims 'got a mixed response': 'Some had a sympathetic response but no follow through in terms of applying the law to the abusive partner . . . A small number had very unhelpful responses from the police though these said this had happened a long time ago.'<sup>44</sup>

Research from the USA suggests that negative police reactions are reported as common. Scarce notes:

Of those survivors I interviewed who reported their rape to authorities, all but one had an intensely negative experience. The one survivor who was the exception had only a neutral interaction—neither helpful nor overtly detrimental. The most common complaints I have heard from male survivors who I interviewed and have worked with professionally have been disbelief, mockery, homophobia, or a combination of all three from police officers.<sup>45</sup>

There is evidence to suggest that negative reactions may be a particular problem with respect to male rape victims who are gay or who are presumed to be gay. Such men appear to have their experience of rape taken less seriously. For example, in a British study of prison sexual violence, Banbury cites the experience of one male victim thus:

When I tried to report [a sexual assault], one of the [prison] officers laughed and just said 'come on mate, you're gay, hows [sic] that gonna sound?' I had basically been told to forget the incident because I was gay and hence 'I wanted it' and the incident was not reported.<sup>46</sup>

40 Above n. 24 at 584.

41 Walker *et al* 2005a, above n. 4 at 74.

42 Ibid. at 72.

43 Prior to the enactment of s. 142 of the Criminal Justice and Public Order Act 1994, non-consensual penile-anal intercourse was classed as buggery, not rape.

44 C. Donovan *et al*, *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships* (2006) 21, available at <http://www.bristol.ac.uk/sps/downloads/IFPCW/cohsarfinalreport.pdf>, accessed 23 November 2007. The passage of time is clearly an important factor, because in more recent years there have been attempts made by the police to improve responses to male rape and sexual assault.

45 Scarce, above n. 7 at 216.

46 Ibid. at 126.

Similarly, a study of prison sexual assault in the USA found that 'gay inmates, or those perceived as gay, often face great difficulties in securing relief from abuse. Unless they show obvious physical injury, their complaints tend to be ignored and their requests for protection denied.'<sup>47</sup> Likewise, on the basis of research involving the completion of questionnaires by police officers and male rape victims, Lees found:

Victim feedback suggested that gay men are treated less sensitively and sympathetically by the police than heterosexual men. Some police officers seem to believe that rape is less traumatic for gay men. Analysis of both police and victim questionnaires shows that police officers are more likely to regard the testimony of homosexual victims as 'unreliable'—either to assume that the sex was consensual or that the complaint was malicious.<sup>48</sup>

Collectively, these findings are troubling. While some men do report a positive response, some police officers and other criminal justice professionals appear to attach to gay men or those they perceive as gay highly questionable assumptions regarding credibility, trauma and truthfulness. This suggests some degree of cross-over in police attitudes towards female rape, where some officers also make assumptions regarding credibility based on highly suspect criteria.<sup>49</sup> The implications of such attitudes are significant given that homosexuality is a risk factor in rape and sexual assault.<sup>50</sup> These findings also highlight a further point to be discussed later. There appears to be a clear linkage between police attitudes and societal attitudes towards male rape and sexual assault.

My first interviewee, (DD), who was featured in earlier research,<sup>51</sup> was initially reluctant to report his rape to the police because he wanted to 'forget what had happened'. Having delayed reporting for two days, he was persuaded to go to the police by a friend:

She said that that if I didn't like what the police had to say then I could walk . . . She wanted the police to get the man who had attacked me . . . They

47 Human Rights Watch, *No Escape: Male Rape in U.S. Prisons* (Human Rights Watch: New York, 2001) 152.

48 Lees, above n. 14 at 94. Gregory and Lees note the following reason given by a police officer for regarding a male complainant as unreliable: 'He is described by his friends as very promiscuous': J. Gregory and S. Lees, *Policing Sexual Assault* (Routledge: London, 1999) 126.

49 See, e.g., L. Kelly *et al*, *A Gap or A Chasm? Attrition in Reported Rape Cases*, Home Office Research Study 293 (2005); J. Temkin, 'Reporting Rape in London: A Qualitative Study' (1999) 38 *Howard Journal of Criminal Justice* 17; J. Temkin, 'Plus Ça Change: Reporting Rape in the 1990s' (1997) 37 *British Journal of Criminology* 507.

50 In a British national study of 2,474 males Coxell *et al* found that men who had experience of consensual sex with other men were six times more likely to have been raped or sexually assaulted as adults than males who had not: Coxell, above n. 2 at 849. In an earlier British study of 940 homosexual males, Hickson *et al* found that a significant number were victims of rape or sexual assault. Of those surveyed it was found that 257 (27.6 per cent) men reported that they had been 'subjected to nonconsensual sex at some point in their lives'. Of these, it was found that 45.2 per cent (99) had been anally penetrated, and in another 11 cases (5 per cent) there had been an unsuccessful attempt at anal penetration: F. C. I. Hickson *et al*, 'Gay Men as Victims of Nonconsensual Sex' (1994) 23 *Archives of Sexual Behavior* 281 at 286.

51 Rumney, above n. 5 at 207.



[the police] were decent, they listened and believed me . . . Yes, I was asked about the delay, they seemed okay about it. One of the officers said it was understandable and that helped. The downside was that I couldn't just forget it because of the trial and everything. It took ages for the trial to come round.

The second victim discussed in earlier research, (SB), was also generally positive regarding the police response to his allegation. He described the police as being 'better than I had expected'. An interesting aspect of his experience is the extent to which his experience was influenced by the fact that his assailant was subsequently arrested, charged and convicted. He noted: 'I felt vindicated, but I'm not sure I would have felt that had the case not gone to court'.

These broadly positive experiences can be contrasted with those of two other interviewees. The first male complainant was Greg. He was raped in his own home by an assailant while he was intoxicated. He described his contact with the police as 'difficult' and 'confusing' and recounted having great difficulty maintaining his composure with the police only a few hours after his rape.<sup>52</sup> However, his primary concern about reporting to the police was in fact his questioning by a forensic medical examiner:

The medical examination was hell. I said I didn't want a male doctor, but that's all there was. I was really upset during the medical tests and then the doctor asks [sic] me something which gutted me. He said: 'It's strange that you don't have more injuries, are you sure you're telling me everything?' I ended up thinking he didn't believe a word I said. I'd already said that I wasn't beaten up, was I supposed to be beaten up or something? . . . The chaperone dropped by [my flat] to talk to me about withdrawing. She was nice and told me I could go back, but I didn't want to go through it all again.<sup>53</sup>

The second complainant with a negative experience was Steve. His recollection of treatment by the police was characterised by real disappointment and regret that he reported. He stated:

One of the officers told me that in these types of cases it was virtually impossible to get a conviction. I thought he was trying to put me off. Do the police only prosecute [sic] if you're attacked by a stranger?

Despite being heterosexual Steve, felt that homosexuality was an issue as he was asked questions about his sexuality. In addition, he described himself as being upset by one officer's reaction to other disclosures, which he interpreted as disbelieving:

52 Greg's confusion appeared to result from the trauma of the attack, rather than as a result of the behaviour of police officers. A recent joint inspection report noted the difficulties some rape complainants face when reporting to the police. As a result, some constabularies recognise such problems by delaying the giving of a statement for 24 hours, though this can cause problems for an effective investigation: HMCPSI/HMIC, *Without Consent: A Report on the Joint Review of the Investigation and Prosecution of Rape Offences* (2007) paras 6.3–6.4.

53 The issue of appropriate behaviour and questioning on the part of forensic medical examiners is echoed in earlier research that examined the experiences of female rape complainants: J. Temkin, 'Medical Evidence in Rape Cases: A Continuing Problem for Criminal Justice' (1998) 61 MLR 821.

I had to tell them that he'd tried to masturbate me during the attack and that I'd got a bit of an erection. One of the officers just went, hang on, how was that? You know, what he meant was how was that possible if you're saying you didn't want it?<sup>54</sup>

One of the issues in both of these cases is that Greg and Steve saw the questioning as indicating suspicion and this impacted on their view of their treatment. But part of the problem in situations such as these might be a failure by criminal justice professionals to explain sensitively why particular questions need to be asked. Indeed, a recent joint inspection report noted that it was important for police officers to 'identify evidential weaknesses at an early stage, to obtain clarification in respect of ambiguities or inconsistencies . . .'. However, as the report also noted, it is important that complainants feel 'supported and believed'.<sup>55</sup> Clearly, similar considerations apply to forensic medical examinations. Steve's experience was also characterised by a classic example of a police officer 'second guessing' the reactions to a complaint at later stages of the criminal justice process, by suggesting the difficulty of securing a conviction. Studies involving female victims have shown that officers do sometimes warn complainants of such difficulties. Harris and Grace note: '[i]n warning complainants about the difficulty of securing a conviction, the police might put complainants off pursuing their case without meaning to'.<sup>56</sup> This was clearly Steve's reaction and contributed to his very negative experience of reporting. The apparent reaction to the disclosure that Steve had experienced an erection is particularly serious given that we know significant numbers of male victims experience erections during rape and sexual assault.<sup>57</sup>

54 It is not clear from Steve's disclosures why the officer stated 'in these types of cases it was virtually impossible to get a conviction.'

55 HMCPSI/HMIC, above n. 52 at paras 6.6–6.7.

56 Harris and Grace, above n. 28, 20–2.

57 There is research showing that males can experience an erection and even ejaculation during sexual assaults by male or female assailants. In their study of 11 males sexually assaulted by women either as children or adults, Sarrel and Masters found: 'men or boys have responded sexually to female assault or abuse even though the males' emotional state during the molestations has been overwhelmingly negative-embarrassment, humiliation, anxiety, fear, anger, or even terror': P. M. Sarrel and W. H. Masters, 'Sexual Molestation of Men by Women' (1982) 11 *Archives of Sexual Behavior* 117 at 118. See also: King and Woollett, above n. 27 at 587 ('Just under 20% of the men were stimulated by their assailants until they ejaculated') In a small-scale study of male rape victims and offenders, Groth and Burgess found:

'A major strategy used by some offenders in the assault of males is to get the victim to ejaculate. This effort may have several purposes. In misidentifying ejaculation with orgasm, the victim may be bewildered by his physiological response to the offense and thus discouraged from reporting the assault for fear his sexuality may become suspect. Such a reaction may serve to impeach his credibility in trial testimony and discredit his allegation of nonconsent. To the offender, such a reaction may symbolize his ultimate and complete sexual control over his victim's body and confirm his fantasy that the victim really wanted and enjoyed the rape. This fantasy is also prominent in the rape of females.'

A. N. Groth and A. W. Burgess, 'Male Rape: Offenders and Victims' (1980) 137 *American Journal of Psychiatry* 806 at 809.

Some victims of male rape and sexual assault report aggressive questioning by the police. In the USA, the experience of Christopher Smith, who was raped at gunpoint by a stranger, gives an indication of the sense of despair that some male victims can experience and the way in which unskilled questioning can have a negative impact on a victim's ability to recall a traumatic event accurately. He recounts his experience with the police:

Then I told the story again. Then again. They asked questions. They interrupted. They told the story back to me, but changed things. They inserted information that I did not provide. Questions sprayed at me from every direction like bullets from a machine gun. Everything became so cloudy and confused . . .

The officers also asked a series of questions that he found distressing:

Do you have any friends who are gay? . . . Why didn't you just run? He wouldn't have shot at you, it's hard to hit a moving target. I would have just started running. Why didn't you run? . . . After being degraded and humiliated in so many different ways, I had reached the lowest point ever, I was convinced I was a terrible person. I didn't even feel recognized as a human being.<sup>58</sup>

Similarly, Fred Pelka recounts his questioning at the hands of police officers in the USA after he had been abducted and raped by a man wielding a gun:

The bad cop asked me why my hair was so long, what was I doing hitchhiking at seven o'clock in the morning? Why were my clothes so dirty? Did I do drugs? Was I a troublemaker? . . . [I was also told that] the best thing to do would be to pull up my pants 'and forget it ever happened'.<sup>59</sup>

These disclosures come from a variety of sources that are disparate in terms of the time and location when these men brought their experiences to the attention of the police and other criminal justice professionals. Consequently, the next section will analyse several emerging themes from the literature as a whole.

## **Analysis and emerging themes**

The current evidence suggests that men's experiences of reporting rape and sexual assault are varied, with some men being much more satisfied with their treatment, than others. These findings are unsurprising given the similar experiences of female rape complainants.<sup>60</sup> The first identifiable theme to be taken from the interviews and previous literature is the way in which the men with negative experiences feel that they are under suspicion or not believed. This can quickly undermine confidence

58 Scarce, above n. 7 at 191–2.

59 F. Pelka, 'Raped: A Male Survivor Breaks His Silence' in P. Searles and R. J. Berger (eds), *Rape and Society: Readings on the Problem of Sexual Assault* (Westview Press: Boulder, CO, 1995) 252.

60 Recent research found that most (70 per cent) female complainants were satisfied with the initial police response to their rape allegation, but a significant minority were dissatisfied (30 per cent): Kelly *et al.*, above n. 21 at 60.

in the investigatory process, and as in the case of Greg, can result in an allegation being withdrawn. A second theme, clearly in evidence in the wider literature, less so amongst the four interviewees, is the linkage between male rape and homosexuality.<sup>61</sup> In a survey of victims and police officers Lees found that '[s]ome police officers seem to believe that rape is less traumatic for gay men [and are] more likely to regard the testimony of homosexual victims as "unreliable" . . .'.<sup>62</sup> In attitude surveys it has been found that students attribute more blame to heterosexual women and gay male victims of rape, than to lesbians and heterosexual male victims.<sup>63</sup> White and Kurpius found that students *inter alia* attributed more blame to male, than to female rape victims and more blame to gay and lesbian victims than heterosexual victims.<sup>64</sup> Likewise, Mitchell *et al* found that students were prepared to attribute more blame and pleasure and less trauma to a male rape victim who is gay, than one who is heterosexual.<sup>65</sup> In her study of correctional officers, Eigenberg found that of 166 correctional officers surveyed, 46.4 per cent 'believe that inmates deserve rape if they have consented to participate in consensual acts with other inmates'.<sup>66</sup> In a recent review of the existing literature on attitudes toward male rape, Davies and Rogers observe that in studies of people's attitudes to male rape:

All, without exception, and regardless of the assault situation, have found that gay victims are judged to be more at fault or to blame than heterosexual victims are. It is reasoned that the homosexual (albeit non-consensual) nature of male rape inspires homophobic attributions that result in victim blame and other negative attributions towards male victims.<sup>67</sup>

The unearthing of homophobic attitudes in the context of male rape might be explained in various ways. One of the reasons may be the equation of men being anally penetrated with being less masculine and therefore gay. In their interviews with gay men who engaged in anal intercourse, Kippax and Smith noted that for some of the participants there was an 'incompatibility between being masculine *and* receptive'

61 The issue of homosexuality has also been raised in male rape trials: above n. 5.

62 Lees, above n. 14 at 94.

63 A. Wakelin and K. M. Long, 'Effects of Victim Gender and Sexuality on Attributions of Blame to Rape Victims' (2003) 49 *Sex Roles* 477 at 483.

64 B. H. White and S. E. R. Kurpius, 'Effects of Victim Sex and Sexual Orientation in Perceptions of Rape' (2002) 46 *Sex Roles* 191.

65 D. Mitchell *et al*, 'Attributions of Victim Responsibility, Pleasure and Trauma in Male Rape' (1999) 36 *Journal of Sex Research* (1999) 369. See also: K. Doherty and I. Anderson, 'Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims' (2004) 14 *Journal of Community and Applied Social Psychology* 85.

66 H. Eigenberg, 'Male Rape: An Empirical Examination of Correctional Officers' Attitudes Toward Rape in Prison' (1989) 69 *Prison Journal* 39, 50, 48.

67 M. Davies and P. Rogers, 'Perceptions of Male Victims in Depicted Sexual Assaults: A Review of the Literature' (2006) 11 *Aggression and Violent Behaviour* 367 at 371. The most recent research suggests evidence of 'erroneous and mythical thinking' about male rape, along with 'some evidence' of homophobia: I. Anderson, 'What Is a Typical Rape? Effects of Victim and Participant Gender in Female and Male Rape Perception' (2007) 46 *British Journal of Social Psychology* 225. See also: Walker *et al* 2005a, above n. 4 at 74 (noting the following responses to disclosure: "you deserved it," "you asked for it," or "you enjoyed it").

(emphasis in original) and for some '[r]eceptivity is automatically associated here with being gay and feminine, suggesting one is more or less gay according to whether or not one engaged in "feminine" sexual practices'.<sup>68</sup> The association of anal intercourse with homosexuality can also be linked to attitudes that blame gay males for their own victimisation. But of course, it goes further. This linkage can also support an assumption that by being anally penetrated (and therefore less masculine), male victims *must* be gay. Thus, it cannot be assumed that the issue of homosexuality only arises in the context of gay victims. As indicated elsewhere, the linkage between male rape and homosexuality also impacts on cases involving heterosexual victims.<sup>69</sup> Another explanation for the linkage of male rape and homosexuality is that it is a form of 'distancing'. Anderson observes: 'close association between male rape and homosexuality/homophobia may be one way for participants to express their disgust at this act . . . for male participants, male rape perception may be linked to a combination of hegemonic masculinity . . . and emotionally defensive/distancing factors'.<sup>70</sup>

A third theme to be found within the existing literature is negativity in response to men's reports of sexual victimisation. In the evidence presented in this article, there are examples of men being disbelieved, laughed at or demeaned as a result of their disclosures. There is also other evidence of negative reactions. On the basis of disclosures from four men who participated in a male rape survivors group, Isley *et al* found that their disclosures of being victims of sexual assault were met with negativity: 'Members shared personal stories about their negative responses of significant others when the rape was disclosed. Frequently, the men have encountered reactions such as hysterical laughter and assumptions about how "gay men would want to be raped"'.<sup>71</sup> Similarly, Jim, who was sexually assaulted whilst homeless, told *The Big Issue*:

I was kipping on the Strand one night and woke up to find a man with his hand inside my sleeping bag. He had his hand between my legs. It really shook me up. But when I confided in my friends they were just embarrassed and laughed.<sup>72</sup>

Likewise, Isley has also observed:

[Male victims] often feel safer suffering in silence and are reluctant to be revictimised by an unsympathetic legal system or disbelieving treatment professionals . . . Those who do report a sexual attack often experience hostile and isolating reactions from the very service providers that are available to provide help. Too often, seeking assistance in dealing with the trauma that can follow a rape too often becomes a humiliating experience in which feelings of depression, anger, guilt, sexual confusion, and anxiety

68 S. Kippax and G. Smith, 'Anal Intercourse and Power in Sex Between Men' (2001) 4 *Sexualities* 413 at 420, 418.

69 For discussion, see above n. 5.

70 Anderson, above n. 67 at 241–2.

71 P. J. Isley, 'Adult Male Sexual Assault in the Community: A Literature Review and Group Treatment Model' in A. W. Burgess (ed.), *Rape and Sexual Assault III* (1991) 171–2.

72 L. Johnston, 'Homeless Sex Scandal', *Big Issue*, 11–17 September 1995, 11, 15.

are reinforced in survivors as they become revictimized by the police, community agencies, and bewildered friends.<sup>73</sup>

Clearly, these findings indicate ignorance, homophobia and insensitive social attitudes towards male victims of rape and sexual assault. Such reactions might also be explained as an attempt to distance or as a defensive mechanism. Further, negativity might also result from assumptions about masculinity.<sup>74</sup> Poor institutional responses to male rape may result from a combination of all of these factors. However, it would be unwise to over-emphasise the impact of societal attitudes on institutional practices. Other factors also have a role to play. In a recent British study involving interviews with gay and lesbian victims of domestic sexual and physical abuse, researchers found that the response of agencies was mixed. The study found that voluntary and statutory agencies have no:

coordinated responses for responding to domestic abuse in same sex relationships . . . many of the problems lie in agencies being governed by a domestic abuse model that is heterosexual and it is this that often prevents an appropriate response because of assumptions made about who might be the survivor/perpetrator.<sup>75</sup>

Clearly, raising awareness of rape outside of the male–female paradigm is crucial in improving service responses. So too, the training of police officers with regard to the dynamics and impact of male rape and sexual assault.

### **Is there credible evidence of a disparity in treatment?**

It is a mainstay of feminist analysis of rape law and its enforcement that '[t]he legal world, of courts, trials and even police investigations, is structured along gendered lines'<sup>76</sup> and that the interests of male defendants are favoured over the interests of female rape victims.<sup>77</sup> If the criminal justice system operates to promote the interests of male *defendants*, then a question that requires consideration is how are male rape *victims* to be situated?<sup>78</sup> The increasing recognition of male sexual victimisation has given rise to a growing number of claims that male rape

73 Above n. 71.

74 Pelka, above n. 59 at 252. Pelka recounts being told by one police officer: 'The good cop told me how upset he'd seen "girls" become after being raped. "But you're a man, this shouldn't bother you".'

75 Donovan, above n. 44 at 20–1.

76 A. Mooney, 'When a Woman Needs to be Seen, Heard and Written as a Woman: Rape, Law and an Argument Against Gender Neutral Language' (2006) 19 *International Journal for the Semiotics of Law* 39 at 66.

77 C. Smart, *Feminism and the Power of Law* (Routledge: London, 1989) ch. 2.

78 For some feminists male rape is merely another facet of men's victimisation of women:

'Rape law sets the boundaries within which it is acceptable for men to have sex. It is about *men's* not women's sexuality: men act, women are acted upon; men force, women succumb; men are the subjects, women are the objects. This is the case even where both the parties involved are men; as has frequently been observed, the raped man is culturally feminised by the act of rape' (emphasis in original).

AHRC Research Centre for Law, Gender and Sexuality, *Response to the Office for Criminal Justice Reform's Consultation Paper: 'Convicting Rapists and Protecting Victims of*

victims are receiving preferential treatment by the legal process, as compared to female rape victims. These claims can be judged on evidential and interpretative grounds.<sup>79</sup> Indeed, it is clear that the argument that male rape victims are receiving preferential treatment is littered with errors and other shortcomings.

The first time it was claimed that adult male rape victims were receiving better treatment than female victims, was when it was asserted that in the first case of male rape to come before the courts in this country, the complainant received preferential treatment during cross-examination.<sup>80</sup> More recently, Ruth Graham claimed that within the medical and social science literature male rape is 'often portrayed as especially horrific',<sup>81</sup> that 'male rape is often portrayed as more physically violent [than female rape]'<sup>82</sup> and '[t]he view of male rape as especially horrific is . . . evident in the legal sphere'.<sup>83</sup> Such claims have little in the way of factual foundation.<sup>84</sup> Graham also makes reference to

*Rape—Justice for Victims of Rape* (2006). The problem with such an approach is that it allows men's specific needs and experiences to be ignored because their victimisation is reclassified as something involving male dominance of women. The reality, of course, is that men who are raped remain *men*, consequently, one has to consider how they should be treated by the criminal justice system. See also: C. MacKinnon, *Women's Lives Men's Laws* (Harvard University Press: London, 2004) 427, n. 118.

- 79 A consideration of whether feminist theory would predict the preferential treatment of male victims, which appears to be assumed by those claiming bias, is beyond the scope of this article. The author is currently co-writing an article that discusses the subject.
- 80 H. Codd, 'The Treatment of Complainants', *New Law Journal*, 29 March 1996, 447. Codd made this allegation of preferential treatment without reference to the trial transcript which indicates that the complainant did not experience bias. For discussion, see Rumney and Morgan-Taylor, above n. 5.
- 81 R. Graham, 'Male Rape and the Careful Construction of the Male Victim' (2006) 15 *Social and Legal Studies* 187 at 188.
- 82 *Ibid.* at 190. There is in fact empirical support for the 'portrayal' of male rape in this way: A. Kaufman *et al.*, 'Male Rape Victims: Noninstitutionalized Assault' (1980) 137 *American Journal of Psychiatry* 221 (finding that 14 male victims suffered greater physical injury than 100 randomly selected cases of female rape). Graham does not acknowledge the existence of this research until the end of her article. She appears unaware of a three-year follow-up study by Kaufman that supported his earlier findings: 'Rape of Men in the Community' in I. R. Stuart and J. G. Greer (eds), *Victims of Sexual Aggression: Treatment of Children, Women and Men* (Van Nostrand Reinhold Company: New York, 1984) 158. Graham also neglects analysis that cautions against making the claim that men are more often physically injured on the basis of limited evidence: P. Rumney and M. Morgan-Taylor, 'Male Rape Trauma Syndrome in the US Courts: *People v Yates*' (1997) 1 E & P 232. More recent research, also neglected by Graham, has examined the injuries suffered by male and female rape victims and suggests differences and similarities in levels of injury, depending on injury type: N. W. Pino and R. F. Meier, 'Gender Differences in Rape Reporting' (1999) 40 *Sex Roles* 979; I. A. McLean *et al.*, 'Forensic Medical Aspects of Male-in-Male Rape and Sexual Assault in Greater Manchester' (2004) 44 *Med Sci Law* 165 at 168; I. A. McLean *et al.*, 'Further Aspects of Male-on-Male Rape and Sexual Assault in Greater Manchester' (2005) 45 *Med Sci Law* 1, 5–6.
- 83 *Ibid.* at 204, n. 20. See also: 'Do Courts View Rape More Seriously When It Is a Man Who Is the Victim?', *Guardian*, 12 June 1995.
- 84 The claim that male rape is portrayed as 'especially horrific' in the 'legal sphere' arises from the case of *R v Richards* [1996] 2 Cr App R (S) 167. Graham does not refer to any passage in either the first instance or Court of Appeal decision to substantiate her claim. What is clear from the analysis of this case is that the sentence of life imprisonment for an attempted rape on a male was entirely consistent with sentencing guidelines developed in cases of female rape. In other

the 'almost exclusive focus on anal rape of men, rather than on anal rape in general' in discussions prior to the 1994 amendment that recognised non-consensual penile-anal intercourse as rape in English law.<sup>85</sup> She also claims that 'the discourse that led up to the 1994 amendment suggests that the penetration of the male body is the important violation, rather than the violation of the anus (male or female) . . . how is it that the penetration of the male anus is privileged?'<sup>86</sup> This claim is contradicted by the actual parliamentary debates associated with this amendment in which there are repeated references to the anal rape of women.<sup>87</sup> There was even a suggestion that anal rape maybe more traumatic for women, than for men.<sup>88</sup> These debates, probably for the first time ever, did pay significant attention to the problem of male rape. This can be explained by the fact that at the time, males were completely excluded as victims from the definition of rape. The amendment was seen as a means of securing equality of treatment with female victims, as well as ensuring appropriate labelling and sentencing for male *and* female victims of anal rape.<sup>89</sup> In the midst of these various claims of male rape being 'privileged', Graham does not explain how such treatment could exist alongside the dire treatment of male rape and sexual assault victims within the prison system,<sup>90</sup> and the less than preferential treatment of male victims detailed in sources discussed throughout this article.<sup>91</sup>

Another recent attempt to claim bias in the treatment of male rape is the most ambitious yet. It has been correctly observed by Candida Saunders that 'with the exception of Gregory and Lees' study,<sup>92</sup> there is a distinct lack of data relating to the receipt and disposition of male rape

words, *Richards* did *not* treat the attempted rape of a man as 'especially horrific': P. Rumney and M. Morgan-Taylor, 'Sentencing in Cases of Male Rape' (1998) 62 JCL 263.

85 Graham, above n. 81 at 196.

86 *Ibid.* at 197.

87 *Hansard*, HL, vol. 556, cols 63, 65, 66, 20 June 1994; cols 1605, 1607, 11 July 1994; *Hansard*, HC, vol. 241, col. 179, 12 April 1994. In the earlier House of Commons debates, where the amendment was the subject of a brief debate, there was more discussion of the anal rape of males, than of females: *Hansard*, HC, vol. 241, cols 174–180, 12 April 1994. Graham might interpret this as evidence in support her thesis. But it is evident from the debate that MPs felt a need to highlight the existence of male rape given that at the time it was a problem with little, if any, societal recognition. It is also worth noting, that the Government initially rejected the amendment to extend the law of rape to cover male (and female) victims of anal rape. This hardly suggests an eagerness to 'privilege' male victims.

88 *Hansard*, HL, vol. 556, col. 66, 20 June 1994 (Lord Swinfen).

89 These points were repeatedly referred to in the debates and yet this is entirely unacknowledged by Graham. See, e.g., the *Hansard* references, above n. 87.

90 See, e.g., Human Rights Watch, *No Escape: Male Rape in U.S. Prisons* (Human Rights Watch: New York, 2001); H. M. Eigenberg, 'Correctional Officers' Definitions of Rape in Male Prisons' (2000) 28 *Journal of Criminal Justice* 435.

91 Despite Graham's article purporting to be a study of scholarship on male rape, her literature search is very limited and she misses a huge body of work in the fields of law, history, criminology, psychology and medicine. Consequently, many of her observations and conclusions rest on an incomplete understanding of the literature.

92 J. Gregory and S. Lees, *Policing Sexual Assault* (Routledge: London, 1999) ch. 5.



allegations throughout the criminal justice process'.<sup>93</sup> (citation added) Yet, despite the lack of crucial qualitative data, Saunders claims that there is evidence to suggest that men are treated more generously than women by the criminal justice system:

The comparison is necessarily crude and its findings therefore tentative; however, the analysis does suggest some disparity in criminal justice responses to male and female rape complaints posing questions for further empirical research.<sup>94</sup>

Indeed, Saunders has suggested that there is bias within the criminal justice system's handling of male rape cases at every point of the process: from the police response to male rape to the sentencing of those convicted of male rape.<sup>95</sup> Her claim that male victims receive better treatment at the hands of the criminal process appears to rest largely on one limited quantitative study by Gregory and Lees in which they assessed a sample of 60 reports of male rape and sexual assault. They found that of the 11 cases that reached court there was a very high conviction rate of between 75 per cent and 100 per cent.<sup>96</sup> Gregory and Lees compare these rates with the conviction rate in cases of female rape that they said was 'about' 30 per cent and speculate that these statistics 'suggest that juries may be more willing to convict in cases where the victim is male'.<sup>97</sup> Such a suggestion assumes much, not least, that these cases are very similar in general characteristics to cases involving female victims.

A number of problems lie in using the Gregory and Lees sample to prove bias. The number of cases that reached court was miniscule: a total of 11. Indeed, Gregory and Lees note that '[t]hese figures are very small so it is dangerous to draw any firm conclusions from them'.<sup>98</sup> In making comparisons one has to ensure that what is being compared is amenable to such an analysis. For example, the Gregory and Lees study is not a

93 C. Saunders, 'Revisiting Rape: A Gender-Comparative Exploration of the Investigation and Prosecution of Rape Complaints,' *Socio Legal Studies Association Annual Conference*, 27–29 March 2006, University of Stirling. The quote is taken from the conference abstract.

94 *Ibid.*

95 The claim as it pertains to sentencing was based on Home Office statistics which indicate that in 2002 and 2003, of the 32 and 35 respective cases of male rape that were sentenced in Crown Court, none received a sentence of less than four years. By contrast in the 535 and 556 cases of female rape, a small number received sentences of below four years. However, it is difficult to claim bias on this basis, because it is impossible to judge the appropriateness of sentences without an examination of case facts and the application of relevant sentencing guidelines. Further, when one examines the data for 2004 and 2005 we find sentences of less than four years for male, as well as female rape cases. It is also worth noting that there was a slightly higher average sentence for female rape in 2003. In 2002, the average sentence for female rape (80 months) was six months longer than for male rape (74 months). In 2004 and 2005 the average sentence is slightly higher for male rape.

96 Gregory and Lees, above n. 92 at 130. Saunders ignored other research by Lees that suggests male complainants do face significant problems with the criminal justice system: above n. 48 and accompanying text, as well as the clear examples of problematic police responses discussed by Gregory and Lees.

97 Gregory and Lees, above n. 92 at 130.

98 *Ibid.* at 129.

study exclusively of 'male rape allegations' as suggested by Saunders. Gregory and Lees clearly state: 'The majority of the rapes [sic] reported to the police involved indecent sexual acts other than anal penetration'.<sup>99</sup> In other words, most of the cases in this sample did not involve rape. When comparing the outcome of a tiny sample of male rape *and* sexual assault cases, with thousands of rape cases involving female victims, one is evidently not comparing like with like. Another fundamental problem with using this research to suggest bias on the part of the criminal justice system is the fact that we know so little about the cases that are included. We know nothing of the extent to which these particular allegations were corroborated or even how many cases resulted in guilty pleas.<sup>100</sup>

In the context of the conviction rate in the Gregory and Lees study, one also has to consider alternative explanations to the claim of bias. An example can be found in the context of the legal recognition of marital rape. In the early 1980s David Finkelhor and Kirsti Yllo examined the operation of the new marital rape law in California. In 1980–81, of 28 cases in their survey, that were prosecuted, 25 (89 per cent) resulted in conviction.<sup>101</sup> By any measure this is a very high rate of conviction for rape offences. Could it therefore be reasonably concluded that criminal justice professionals and jurors in California were treating marital rape cases with greater seriousness than non-marital rape cases? This is not a reasonable explanation. As Finkelhor and Yllo point out the cases being prosecuted 'were, on the whole, extremely brutal'.<sup>102</sup> This suggests the presence of corroborative evidence that a rape took place and would make securing a conviction easier. In addition, 60 per cent of defendants in their study pleaded guilty at trial.<sup>103</sup> Since Gregory and Lees provide very little information on the cases in their study, it is impossible to judge whether similar factors might be at work to explain the high conviction rate in their sample of 11 cases. By the same token, the absence of such evidence hardly provides a positive basis for arguing bias.

As a general observation on the claim of bias it is also worth pointing out that 'disparity of treatment' cannot be proven merely by differing outcomes in cases. As already noted, much depends on the nature of cases that are being reported and proceed through the criminal justice system. In addition, the treatment of rape cases is dependent on other factors that are often ignored by those claiming bias: 'although official

<sup>99</sup> *Ibid.* at 120.

<sup>100</sup> It is unclear from the study how many cases attracted guilty pleas. There appear to have been guilty pleas in at least two out of the 11 cases: 128–9, though it might be that this is the same case referred to twice. The same caution should be shown in relation to figures produced by the joint HMCPSI/HMIC report that found a higher conviction rate for male rape than female rape (37.5 per cent vs 21.8 per cent). Of the 1,735 recorded offences considered, 7 per cent involved male victims: above n. 22 at paras 6.19–6.21. Again, without a detailed understanding of case characteristics it is impossible to judge whether the cases involving male victims generally involved greater corroborative evidence.

<sup>101</sup> D. Finkelhor and K. Yllo, *License to Rape: Sexual Abuse of Wives* (Free Press: New York, 1985).

<sup>102</sup> *Ibid.* at 223.

<sup>103</sup> *Ibid.* at 227–8.

bias has played an important role, most rape-case attrition appears to be due to a combination of the victim's unwillingness to seek legal redress, the prosecution's burden of proof in criminal cases, and jurors' attitudes'.<sup>104</sup> Consequently, it cannot be fairly concluded on the basis of the current evidence that there is 'some disparity in criminal justice responses to male and female rape complaints'. Indeed, the current evidence clearly supports the claim that both male and female rape victims face significant difficulties when reporting rape. Some of these difficulties, as demonstrated here, are similar, others maybe largely unique, such as homophobia in the context of male rape victims.<sup>105</sup> In order for those who claim gender bias to build a convincing case they require data that actually supports the conclusion of differential treatment and which indicates bias and excludes other explanations. Put simply, to suggest bias on the basis of the current evidence is at best speculation and at worst is an 'ideological projection'<sup>106</sup> whereupon a particular theory-led interpretation is imposed on evidence, irrespective of whether or not the evidence supports that viewpoint.

## **Conclusion**

This article has brought together information on the police treatment of adult male victims of rape and sexual assault from a variety of sources and jurisdictions. It has also brought into the public domain a small number of interviews with men who have reported their experiences of sexual victimisation to police in England. It would be inappropriate to generalise from these findings and claim that they represent the experiences of all male victims.<sup>107</sup> However, within these findings, taken together with the wider literature we do see the emergence of certain themes. Some of these themes are also in evidence in the literature involving female victims. Men's experiences are varied, some positive, and some negative. The positive experiences emphasise the importance of communication, a sense of being believed and sensitivity on the part of the police. The negative experiences highlight problems with some complainants feeling that they are being met with discouragement or disbelief and ignorance, on the part of some officers, of the dynamics of male rape. An examination of the wider evidence suggests that there is a basis for arguing that there is linkage between male rape, homosexuality and negative attributions. These findings indicate the importance of training for criminal justice professionals and others working in support

104 D. P. Bryden and S. Lengnick, *Rape in the Criminal Justice System* (1997) 87 *Journal of Criminal Law and Criminology* 1194 at 1384.

105 There is evidence from the USA that victims of female-on-female sexual assault rarely report to the police and other agencies for fear of a homophobic response: L. B. Girshick, *Woman-to-Woman Sexual Violence* (Northeastern University Press: Boston, 2004) 75, 146.

106 J. Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press: New Jersey, 2006) 387, n. 15.

107 Fortunately, the treatment of male rape victims by the police is the subject of several ongoing studies in Britain.

services.<sup>108</sup> This is a view expressed by Susan Estrich, who recently wrote a syndicated newspaper column concerning the plight of male rape victims in the USA. In her article she drew comparisons with her own experience of rape: '[i]n so many respects, other than my gender, it was just the same as what is [sic] happening to boys my age then in Houston. It is time we treated it the same'.<sup>109</sup> She also points to the need for education on this issue, stating:

This is a crime of violence, not sex. They need men—in police departments, hospitals and district attorney's offices—with the training and expertise to deal sensitively with the physical and emotional issues involved, in order to win the victim's cooperation, in order to catch and successfully prosecute the perpetrator. They need, in short, all the support structures we have built for women victims, and then some. It is time to take male rape out of the closet and deal with it in the courts.<sup>110</sup>

There is one further point to add to Estrich's call for change. The treatment of male rape and sexual assault appears to be partly influenced by societal attitudes and rape myths. Consequently, the training of criminal justice professionals is important, but so too the challenging of misconceptions and ignorance in wider society. Legal scholars may have a role to play in both these endeavours, but only if they are prepared to listen to men's experiences and not impose dubious meanings on our current understanding of adult male sexual victimisation.

108 M. Davies, 'Male Sexual Assault Victims: A Selective Review of the Literature and Implications for Support Services' (2002) 7 *Aggression and Violent Behaviour* 203.

109 Estrich, above n. 14.

110 *Ibid.*