TRUE “LIES” AND FALSE “TRUTHS”

Women, Rape and the Police

by

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*The range of what we think and do
is limited by what we fail to notice.
And because we fail to notice
that we fail to notice
there is little we can do
to change
until we notice
how failing to notice
shapes our thoughts and deeds.*

(R. D. Laing, 1970)

ABSTRACT

The notion that women lie about rape is a prevalent belief with pervasive influence. This thesis comprises a series of studies aimed at elucidating understanding of the ways in which this belief affects police officers' responses to women who report rape.

The thesis begins by examining the historical context within which rape came to be defined as a crime, and considers the impact of dominant assumptions regarding the 'nature' of women on the formation of rape laws. Factors affecting criminal justice system responses to women who report rape are identified, considering in particular the ways in which these have been influenced by views of women's inherent deceitfulness.

Having established the ideological and socio-political framework, attention then shifts to a consideration of rape in contemporary New Zealand. The views of rape complainants regarding their experiences of reporting rape and sexual assault to the police are presented, highlighting the centrality of 'being believed'. Quantitative and qualitative data are presented from an analysis of police sexual assault investigation files and are used to highlight the factors affecting police officers' perceptions of complainants' credibility. The file analysis is complemented by material derived from interviews with sexual assault investigators, which explores further the issue of allegedly false rape complaints. The final study presented documents the experiences of a group of rape victims who largely conform to the police stereotype of the 'perfect victim'. In this chapter, women who were attacked by serial rapist Malcolm Rewa reflect on the ways in which they were treated by the police. Their accounts are useful in highlighting the potential for positive police-complainant relationships when the issue of the victim's credibility is not the dominant concern.

Taken together, these studies provide a series of different perspectives on police responses to reports of rape. The results indicate that concerns about the victim's credibility continue to dominate reporting procedures, and that negative stereotypes

concerning lying, vengeful women remain influential. Recent attempts by the police to improve women's experiences of rape investigations are acknowledged, but the overall conclusion suggests that the scope for positive change will remain limited while such negative stereotypes prevail.

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CHAPTER 1: INTRODUCTION

*Man is the hunter; woman is his game;
The sleek and shining creatures of the chase,
We hunt them for the beauty of their skins;
They love us for it, and we ride them down.*
(Alfred Lord Tennyson, 'The Princess',
quoted in McSherry, 1993, 27)

Man/woman; right/wrong; reason/emotion; truth/lies. Dichotomous thinking polarises that which defies polarisation. Yet the crime of rape has been legally defined for centuries in ways which uphold a rigid rape/not rape distinction. Moreover, the societies within which such definitions have been promulgated have reflected patriarchal privileging, with the gender class 'men' being equated with rightness and the 'truth' and the gender class 'women' regarded as wrong and full of lies. The long history of men's violence towards, and subjugation of, women depended in large part on a woman's protests and accusations being silenced. Little wonder, then, that women came to doubt the worth of their words and the value of their selves. Men's credibility was dependent on continued perceptions of women's lack of credibility, or on what Jocelyne Scutt (1997) has termed the construct of the 'incredible' woman, the woman who is hard to believe, who defies belief. As Scutt says:

Women's words are rightly accusatory, when women have been raped, bashed, stalked, harassed, sexually exploited, killed. Women's words are rightly accusatory, when they claim these crimes and civil wrongs have been committed against them by men. Men know this. No doubt this is why a male-designed legal system protests so loudly through its written and unwritten laws, rules, practices and procedures that women's words are suspect. That women's words are not credible. That every woman is an incredible woman. (Scutt, 1997, 4)

Issues of belief and credibility are more pronounced in the history of criminal justice system responses to rape than they are for any other crime. This has been justified on the basis that rape incidents usually involve no witnesses apart from the key parties involved, thus reducing the situation to one of her word against his. Other crimes, such as robbery, may also depend on the victim's testimony alone but, unlike rape, robbery has not been perceived in such problematic terms. The fact that rape is the word of a **woman** against the word of a **man** is of critical import. Women's words, historically, have counted for less than men's – if only because men regarded them that way. Throughout the history of patriarchy, men's 'truth' prevailed and women's voice was silenced (Taslitz, 1999). One of the most effective silencing mechanisms, when simply ignoring women was no longer a sufficient control strategy, was to declare women's voices to be lying. Women, it was alleged, either deliberately tell falsehoods, or are so deceived that they do not know their own minds. Either way, the word of a woman counts for little.

The focus of this thesis is on the responses of the police to women who have made complaints of rape. Whilst the crime of male rape must be acknowledged and is achieving greater recognition legally and socially (Gillespie, 1996; Lees, 1997; Mezey and King, 1992), it is female victims who are the subject of this thesis. This is not only because of their numerical dominance, but because the history of the crime of rape precluded recognition of male victims until very recently. A major strand of analysis running through this thesis focuses attention on the patriarchal legacies still present in contemporary thought and practice. Of particular relevance are the ways in which heterosexual relationships have been structured to privilege men and accord them greater rewards and credibility than women. Men's definitions, interpretations and experiences have tended to be accorded the status of 'objectivity' and 'truth'; in contrast, women have traditionally been ignored, subsumed within accounts pertaining to men, discounted as liars, or at best seen as wholly subjective. This thesis explores the issue of why women's words have been construed as non-believable in the context of police responses to women rape complainants. It focuses on the factors assumed by the police to denote credibility

and seeks to identify the basis underlying police beliefs in high levels of false rape complaints.

The studies

Internationally, there has been comparatively little research conducted on complainants' experiences of reporting rape to the police since the significant reforms to law and procedures which took place in the mid-late 1980s. New Zealand was one of the first countries to attempt major reforms of its rape laws and, amongst other developments, introduced an expanded, gender-neutral definition of 'rape' in 1986, as well as abolishing married men's 'right' to spousal immunity from prosecution for rape (Sullivan, 1986). However, whilst some important, recent studies have been undertaken in England (Gregory and Lees, 1999; Temkin, 1997; 1999), the United States (Taslitz, 1999) and Australia (Easteal, 1998a), developments in New Zealand had remained virtually uncharted since a major study pre-dating these reforms (Young, 1983). An initial interview-based study that I participated in provided the impetus and direction for the studies presented here (Jordan, 1998a). It identified that the issue of being believed was a key concern for women when they approached the police with a report of rape, and that scepticism and suspiciousness towards rape complainants appeared to be common amongst police investigative officers. These themes informed the research design for this thesis.

As a series of related studies on rape, this thesis is primarily concerned with the depiction and analysis of police responses to female complainants of rape and sexual assault. The specific aims of this research were as follows:

- To identify and examine the factors which inform police decision-making in relation to female rape complainants;
- To understand why police officers express doubts as to the authenticity of women who make rape complaints;

- To gain an understanding, from the complainant's perspective, of police practices, and the attitudes necessary to establish positive police-complainant relationships.

The first study documented here was originally conducted in the mid-1990s, and involved the interviewing and analysis of 48 women's experiences of reporting rape and sexual assault to the police (Jordan, 1998a). One significant finding emerging from this study was the centrality of issues of belief and credibility as they related to police perceptions of rape victims. The identification of this issue informed the decision to embark on three subsequent studies: the first of these involved an analysis of police files to determine the factors affecting investigative decision-making; the second involved interviews with experienced detectives to elicit their views on rape investigations and aspects of victims' credibility; and the third involved interviews with a group of women deemed highly credible – the victims of a serial rapist – in order to ascertain the extent to which 'perfect' victims receive 'perfect' policing, and what we might learn from this experience.

Perspective taken

It is important in any research endeavour to acknowledge one's values and beliefs in order to clarify the nature of the lens through which one looks at the world. As Liz Stanley and Sue Wise pointed out so cogently, research emerges from, and in turn is experienced by, the researcher and is not simply the outcome of detached, 'objective' practices (Stanley and Wise, 1993). In my case, that lens must inevitably reflect my position as a white, middle class, middle aged (but feisty!) woman living in a society that bears the twin, and related legacies, of patriarchy and colonialism. As a criminologist with a background in sociology, I consider it not only important but essential to contextualize individual acts within their social structural location. This 'location' is, for me, not a fixed, static entity but a fluid concept which evolves and mutates through time. Any understanding of contemporary dynamics must

acknowledge the legacy of the past, ever present even if slightly obscured or more nuanced. As a feminist, I am particularly aware of the critical impact of gender and of the significance of living in a society marked by gender differences and inequalities. And as a woman who is passionate about social justice, I am motivated to probe beneath surface realities to ascertain the truths and do what I can to promote fairness and equity.

Interviewing dynamics

Much of the data gathered for this thesis was obtained through in-depth interviews with either police detectives or women who had been raped or sexually assaulted. These interviews were all based on semi-structured schedules, using predominantly open-ended questions. Such an approach was favoured for its flexibility and responsiveness and for the ways it encourages those being interviewed to tell their realities in their own words (Reinharz, 1992). Kenneth Tunnell has observed, in relation to interviewing criminal offenders,

A sociological verstehen of crime means accepting the subjective viewpoint and understanding actors' states of mind while rejecting the notion that science can deliver a complete or ontological reality. It also implicitly means that empirical knowledge is subjective and typically reflects (among other things) investigators' interests, values and biases. (Tunnell, 1998, 214-215)

The theoretical foundations and methodological infrastructure of this thesis inevitably reflect my biases and subjective impressions as well as those of all the many participants in the research process. These must be acknowledged, rather than hidden behind a façade of 'scientific objectivity' that can never be sustainable in the value-laden world of social research. To quote Tunnell again,

Sociology, happily, is not value free, but is filtered through human qualities and emotions and, as a result, is both limited and liberated by the human state. (Tunnell, 1998, 217)

Acknowledging my own background was, therefore, central to the process of negotiating and establishing rapport with the interview participants. Early feminist researchers often commented about how easy it was for women to interview women (Bell and Roberts, 1984; Finch, 1984; Oakley, 1981). Subsequent writers have qualified this to some extent, noting that gender-identification alone may not be sufficient to overcome the structural divisions of race and class (Edwards, 1993; Horn, 1995). In my case, it seemed to be very easy to establish a good rapport with the women I interviewed, and this may have been aided by, in most cases, our sharing not only a common gender but also common ethnicity and similar class positions. However, rapport also seemed to be just as easy to gain with those women from a different ethnic or class background. What appeared to be more important was the women's sense of where I was coming from, what my credentials were, and why I was doing what I was doing. One, for example, asked to see a copy of other research I had published on rape and, during some of the interviews, it seemed appropriate at times for me to acknowledge that I, too, knew some of the realities of sexual victimisation. From what some of these women said, it seemed that in telling their 'stories' I was doing what many of them had hoped would happen, so we shared a common goal. Ultimately, the fact that I believe they could sense that I respected them and was committed to representing them accurately meant that I was privileged to have them share very personal, and sometimes still emotionally raw, experiences with me.

The interviews that I conducted with the police officers could have been quite different. To begin with, most were male and I was not, and they were 'police' and I was not. What may also have counted against me was my status as an academic, since the latter rarely rank highly in the eyes of many police. However, as both Edwards (1993) and Horn (1995) have said, it is possible to acknowledge structural

differences and turn them into advantages. Thus I tried to ensure that I approached these interviews in a way that communicated my position as someone who knew very little about the world of policing and was dependent on them clarifying my understanding. This was not hard to do, since at times my ignorance was palpably obvious! What was particularly important was the need to convey respect for the officers concerned and, on those occasions where I felt such respect waning, to consciously try to place myself in the shoes of that particular detective and try to understand the world from their vantage-point. I believe this helped immensely both in maintaining rapport and advancing my understanding and awareness.

Conducting research with both rape complainants and detectives impressed upon me the existence of diverse 'truths' and social realities. My experiences reaffirmed that there is no one, single, absolute Truth 'out there' waiting for the intrepid social scientist to discover it (Stanley and Wise, 1993, 113). Instead, competing and contradictory accounts were encountered and had to be negotiated, and within this process my experiences as the person involved in, and affected by, this research had to be considered.

Ethical issues

Any research involving people has ethical implications, and research involving persons who are traumatised and potentially vulnerable carries with it particular ethical responsibilities. Even the initial decision as to whether or not it is justifiable to interview women who have been raped is a difficult one to make. Of major concern is the potential for the research process to impact detrimentally on participants, and the fear that it may itself become a victimising experience. Involvement with the earlier study (Jordan, 1998a) had sensitised me to the paramount importance of these issues, and also persuaded me that sensitive, ethical, constructive research was possible in this area. It is also essential, and desirable, as a means of ensuring that the voices of rape complainants themselves could be heard.

For this to be achieved, however, it was important that certain safeguards were adhered to, along with a commitment to placing the women's welfare first and my research results second. In the case of the women interviewed primarily for the study presented in this thesis, the initial impetus came from some of the women themselves and there was a process of consultation between them and myself prior to any agreement that a study would be undertaken. Considerable effort was also taken by me, as the researcher, to minimise the risk of retraumatisation in interviewing the women. The procedures adopted are outlined further in Chapter 7.

Research limitations

All research endeavours have particular methodological limitations attached to them. These are addressed in the relevant chapter for each particular study presented here. The decision to approach the issue of complainant credibility through a series of related studies was, however, made in an attempt to counter some of the limitations within each individual study. Considerable effort has been made to interpret the results of these studies within the context of an extensive review of the literature (presented in Chapter 2). Interpretation is by its very nature a subjective act; thus the possibility of my misinterpretation of some data must be acknowledged. This inevitably raises the question of misinterpretation according to whose definition of a situation, and makes it important to recognise whose voice is privileged in the accounts that follow.

Deciding whose voice to privilege

Interview subjects are not all positioned equally, and that is especially true when the research involves gathering material from different sets of respondents. In this case, the police occupy a position of authority in a system which redefines victims as witnesses, making it additionally important for a researcher to be aware of potential

power imbalances. It is against this backdrop that the question arises of whose account to privilege or situate in the most influential position. This is not necessarily the same as inferring one particular position to be more truthful than another, because the 'truth' of any particular context may be somewhat different for the parties involved. As will be seen in the research results, the narratives of rape adhered to by the police may be ostensibly about the same incident as that reported by the victim, yet appear quite different in emphasis and interpretation. Subjective experiences differ, and the issue for the researcher becomes one of whose subjective experience to position more centrally – in other words, the subjective emphasis of the researcher becomes apparent at this point. In the research presented here, it is the voice of the victims that is privileged by using accounts from raped women themselves to both begin and end this thesis. The data obtained from the police are, in effect, sandwiched between the studies conducted with the women themselves, whose perceptions of how they were treated lie at the heart of this thesis.

'Victims' and 'survivors'

Considerable debate has surrounded the use of the terms 'victim' or 'survivor' in relation to women who have experienced sexual violence. The term 'victim' was criticised, often rightly so, for reinforcing a sense of women's passivity and consolidating her victim-status. The preference for 'survivor' was equated with recognition of women's active resistance and sense of agency (Kelly, 1988; Stanko, 1985). More recently, however, the 'victim' or 'survivor' debate itself has appeared to be in danger of reinforcing a binary opposition which negates the complex realities of women's experience. An unintended consequence resulting from over-emphasis of the survival aspects can be a silencing of the victim's voice, and a minimising by some women of the effects of sexual violence. Women whom I interviewed often expressed divided views on this issue, with some explicitly rejecting being told, as they saw it, that they 'had to call themselves survivors'. In this thesis, therefore, I use both terms at different times, consciously choosing the term 'victim' either when

acknowledging that a person has been criminally offended against, or when it is important to ensure adequate recognition of the effects of men's violence and victimisation on women as well as women's capacity for survival.

Outline of chapters

The structure of this thesis consists primarily of the results and analysis of the rape studies conducted. The background to each study, and the methodology adopted, are contained within the relevant chapter.

Chapter 2 presents an overview of the literature deemed to be of particular relevance to the questions explored in this thesis. Drawing parameters around the possible subjects to be included in this review was one of the most difficult tasks I faced. The subject of rape traverses a series of contested and highly disputed terrains. Sex, power, privilege, law, and religion are all evident in discussions of rape through the ages, making charting a course through the literature a complex and potentially hazardous task. What is included here represents my attempt to consider the ways in which themes evident in the literature on rape and on the nature of women combine to influence criminal justice system responses to women who make complaints of rape.

In Chapter 3, a summary is presented of the first rape study I was involved in conducting. This research comprised interviews with New Zealand women who had been raped, and amongst its findings was the importance to the women of being believed by the police, especially when met by apparently high levels of police mistrust. This result formed the platform for the studies presented in the rest of this thesis.

Chapters 4 and 5 outline the central findings from my analysis of police rape investigation files for the year 1997. The principal aim of this research was to gain

an understanding of the factors affecting police decision-making processes in relation to rape complaints. In particular, I wanted to understand how the evidence had been evaluated and why the investigation of cases was so often terminated.

Chapter 6 presents the findings which emerged from interviews with detectives concerning their experiences in sexual assault investigations in New Zealand. This study sought to identify commonalities and differences in detectives' perceptions, and to advance my understanding of the ways in which police officers view and assess the credibility of rape complainants.

In Chapter 7, the focus shifts to a consideration of the experiences of one group of rape victims in particular and their interactions with the police. Their status as the victims of a serial rapist meant that few of these women encountered disbelieving attitudes or negativity from the police. Moreover, their importance to the success of the investigation was recognised and conscious efforts were made by the police to treat them with consideration and respect. For these reasons, they provide a good opportunity for gaining further insights into factors affecting the quality of police-complainant relationships.

The final chapter, Chapter 8, links the findings from these studies together and back to the wider literature. The themes emerging are discussed, and the implications of this research, for the police in particular, are outlined. The overall conclusion acknowledges the difficulties involved in any determination of 'truth', while maintaining that adherence to particular myths and 'lies' about women will continue to stand in the way of the 'truth' behind any one case being recognised and justice delivered.

* * *

CHAPTER 2: THE BROADER CONTEXT

We're trapped inside a legacy, and its core is patriarchal. (Johnson, 1997, 4)

From seduction to rape, from rape to seduction, an easy and endless patriarchal loop. (Taslitz, 1999, 57)

Introduction

Police perceptions of victims' credibility in relation to rape complainants forms the central focus of this thesis. Before addressing, in subsequent chapters, the research projects that provide the principal data for this thesis, an overview is provided of the broader context surrounding these studies.

The contextual material presented here derives from an examination of both historical and contemporary literature on rape, and contains coverage of traditional ideas pertaining to the nature of women as well as reviewing developments in police policy and practice. The material on rape is presented first, in order to provide an overview of the principal subject matter at the heart of this thesis. The ways in which rape has been defined in law have reflected dominant ideological discourses, a key strand of which involves underlying assumptions and beliefs concerning the nature of women. The second major section of this chapter explores these underlying views on women, with particular relevance to perceptions of women's veracity, since this impacts significantly on responses to women who are rape complainants. In turn, these broad views on women form part of the social climate within which criminal justice system agencies, such as the police, function and operate; thus the third main focus in this chapter concerns police responses to women as victims of sexual violence. In particular, brief coverage is provided here of studies that have sought to obtain the views of complainants themselves regarding their treatment by the police, as well as outlining recent police initiatives developed in response to their views.

I. RAPE: NATURE, DEFINITIONS AND HISTORY

What is rape?

Defining rape is a difficult task (Bourque, 1989; Box, 1983; Katz and Mazur, 1979; Kelly, 1988; Los, 1994). While simple definitions can be advanced, such as rape is sex forced on a woman without her consent, these attempts to define rape ignore the fraught mine-fields that surround the categories 'sex', 'force', 'woman', and 'consent'. Take the concept of 'sex', for example. If sex is equated with acts of intercourse involving penetration by a male's penis of a woman's vagina, then this effectively limits the accepted understanding of what is sexual to practices reflective of masculinist and heterosexist assumptions. In other words, the view of sex which prevails is one formulated by men to describe sex with women. Moreover, if definitions of rape are predicated on such assumptions, only those offences are acknowledged which similarly involve the penetration of a woman's vagina by a man's penis, with the added ingredient of 'force', on his part, and/or 'lack of consent', on hers. In writing about the 'legitimate victim', Weis and Borges noted:

The widely held conception that rape is primarily a sexual act easily leads to the argument that for sexually experienced women, one more act should not matter. If, however, rape is understood as humiliation, violation of self-determination and an intimate attack on the woman's personhood, then the extent of her previous sexual experience should bear little impact on the treatment she deserves as an authentic rape victim. (Weis and Borges, 1975, 122-123)

Much feminist debate has railed over the issue of whether or not rape is a sexual act (Bell, 1991; Brownmiller, 1975; Donat and D'Emilio, 1992; Griffin, 1975; Howe, 1998; Los, 1994; Muehlenhard et. al., 1992) and over the extent to which an emphasis on the sexual aspect minimises the power and coercion aspects involved and obscures acknowledgment of rape as an act of violence (Howe, 1998; Kelly,

1988). To remove or obscure the power dimensions reduces rape to an act of clumsy seduction or views it as the result of poor communication by a lust-driven male, thereby privileging the voices of excuse-finding men over their victims, many of whose lives will never be the same again. Feminists' acknowledgment of the relationship between 'sex' and 'power', however, can also differ in emphasis and interpretation. While some have stressed men's use of their power to achieve sexual satisfaction (for example, Barry, 1979), others have shown how sex is used to achieve or maintain power (for example, Kelly, 1988). Jocelyne Scutt has expressed it this way:

*Far from rape **not** being 'about sex' as some are wont argue, rape is directly relevant to 'sex'. Certainly for the victim, it is nothing to do with loving, caring, consideration which we see as **consensual** 'sex'. But it is 'about sex': the 'sex act' is intimately linked with power and violence in the act of a rapist..... Rape is a manifestation of power, aggression, violence and brutality specifically directed **through** sex. It is not 'not sex'. (Scutt, 1993, 182)*

What seems particularly important is preserving a sense of the structural interconnectedness of sex and violence within heterosexual relationships in a patriarchal society, in a way which acknowledges the diverse forms and manifestations such violence may take. Within this, recognition must be given to women's own processes of perceiving, defining, and responding to sexual violence. This approach will inevitably expand and complicate traditional legal definitions, stressing as it must the diverse and even contradictory ways in which sexual violence is experienced and understood.

One major complication surrounding the definition of rape, then, arises from the issue of deciding whose voice to privilege, whose perspective to speak from. Rape as defined by the victim will be a very different phenomenon from rape as defined by the perpetrator. Rape as defined by the victim may also differ markedly from its

definition in law or, for that matter, in much of criminology. Moreover, those who have been raped may define rape very differently from those who have not; but even this is not straightforward. For many victims of rape themselves, the definition of rape is a vexed issue, particularly in relation to naming their own experience as rape (Kelly, 1988; Patton and Mannison, 1998; Wood and Rennie, 1994). Rape itself is an emotive word, and has traditionally borne its own cloak of stigma. Many sexual assault victims struggle to make the decision to report; the majority never do (Bachman, 1993; Burt and Katz, 1985; Epstein and Langenbahn, 1994; Freckelton, 1998; Koss et. al., 1987; LeDoux and Hazelwood, 1999; Russell, 1984). The reluctance to define oneself as a rape victim can be linked to various concerns, including fear of being blamed or ostracized, fear of the perpetrator and/or consequences, mixed emotions towards the perpetrator (who is typically already known by the victim and may be her boyfriend or partner), and a general reluctance to admit to being sexually violated (Holmstrom and Burgess, 1991; Kelly, 1988; Wood and Rennie, 1994).

In recent years, there has been extensive challenging by feminists of the traditional definitions of rape for being so narrowly restricted to one particular sexual act and of the law generally for being biased in favour of men (Donat and D'Emilio, 1992; Kelly, 1988; Mason, 1995; Taslitz, 1999). To define rape in law as penetration by the penis of the vagina, without consent, excludes the possibilities of men being victims or women the perpetrators of sexual assault, and prevents recognition of other sexual acts which may be experienced as equally violating. The argument has been advanced that the traditional definition derives from heterosexual men's obsession with, in effect, one object and one opening (Howe, 1998; Walklate 1995). Any woman who has had a bottle or hairbrush rammed up her, or had a penis forced down her throat to the point where she wanted to gag, or had objects thrust up her anus, knows only too well that sexual violation comes in many forms. The force accompanying sexual violation may also be more subtle than these examples would indicate. The presence of weapons or threats may be used to secure victims' compliance; or compliance might be obtained by the implicit threat of withdrawal of

funds, or by promises of protection or favours. While gender inequality continues at a social level, women will remain vulnerable to sexual and physical violence in their relationships with men.

The law reflects the polarised thinking characteristic of Western philosophical tradition: black and white, either/or, binary opposites, a choice of one or the other, not a mixture, not 'both/and' but 'this **or** that'. The dichotomous thinking of the law bears little resemblance to the continuum of experiences described by women as sexual assault.

In particular, legal discourse tends to assume that there is a fine line between consensual and non-consensual sexual intercourse: that is, behaviour which might look like rape can become consensual in the blink of an eye.... [The] line drawn between rape and legitimate sexual behaviour has been drawn in a location which erases the experiences of the majority of victims of sexual assault. (Young, 1998. 145-6; 147)

When women speak in their own voices, they detail a much broader range of sexual experiences that feel coercive and bring with them the violation and traumatising effects of coerced sex, than those legally defined as rape/attempted rape (Kelly, 1988; Young, 1998). Even within the law itself, the difference between sexual violation and indecent assault, for example, is often blurred, with some of the incidents classified as indecent assault being described in very similar ways to others classified as attempted rape or sexual violation (Walklate, 1995; see also examples in Chapters 4 and 5 of this thesis).

Accordingly, many feminists argue that legal definitions do not resonate with women's experiences (Kelly, 1988; Scutt, 1998; Smart, 1989; Young, 1998). If we accept the high incidence and prevalence figures, we can see that rape is not a rare, aberrant act, but is what Walklate terms an 'ordinary' experience, and one that is far more common than generally supposed.

Rape is the ordinary product of ordinary (male, heterosexual) behaviour. That helps explain the emotiveness of the issue. It touches upon all our experiences both male and female. It is its ordinariness which renders it so difficult to grasp and embrace. It challenges us all to examine ourselves and our relationships very carefully. In so doing, it can make us all uncomfortable. And so it should. (Walklate, 1995, 85)

It is, therefore, apparent that legal definitions of rape do not necessarily reflect women's experiences of sexual assault and violation. The law assumes a clear dividing line between rape and not-rape, a distinction which primarily only male judges and lawyers seem able to uphold. For most victims of sexual assault, the black and white categories of the law fade into multiple shades of grey. The legal definitions seldom come close to what women experience, and how women feel. Thus, as Liz Kelly has so clearly set out, women's experiences are depicted much more easily along a continuum of sexual violence than they are encapsulated within the law's unyielding categories (Kelly, 1988). As she expresses it:

The male definitions of sexual violence which are encoded in laws and which underlie the stereotypes are limited and draw on the extremes of the continuum of sexual violence. (Kelly, 1988, 157)

Criticism of narrow legal definitions of rape has led to many jurisdictions introducing legal reforms in this area. In New Zealand, the most significant changes occurred in 1986, when legislative amendments were introduced which, amongst other changes, expanded the definition of sexual assault to make rape, as traditionally defined, one category of the new offence of 'sexual violation' (Sullivan, 1986). These changes acknowledged that the penis was not the only weapon of sexual assault, nor the vagina the only orifice able to be invaded. Hence, sexual violation offences were redefined to include forced anal and oral sex, using any object able to be used for that purpose, and the concept of 'rape victim' was expanded to apply to both male and female victims of sexual assault. One other major change introduced

at this time involved the abolition of spousal immunity. Previously, rape charges could not be laid by a wife against her husband; as the next section explores, there was legally no such act as rape in marriage. The abolition of spousal immunity removed the husband's prerogative, making it legally possible, at least, for men to be charged for acts of sexual violence perpetrated against their wives.

Within this thesis, the terms 'rape' and 'sexual violation' are used synonymously, reflecting legal acknowledgment of the expanded concept of rape. Much of the material presented reflects upon police practices and categorizations, seeking understanding of **police** processes of naming and definition. The women interviewed for this research were those who had reported their experience of sexual violence to the police, and who had, thus, identified the behaviour they experienced as violating and unacceptable. What is of particular interest here is the extent to which these women's definitions were accepted and acted upon by the police, and the factors identified as critical in determining police responses.

Measurement of rape

The measurement of rape has been a vexed issue, partly because of definitional debates, and also because of the profound methodological difficulties associated with the quest for reliable data in this area. One major difficulty associated with the measurement of rape arises from the fact that not all studies define rape in same way (Kelly, 1988; Walklate, 1995). Some researchers use definitions which equate with legal definitions in order to facilitate comparisons with police statistics (for example, Russell, 1990; Warshaw, 1988); others allow respondents to define their own experience (for example, Hall, 1985; Kelly, 1988).

Official crime statistics have long been recognised as notoriously unreliable indicators of the incidence of rape. Most rape victims do not report (Bureau of Justice Statistics, 1991; Feldman-Summers and Norris, 1984; Kelly, 1988; Kilpatrick

et. al., 1987; Koss et. al., 1988; Williams, 1984), or minimise the severity of the incident (Kelly, 1988; Kelly and Radford, 1996; Wood and Rennie, 1994). Results from one United States study, for example, showed that between five and eight percent of adult cases of sexual assault were reported to the police, compared with 61.5% of robberies and 82.5% of burglaries (Kilpatrick et. al., 1987). Even if reporting rates were higher, police in different jurisdictions often have different recording practices, even between districts within nations, let. alone on an international basis. One approach taken by researchers is to estimate the **incidence** of rape, i.e. the total number of incidents occurring in a specified time period or, expressed slightly differently, the number of new episodes of an event occurring during a specific time period. For example, the 1988 British Crime Survey offers an incidence estimate of 60,000 sexual offences against women for the year 1987, of which about 13,000 were reported (Walklate, 1995).

An alternative measurement strategy has involved estimating **prevalence** rates, i.e. the number of individuals who experience victimisation within a specified time frame. Examples of these include Hall's prevalence study (1985), which reported that one in six women have experienced rape, and one in three sexual assault, in their lifetime, and also studies by Russell (1990) and Painter (1991), who both reported a prevalence rate of one in seven for women who had experienced rape in marriage.

It was hoped that many of the measurement difficulties associated with the traditional reliance on official statistics would be circumvented by victimisation surveys, but they also have questionable validity. For many years, for instance, the British Crime Surveys yielded exceptionally low rates of sexual abuse and violence, a finding acknowledged to emanate from the methodology of the survey rather than from low rates of sexual assault per se (Gregory and Lees, 1999; Maguire, 1994; Stanko, 1988). The New Zealand Survey of Crime Victims 1996 attempted to address this issue by using a self-completed questionnaire on the topics of sexual offending and partner violence. The survey revealed that more than a quarter of the

women respondents had experienced some form of sexual victimisation (Young et. al., 1997).

One major limitation with early victimisation surveys arose from their apparent insensitivity to the impact of asking questions about sexual violence on the respondents and their current situation. The practice of including a few questions on rape and family violence in the middle of a general crime survey came to be criticised, especially when it was possible that interviewers were asking such questions while other family members, and possibly perpetrators, were also present (Gregory and Lees, 1999; Stanko, 1988). Specific surveys began to be designed, worded carefully and administered in potentially safer and less compromising environments (for example, see Morris, 1997).

Probably the best known of these, in relation to rape and sexual assault, has been the Sexual Experiences Survey (Koss et. al., 1987). The questions were worded in 'neutral' language that asked women to describe different sexual experiences, which were then assessed by the researchers to determine whether these incidents, as described, met legal definitions of rape, attempted rape, and so forth. The survey by Koss, Gidycz and Wisniewski (1987) was conducted on college campuses in the United States of America. The results showed that over one quarter of the respondents (27%) recalled an incident that had occurred since their 14th birthday and that met the legal definition of rape, or attempted rape. Eighty per cent of these incidents involved someone whom the victim already knew, with 57% involving someone they were dating at the time.

The Sexual Experiences Survey was replicated with a smaller sample of university undergraduate students in Auckland, New Zealand, and yielded strikingly similar findings (Gavey, 1991). The results showed that 25% of the participants had been raped or had experienced attempted rape, with known perpetrators accounting for 83% of the sexually abusive incidents. The latest large-scale victimisation survey in New Zealand, the New Zealand National Survey of Crime Victims 1996, estimated

that 26% of female respondents had experienced some form of sexual victimisation in their lifetime (Young, et. al., 1997).

Whilst victimisation surveys, if administered sensitively, can provide potentially more reliable estimates of prevalence rates, it is likely that they will still underestimate the extent of sexual victimisation. The reluctance of many women to define and name what they experienced as violence, minimise its severity, or simply 'forget' and try to erase it from their memory, means that, as Kelly has noted, 'all estimates of prevalence are likely to be underestimates' (Kelly, 1988, 158). This is especially so in relation to sexual violations perpetrated by men who are known by the victim who, as the research cited above shows, make up the majority of sexual assault victims.

Analysis of the traditional legal definitions of rape and how it is measured raises issues concerning who decided what was to be recognised and counted as rape, and on the basis of what assumptions. This leads us to a consideration of the historical and socio-cultural contexts which gave rise to legal definitions and criminal justice system practices.

The history of rape

When we consider the changing legal responses to rape over the centuries, we see before us a microcosm of gender relations in the social world. In many ways, the history of rape is the history of women.

The earliest references to rape depict a social process by which men were condoned in their taking of a woman by force in the context of acquiring a spouse. Bride capture literally meant the capture and forcible rape of a woman whom the man desired to possess as his wife (Brownmiller, 1975). To take possession of a

woman's sexuality meant that a man had control of her for life. As Brownmiller comments:

Forcible seizure was a perfectly acceptable way – to men – of acquiring women, and it existed in England as late as the fifteenth century.
(Brownmiller, 1975, 17)

The legacy of bride capture has remained evident until very recently in our rape laws, and still persists in many social groups. In New Zealand, a woman was prohibited from making a claim of rape against her husband until 1986, precisely because the husband was viewed in law as the sexual master of his wife. When she said 'I do' in the wedding ceremony, and promised to 'love, honour and obey', she was effectively consenting to sex on demand – his demand – for the rest of her life. There was no right of refusal, no choice for her – the choice was all his. Her 'no' had no meaning in the context of a relationship where, legally, it was only his 'yes' that counted. To try and avoid sex, women often resorted to appeals to what they hoped was his better nature, his non-sexual nature, which is possibly where the much joked about wife-line – 'I've got a headache' – had its origins.

The question of why men rape both defies comprehension and is horrifyingly understandable. On the one hand it seems unfathomable to imagine why, in the year 2000, a toddler like 'Lillybing'¹ should die with tears and abrasions to her vagina, caused by a penis or other object. On the other hand, why are we so shocked and surprised? While there is absolutely no justification for such an act and there is no question, in my mind at least, that it is totally reprehensible, nevertheless in my heart I feel a thud of resonance and familiarity. It feels as if there is an inevitable logic, a line of history, running from the rapes of children in ancient Greece to the rape and murder of 'Lillybing' in New Zealand in the 21st century. A similar thread links the

¹ 'Lillybing' was the family name for Hinewaoriki Karaitiana-Matiaha, who 'sustained a catalogue of mutilations and injuries' in the three days leading up to her death at the age of 23 months. These included recent forceful and traumatic penetration of the vagina (Sunday Star Times, 20/5/01, C-3).

rapes of women in Bosnia (Kadic, 1998) to the rapes of women in contemporary Western societies such as New Zealand, Australia, the United Kingdom, and the United States of America. To have hope for the future, we have to acknowledge the possibility for this thread to be broken. We have to believe that it is possible to transform gender relations at all levels. It is in some ways tempting to feel complacent that, in 2001, in New Zealand we have a woman as Prime Minister, a woman as Chief Justice, a woman as Governor General, a woman as Attorney General and a woman Secretary for Justice. With all these key positions being occupied by women, we may think we can relax and be self-congratulatory that this was the first country in the world to give women the vote, and think this means New Zealand is a land of gender equality, a country where 'girls can do anything'. While girls may be encouraged to do more things now than they were in the past, boys, it seems, can not only do 'everything' but get away with most of it as well. Rape laws have changed; the reality of rape has not.

The oldest written laws making rape a crime date back to the early part of the 17th century before Christ, contained within the Code of Hammurabi (Smith, 1974). As Smith says:

Rape is no doubt as old as the human race. We know it to be as old as our brief six millennia of recorded history, also that it is embodied in the legends of the pre-record era. (Smith, 1974, 188)

Early Hebrew laws also provided criminal penalties for rape. Deuteronomy, Chapter XXII, spells out the penalties for rape: If a man forced a betrothed damsel 'in the field', the penalty would be death to him and no punishment would be given to her (the assumption being that, if she was in a remote place, her cries for help would be in vain). If, however, a man in the city lay with a woman, who was betrothed and a virgin, and she failed to cry out, then the penalty was death to them both (Smith, 1974). Moses was, in effect, the lawgiver, the judge and the jury; through him the invisible god Yahweh spoke. This one-god was wholly masculine, meaning that no

longer would the goddesses who embodied feminine essences of love, passion and fertility be worshipped (Smith, 1974). This appropriation of power by men heralded a vast change in attitudes persisting to today; as men's 'rights' prevailed, so the status of women fell. When God became male, the man became god.

The early rape laws were passed to protect virginity, with greater concern apparent for the man whose daughter/property may be sullied by rape than for her as a person in her own right. In many ways, this is understandable given that women were not viewed as autonomous social beings (Brownmiller, 1975; Clark and Lewis, 1977). As the property of men, women were items of exchange, commodities whose social value lay in their reputation and reproductive abilities. From women, the sons and heirs of men were born. In a patriarchal, patrilineal society, men sought to ensure the legitimacy of their offspring and the continuance of their bloodline. Against this backdrop, the crime involved in the rape of a woman derives from one man defiling the property of another man; the victim of rape is accordingly seen, not as the woman who has been violated, but as the man to whom she 'belongs' (Brownmiller, 1975).

As Susan Brownmiller (1975) noted in her defining work on rape, the origins of marriage date back to the earliest form of conjugal union in society, achieved through bride-capture. As the name suggests, this practice involved a man forcibly seizing a woman and raping her, by which act he lay claim to her and made her 'his'. Although such a practice has long been rejected for its violent origins, its legacy has lived on for centuries in marriage ceremonies and legal codes. Wives, historically, have long been regarded as the property of their husbands; in New Zealand, for example, it was not until 1868 that wives were legally allowed to own property in their own right (Sutch, 1973). Moreover, the presumption of coverture stipulated in effect that, if a woman committed a criminal offence in the presence of her husband, he (not she) was to be held criminally liable for that act, since she was not an autonomous legal actor (Sutch, 1973).

The notion of the wife being the property of the husband clearly underpins the spousal exemption from rape laws which, in effect, licensed husbands to rape. This notion is said to date at least from the days of William the Conqueror when legal rules allowed victims of rape to 'forgive' the man by consenting to marry him (Easteal, 1998b; Snelling, 1975). Such thinking was still evident in the 18th century in Lord Matthew Hale's famous pronouncement:

The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband which she cannot retract.
(Hale (1736), quoted in Easteal, 1998b, 108)

Hale came to be recognised as the most cited authority on rape in England, and his assertion prevailed in many international legal codes until recently. Spousal immunity was abolished in New Zealand in 1986, in Australia in 1991 (Heath, 1998, 14) and in the United Kingdom in 1991 (Kennedy, 1992, 112). The rape of women in marriage, however, continues (Easteal, 1998b). As Susan Griffin observed:

The laws against rape exist to protect the rights of the male as possessor of the female body, and not the right of the female over her own body. (Griffin, 1975, 33)

Changing perspectives on rape

Examination of published works on rape reveals a chronological development that parallels closely shifts in social movements and attitudes. During the 1950s and 1960s, most literature dealing with rape focused on the rapist (Walklate, 1995). Men who raped were typically portrayed as either mentally or sexually disordered (Scully, 1990), and the notion of victim precipitation was also strongly apparent (Amir, 1967; Box, 1983; Katz and Mazur, 1979, Chapter 9). Concern was voiced, not regarding

women's vulnerability to being raped, but over men's vulnerability to unfounded charges of rape (for example, Firth, 1975). Men, it seems, were the victims, victims of either their own disordered states or of women's disordered states. As Elizabeth Kemmer notes in her bibliography of rape:

From approximately 1965 to 1968, rape literature focussed on the offender and the unjust system that convicted the falsely accused male of so heinous a crime. The sympathy of the public was with the offender, thus making the victim the guilty party in a rape situation. This attitude is reflected in statistics and literature concerning the incidence of rape, in rape reporting, and in rape convictions for the years mentioned. Rape was still a fairly silent, secret crime – a crime whose victims were the most silent of all.
(Kemmer, 1977, xii)

The growth of the Women's Liberation Movement, from the late 1960s onwards, encouraged women to engage increasingly in critical reflection of their position in society and in their relationships with men. As what Marilyn French called 'the slime under the rug of patriarchy' began to be exposed (French, 1992, 198), dominant myths about rape were questioned and debated (Burt, 1980; Kelly, 1988; Shapcott, 1988; Smart, 1976). The notion of victim precipitation was criticised for its victim-blaming implications (see for example, Weis and Borges, 1975 and Smart, 1976) and feminists' awareness of the issues associated with rape, child abuse, and domestic violence grew throughout the 1970s and 1980s (Adler, 1987; Bourque, 1989; Herman, 1992; Kelly, 1988; Morris, 1987; Smart, 1989; Stanko, 1985). Critical social analysis was accompanied by political and legal strategies aimed at improving the status of women and reducing their vulnerability to such practices (Gregory and Lees, 1999; Smart, 1995; White and Perrone, 1997). Victims of rape were portrayed as deserving of sympathy; support and crisis centres were established in the 1970s; and campaigns were launched which aimed at achieving social and legislative reform (Kelly, 1988; Kemmer, 1977, xii).

The perception of rape as a sexual act was challenged by early feminist writers such as Brownmiller (1975) and Griffin (1975), who argued that such an emphasis obscured the violent and aggressive dimensions of the assault (Walklate, 1995). Thus radical feminists (for example, Dworkin, 1982; Barry, 1979) strove to have rape recognised as being different from simply unwanted sex; since traditionally no 'good' woman wanted sex, unwanted sex was regarded as the norm and not something to complain about. Instead, rape was defined as violence and attention was focussed on issues of men's power and control.

Redefining rape as primarily an act of violence and control, however, can deny the sex-specific nature of these acts. Thus later writers, such as Kelly (1988), MacKinnon (1989), and Smart (1989), tried to reinstate the sexual dimension to analyses of rape and sexual assault. Sexual violence is both sexual **and** violent, not simply one or the other. The question then becomes: why do men so frequently choose to be violent in sexual ways?

Stereotypes of deranged stranger assailants began to be challenged, and from the mid-1980s onwards, increasing acknowledgment was given to date and acquaintance rape (Bohmer, 1991; Estrich, 1987; Warshaw, 1988). The 'ordinariness' of men who rape came to be stressed (Allison and Wrightsman, 1993; Kelly, 1988; Stanko, 1985), with the earlier psychopathological explanations being at least supplemented, if not replaced, by sociological and criminological accounts emphasising societal and structural variables (Smart, 1989). During the 1990s, increasing emphasis began to be placed on the relationship between men, rape and masculine identity (Jefferson, 1997). Scully and Marolla (1993), in their studies of men convicted of stranger rape, identified a range of motivations underlying rape, from a stated desire to put women in their place, to viewing rape as impersonal sex with added risk and excitement. One man referred explicitly to the feelings of mastery and conquest he felt whilst raping a woman, likening it to the sense of supremacy felt after 'riding the

bull at Gilleys'.² Scully and Marolla suggest that such statements reveal the cultural roots of rape to be linked to the masculine quest for control, as expressed through conquest and penetration. Other writers (for example, Cameron and Frazer, 1987), have suggested that this search for control lies at the heart of masculinity, and can be linked to notions of 'male sexual propriety' and ownership, not only in relation to rape but also in domestic violence and in spousal homicide statistics (Polk, 1994; Wilson and Daly, 1992; Stanko, 1985). As Sandra Walklate says,

Recasting rape in these terms helps an understanding of why it is difficult to see the 'ordinariness' of rape and sexual assault. Women say 'no'; men fail (or refuse) to hear it. There is little in the heart of the cultural expectations associated with masculinity to encourage them to hear it. This does not mean that they cannot. (Walklate, 1995, 84)

Writers such as MacKinnon (1987) asserted that sexual violence was an inevitable feature of heterosexual relationships in a patriarchal society, in an argument that effectively reduces all heterosexual sex to rape, irrespective of whether either of the parties involved defined or experienced it as such. More recently, concern has been raised in some quarters that such an emphasis is reductionist and that, in reducing all heterosexual sex to violence, this approach ignores the diversity of both men's and women's attitudes towards, and experiences of, sex (Walklate, 1995).

Walklate (1995) maintains that the presumption that sexual violence is inextricably entwined in men's sexuality within heterosexual relationships removes the capacity for either women to be sexually violent or for men to be the victims of sexual violence. Nevertheless, early radical and lesbian feminists managed very effectively to shake the foundations of heterosexual supremacy by challenging the stereotypes and assumptions underlying dominant conceptions of men, women, sex, and violence (Barry, 1979; Daly, 1979; Dworkin, 1982; Kelly, 1988). What also needs to be

² Riding the bull at Gilleys' refers to a mechanical bull in a bar, which patrons take turns riding a la bucking bronco (Scully and Marolla, 1993, 41).

acknowledged, however, are the different ways in which gender mediates women's and men's experiences, such that the experiences of either abusing or being abused will differ for each, and warrant separate structural, as well as individual, analysis. While the critical gaze first fell upon social constructions of femininity, increasingly that gaze is being turned towards deconstructing masculinity (Baker, 1999; Carrington and Watson, 1996; Jefferson, 1997; Smart, 1995). Whereas the male was assumed to be the norm, and women were defined in relation to this male norm, no longer is this practice defensible. The question inevitably arises: why should men be accorded the subject position, the active voice, and the defining gaze? We now have thirty years of critical self-reflection by women, while most men seem still to be wandering in the wilderness of their own confused psyches (Johnson, 1997).

Understanding sexual violence within a patriarchal society involves understanding social constructions of heterosexuality and the ways in which these have privileged men's subjective realities. Cossins puts it this way:

Through the eyes of the sense common to men, a woman, as a constructed gendered subject, is considered to readily invent allegations of sexual assault, or say no when she means yes, conforming to a prevalent cultural belief that women should generally be sexually available to men....

*In fact, wherever there has been heterosexual intercourse, historically, it has been **assumed** to be consensual unless a complainant can prove otherwise. In light of this assumption, the spectre of the lying, immoral woman and the man falsely accused is a particularly potent cultural image that continues to undermine the administration of justice. (Cossins, 1998, 100) [Emphasis in original]*

Similar analysis needs to be conducted in the area of sexual violence as Ken Polk undertook in relation to men, masculinity and murder (Polk, 1994). He sought to unravel the complex threads involved in ways which incorporated the dynamic

nature of social and sexual relationships, rather than depicting these as fixed, static entities. The heterosexuality of my mother's generation was not the same as mine, nor of that of many of my students. So how has change occurred, and how can we better understand the processes involved in the construction of masculine and feminine identities? At the same time, paradoxically, the structures of heterosexuality essentially remain intact. Within these structures, though, there has been movement. What does this movement mean? Can we influence it in ways that reduce the most destructive dimensions and enhance the more positive aspects of our social and sexual relationships? If the structures really are immutable, no change is possible, but to accept this is to bid hope goodbye and with it any prospects of achieving a society where being female does not signify the likelihood of rape.

Rape and the law

Studying the laws of a land reveal much of import regarding what is prized and valued in that society. Traditionally, considerable effort was spent on attempting to establish law's supremacy and portraying its origins as divine and other-worldly. As such, the law was unquestionable, and its decrees absolute (Smart, 1995).

The history of rape legislation provides an illuminating window into the history of male-female relationships. Prior to the 19th century, rape was defined as carnal knowledge of a woman against her will; by definition, this act necessitated the use of force or threat by the accused and resistance by the victim (McSherry, 1998). From the mid 19th century onwards, after rape ceased to be a capital offence, the courts in England began to use the concept of 'lack of consent' to include situations where the victim of rape was asleep or inebriated or where there was fraud as to the nature of the act (cases cited in McSherry, 1998, 27).

Traditionally, the law has made the issue of consent the central concern. This effectively places the burden of proof on the victim (Adler, 1987; Edwards, 1981;

Kennedy, 1992; Lees, 1996; Lees, 1997; Scutt, 1997; Smart, 1989; Stuart, 1993). She has to demonstrate that her lack of consent was apparent, preferably by physical resistance. Commentary in a medical article from the early twentieth century illustrates the dominant discourse at that time:

The question whether or not an adult female can be forcibly induced against her will to submit to sexual intercourse was at one time seriously debatable, but the present consensus of opinion amongst those who should know is that so long as the woman remains conscious she cannot be compelled by force to acquiesce, no matter how physically strong the male nor how physically weak (within certain limits) the female. In other words, so long as the woman is physically capable of resisting the attack, accomplishment of the act is manifestly impossible, since it has been amply demonstrated that the male cannot successfully fight and copulate at one and the same time. (Mapes, 1906, 928-929)

The legal presumption of consent assumes 'normal' heterosexual sex is centred around the act of penetration, and that women enjoy being coerced or persuaded to engage in sexual intercourse. Sexual intercourse is presented as a hunt by the man, who chases, corners and conquers a demurely protesting female. In what has been termed the 'penetrative/coercive model of sexuality' (McSherry, 1998, 28), women are presented as passive and submissive in sex, assumed to be acquiescing unless they physically resist. Evidence of resistance will be observable, manifest in the visible, physical injuries that will supposedly accompany any genuine rape allegation (Edwards and Heenan, 1994; Harris and Grace, 1999; Kennedy, 1992). Even comparatively recently, defence lawyers have used the example of the coke bottle and the pencil³ to infer that rape is impossible if the woman displays any physical motion or resistance (Shapcott, 1988).

³ In this example, the defence lawyer passes the coke bottle to a jury member, asking him or her to move it round while the lawyer tries to insert the pencil into the bottle. The difficulty of achieving

The extension of such thinking effectively equates visible evidence of physical resistance with non-consent. Anything less than this betrays a woman's supposedly 'real' desires and inclinations. Her saying 'no' cannot be construed as adequate proof of lack of consent, since it is expected that women will say no when they mean yes (Scutt, 1998). According to this view, the word of a woman is not to be trusted. Women do not tell the truth; they are so deceived, they do not even know the truth. What, indeed, is 'truth' to a bent rib whose carnal and deceptive nature caused the downfall of the human race? When rape is described as a crime of passion, whose passion is being talked about? The language of sex has traditionally privileged men's voice over women's. Sex only counts if **he** penetrates her; sex is not complete until **he** has ejaculated; sex is not satisfying unless **he** is satisfied. Men need sex and women need men. To attract men, and to keep their man, women must satisfy them sexually. Men's sexual needs predominate; women's are denied, sublimated, or misinterpreted.

Until very recently, the law did not even acknowledge the various violent and coercive contexts in which women may be raped; for example, the presence of weapons or threats, or the impact of perpetrators occupying authority positions (such as priests or professors).⁴ Recognition is still seldom given to the paralysing impact of fear on prospective rape victims, rendering physical resistance impossible. As Liz Kelly's research established, and as confirmed in my own research (Jordan, 1998a), at the time of the attack, many rape victims become terror-bound, fearing they are about to die (Kelly, 1988). Sandra McNeill's research showed that women confronted by flashers can also fear death in such an unpredictable encounter (McNeill, 1987). Men's displaying of their penises, in a society where many use the penis as a weapon, can produce reactions as potent as if they had pulled a gun. Furthermore, the prevalence of sexual abuse and rape is so common that, frequently,

entry is likened to the apparent impossibility of sexual penetration occurring without a woman's co-operation (Shapcott, 1988, 185).

⁴ The legislation enacted in New Zealand in 1986 acknowledged to some extent the role of threat, and included the offence of Inducing Sexual Connection by Coercion, in which persons might abuse their authority to have sexual relations with another party (Sullivan, 1986).

a rape victim will recall previous violations and, as a survival strategy, may dissociate⁵ from the experience or decide to 'get it over with' as quickly as possible (Kelly, 1988). How can the law then, based as it is primarily on men's perspectives, reflect the diversity and complexity of women's realities and experiences? Kaspiew expresses this view well:

Women are the outsiders because rape law has for centuries reflected the patriarchal view of human relationships and sexuality which defines woman as 'other', and that which is possessed. Rape law reflects a construction of sexuality which discounts women's subjectivity and privileges the male perspective. (quoted in Easteal, 1998a, 1)

Or, as Catharine MacKinnon (1983) has succinctly asserted:

The law sees and treats women the way men see and treat women.
(MacKinnon, 1983, 635)

One area within which such a bias has been evident is in relation to the law of recent complaint, also known as the 'fresh complaint' rule. This law governs the evidential significance of when a victim tells others (especially the police) about the rape or abuse, and attaches differential weighting to complaints which were made at the first opportunity, compared with delayed complaints. The underlying assumption has been that the 'reasonable' victim should report sexual abuse immediately; delay or failure impacts negatively on the apparent truthfulness of the victim as a witness (LaFree, 1981; Maclean, 1979; Peters, 1975; Torrey, 1991). The laws regarding recent complaint evidence can be traced to the medieval common law rule that victims of violent crime (including rape) were expected to make a 'hue and cry' immediately upon violation (Brownmiller, 1975; Freckelton, 1998). Victims were,

⁵ 'Dissociation' refers to the psychological distress symptom evident in trauma survivors when they distance themselves by temporarily separating, or splitting themselves off, from the pain (Herman, 1992). This can induce a sense of numbness, and a feeling of not being in one's body.

in fact, expected to travel around their locality showing injuries sustained in the attack to 'men of good repute' and law enforcement officials (Bronitt, 1998).

Indeed, making a complaint of rape without raising a 'hue and cry' automatically resulted in the allegation being dismissed and the victim being prosecuted for making a 'false appeal'. (Bronitt, 1998, 44)

By the 18th century, the requirement of 'hue and cry' had been repackaged into a rule of evidence relating to the truthfulness of women who complained of rape. Blackstone's Commentary in 1769 clarifies the legal position:

[I]f the witness be of good fame; if she presently discovered the offence and made search of the offender; if the party accused fled for it; these and the like are concurring circumstances which give greater probability to her evidence. But on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place, where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these and the like circumstances carry a strong but not conclusive, presumption that her testimony is false or feigned. (quoted in Bronitt, 1998, 45)

The law of recent complaint presumes that victims of rape and sexual abuse are capable of reporting their violation to others at the first opportunity; otherwise the complaint is perceived to be suspect. Underpinning this doctrine is a basic distrust of the testimony of women. Thus, Bronitt says,

From a forensic perspective, both the timing and circumstances of the complaint provide the key to identifying false accusations. (Bronitt, 1998, 49)

In court, the prosecution may present a case to explain the victim's delay in reporting; or the jury is left to use 'common sense' to determine the significance or otherwise of any time lag. What is asserted is the 'naturalness' of prompt reporting, contrary to the findings of empirical research demonstrating that the more typical, 'normal' response to rape is for women not to report it at all (Burgess and Hazelwood, 1999; Kelly, 1988; Torrey, 1991). A senior New Zealand detective interviewed in 1976 expressed it this way:

If a girl complains very soon after the event this shows consistency of behaviour - that's how you'd expect a woman who'd been raped to act. If she doesn't complain for several weeks, perhaps until she's discovered she's pregnant, then that's less convincing. It could look as if she's complaining about being pregnant rather than about being raped. (quoted in Lloyd, 1976, 35)

A related area, which has also been the subject of recent reforms, concerns judicial warnings to the jury regarding a lack of corroboration in most rape allegations (Edwards and Heenan, 1994; Kennedy, 1992; Lees, 1996; Scutt, 1997). In the seventeenth century, Chief Justice Matthew Hale ruled that rape was a charge

... easy to be made and hard to be proved, and harder to be defended by the party accused, tho' never so innocent. (quoted in Lees, 1996, 131)

The legacy of this ruling continued formally within the courts until very recently, and persists informally, at an attitudinal level, still today (Lees, 1996). The fact that most rapes happen in private settings, with no witnesses, was offered as justification for the requirement for judges to warn juries of the possible dangers associated with convicting defendants who had been accused in such circumstances (Mack, 1998). In a book entitled Sex and the Law, an American Judge asserted:

There are few crimes in which false charges are more easily or confidently made than in rape. Experience has shown that unfounded charges of rape are brought for a variety of motives. The adage, 'Hell hath no fury like a woman scorned', is frequently encountered in rape prosecutions. (Ploscowe, 1951, 187)

Not only were rape allegations believed to be easy to make, but they were based on the word of a woman, which was viewed as no word at all. Carol Smart thus refers to the corroboration warning within the legal system as an example of the 'disqualification of women and women's sexuality' (Smart, 1989, 26). Judges would warn juries not to convict on woman's testimony alone, a sentiment clearly espoused in the words of an Australian judge:

[I]n cases of alleged sexual offences, it is really dangerous to convict on the evidence of the woman or girl alone... because human experience has shown that girls and women in these courts do sometimes tell an entirely false story which is very easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all. (Salmon LJ (1968) quoted in Mack, 1998, 61)

More recent critics have pointed out that no such warning is given in relation to other crimes, such as robbery, which are also likely to occur without the presence of witnesses (Bargen and Fishwick, 1995). The corroboration warning given in rape cases appears to be based, then, not only on the private nature of the crime but on the historic beliefs outlined earlier in this chapter regarding women's deceitfulness and lack of credibility (Mack, 1998; Smart, 1989; Temkin 1987). If women are neurotic, irrational, liars, and prone to fantastical imaginings, why should their word count against that of a man? The main problem with rape allegations, it seems, is that women make them against men.

Effects of rape

In relation to the effects of rape on victims, for many years these were minimised and the notion was even purported that not only were women minimally harmed by rape, but some even found the experience pleasurable. Assumptions regarding the extent to which women who were not virgins would be harmed by rape confirms again the confusion that arises when rape is perceived in fundamentally sexual terms. The traumatic effects of rape are minimised or negated when the violence within rape is ignored, along with the way it violates a woman's being and removes her sexual autonomy.

Since the mid-1970s, feminist work and research with victims of sexual violence has documented the extensive and often devastating effects of rape on the survivors (Burgess and Hazelwood, 1999; Crowell and Burgess, 1996; Goodman et. al., 1993; Kelly, 1988; Kilpatrick et. al., 1987; Koss, 1990; Resick, 1993; Wiehe and Richards, 1995). Victim Impact Statements were introduced to inform sentencing decisions, and the seriousness of the offence has to some extent been recognised by the State in extending the penalties available. Increasing recognition has been given to the effects of rape on victims of acquaintance and marital rape with a growing body of research documenting that the extent of the harm caused by rape appears to be little affected by the nature of the victim-offender relationship (Koss et. al., 1988; Riggs et. al., 1992; Wiehe and Richards, 1995). In other words, rape trauma is an effect of rape irrespective of whether the rapist is a stranger or the woman's husband.

Rape trauma itself has come to be defined as a 'syndrome', diagnosed when the common after-effects of rape are present and when a complainant's behaviour can be interpreted as consistent with having been raped (Burgess and Hazelwood, 1999; Frazier and Borgida, 1999). The concept of 'rape trauma syndrome' has been used to describe an acute phase of reaction followed by a longer period of reorganisation and recovery, during which time behavioural, somatic, and psychological effects may be observable (Burgess and Hazelwood, 1999). Some writers have argued,

however, that rape trauma syndrome has tended to be over-used as evidence of rape having **occurred**, rather than to educate the judge and jury regarding the **effects** of rape on complainants (Bronitt, 1998, 50-51), and the variability of those effects. Moreover, the naming of the effects of rape as a 'syndrome' raises concerns that such a label may serve to portray rape survivors as psychiatrically disturbed and unstable, rather than as women displaying typical reactions to a traumatic event (Gregory and Lees, 1999). 'Deviancy' lies in the actions of the rapist, rather than in the reactions of the victim. Also of concern is the possibility that lawyers or doctors appearing for the defence will use the absence of particular symptoms as 'proof' that the complainant could not have been raped (Bronitt, 1998; Gregory and Lees, 1999).

Greater education is clearly still needed concerning the diversity of ways in which sexual assault may impact on victims, often in ways which may appear at times to be irrational, bizarre, and contradictory (Burgess and Hazelwood, 1999; Bronitt, 1998; Freckelton, 1998; Kennedy, 1992). Deeper understanding is required of the various reasons underlying the reluctance of sexual assault victims to tell others about the rape/assault, and to enhance awareness of the psychological processes of avoidance, denial, and dissociation. In addition, the structural reasons which may be associated with delayed reporting also need to be addressed. These include the victims' perceptions of the police and criminal justice system, the extent to which they feel they will be believed and supported, and how much they fear being blamed by those around them (Jordan, 1998a; van de Zandt, 1998).

Much of the history of rape and rape legislation has been built upon a foundation of misogynist beliefs and assumptions concerning the 'nature' of women.

II. NATURE OF WOMEN

Women in pre-history

From the Biblical account of the Fall, women have been presented by men as deceitful, as natural born liars (Cavanagh, 1971; Easteal, 1998a). The devil tempted Eve, but it was Eve who seduced, deceived, and manipulated Adam, using her feminine wiles to beguile and lead him into sin. This account emphasises two parallel and paradoxical themes that have been significant in the history of male-female relationships. Firstly, one strand leading to the Fall was woman's weakness and openness to manipulation by the devil; the second strand stressed men's weakness and openness to manipulation by women. When Eve tempted Adam, not only did Adam suffer the consequences but, according to the story, these impacted on the entire human race. As depicted by patriarchal religions, all the woes and afflictions of humanity derive from this one source – the deadly charms of a woman. Judeo-Christian doctrines portray women's sexuality in dualistic terms, juxtaposing the virtue of the Madonna with the contemptibility of the whore (Easteal, 1998a; Summers, 1975).

Given the pre-eminence of patriarchal thought historically and cross-culturally, it is difficult to conceptualise even the possibility of alternatively based social systems. How, when one's vision and perception is channelled so narrowly through a patriarchal lens, can we imagine what life would be like in societies which did not depend on women's subjugation for their economic and social survival? While this topic is hotly debated, nevertheless there are many who argue that very early societies regarded women more positively than those of more recent times (Eisler, 1987; Gimbutas, 1989). Whilst there has been considerable romanticism concerning a golden age of matriarchy, nonetheless archaeological evidence from pre-Judeo Christian times suggests the possibilities of a time when women were revered and respected as nurturers and givers of life. Very early mythological thinking, for

example, posited creation stories in which, out of Nothingness, came Gaia⁶, giver of life. From her body the land and sea were formed, and from her fertile abundance came life itself. Gaia was prayed to as supreme being, the source of life and death, the Earth Spirit and the Great Mother.

Women's life-giving properties were regarded as a source of awe and mystery but were also feared for these same reasons. As men's fear of these mysterious womanly powers grew, the more likely they were to perceive women as a threat (Cavanagh, 1971). Myths and legends changed to depict women as unruly and in need of subjugation. As Cavanagh has observed:

From the time of the myth of Pandora, woman has been characterized as mischief-maker. (Cavanagh, 1971, 268)

In time, the power of Gaia was usurped by an Olympic world of superior male gods, and Gaia's name was replaced in Delphi by that of the rational male deity, the sun god Apollo (Highwater, 1990). Charlene Spretnak has argued that the concept of a warlike male god was brought into Greece when the land was invaded by patriarchal peoples such as the Dorians (Spretnak, 1984). Jane Ellen Harrison's anthropological research also established evidence for a pre-Hellenic mythology dominated by a matricentric spirit. Predating Spretnak, Harrison (1903, cited in Highwater, 1990) had similarly maintained that the concept of a male supreme being is a comparatively recent invention, which could be traced back to Zeus, about 2500 B.C. and later, about 1800 B.C., by Abraham, the first Old Testament patriarch.

The defeat of the mythical supremacy of the Mother Goddess was supposedly further signified in two events. For giving men the gift of fire, the Greek god Zeus first bound Prometheus to a rock, then punished the offspring of Prometheus by creating

⁶ Highwater refers to this Goddess by the name 'Gaia'; other terms used include Triple Goddess, Hera, Great Goddess, the Creatrix, and some refer to the Ten Thousand Names of the Great Mother Goddess (Wilshire, 1994; Gimbutas, 1989).

women (Highwater, 1990, 57). Hesiod wrote that when Hephaestus created the first woman, Pandora,

Into her heart he put lies and false words and treachery so she might be a sorrow to the men of the earth. (Hesiod, quoted in Highwater, 1990, 57)

As Highwater comments:

The transformation of a pre-Hellenic earth goddess into such a destructive demon as Pandora provides a fascinating insight into the workings of the patriarchal Greek mind. According to the famous myth about this first woman, all possible torments and evils, all wickedness and sorrow were contained in a box. Despite warnings not to touch the box, Pandora opened it, unleashing endless disaster upon men. Like Eve after her, it was Pandora's beguiling sexuality that allowed her to bring about the Fall. Thus Hesiod reflected the Greek attitude toward women when he wrote: 'Do not allow a sweet-tongued woman to beguile you with the fascination of her body.' Thus, the power of women had been villainized. (Highwater, 1990, 57-58)

Anthropologists and archaeologists have thus suggested that a rich oral tradition of myth-making pre-dated the efforts of Homer and Hesiod in the seventh century B.C. to document the classical myths (Highwater, 1990). Similar patterns occurred in other parts of the world, as Goddesses became devalued in many cultures, to be replaced by male gods (Gimbutas, 1989; Wilshire, 1994).

Men expressed doubts regarding the extent to which a woman's word could be trusted. This is exemplified in the legend of Cassandra, whose name means 'she who entangles men' (Mills, 1991, 40). Apollo gave Cassandra the gift of prophecy, for which he expected sex in return. She refused him and, in a fit of pique, he ensured that although her prophecies would be true, no-one would believe her. One of her

warnings, which went unheeded, was that the Greeks would use a wooden horse to bring about the fall of Troy. Mills writes that:

Cassandra symbolises a patriarchal refusal to trust in the words of women.
(Mills, 1991, 40)

The influence of Judeo-Christian thinking played a major role in reconstructing the portrayal of women. Eve, the first woman in the Bible, was formed from the bent rib of a man, and her inherent defectiveness sealed forever (Cavanagh, 1971; Highwater, 1990). She was depicted as the source and fountain of man's oppression (Griffin, 1975; Tong, 1984). Reflecting this image of the woman being a lying temptress, Tertullian stated in a letter to his wife:

In pain shall you bring forth children, woman, and you shall turn to your husband and he shall rule over you. And do you not know that you are Eve? God's sentence hangs still over all your sex and his punishment weighs down upon you. You are the Devil's gateway; you are she who first violated the forbidden tree and broke the law of God. (quoted in Tong, 1984, 99)

The Old Testament clearly delineated men's rights to abduct and rape women under certain conditions.⁷ Women were sealed in their status as chattels, as the property of men to be given, traded, stolen, and discarded. Such beliefs ensured men's social and sexual status, guaranteeing them ownership as well as easy access (Dworkin, 1982). While such an arrangement was in men's interests, clearly it worked to the detriment of women, who were not only treated as disposable chattels, but liable to be branded as whores once men had no further use for them. In this climate, the division of women from each other, into madonnas and whores, further reinforced men's social position and control (Summers, 1975).

⁷ For example, Deuteronomy, Chapter XXI, verses 10-15 spells out that in warfare a man take possession of a beautiful woman prisoner as his wife, until she ceases to please him, when he can discard her as he wishes.

The notion that, underneath, women **wanted** to be taken forcefully helped men appease their consciences. Writing in 500 BC, Herodotus, known as the Father of History, declared:

Abducting young women is not, indeed, a lawful act; but it is stupid after the event to make a fuss about it. The only sensible thing is to take no notice; for it is obvious that no young woman allows herself to be abducted if she does not wish to be. (Herodotus, quoted in Dworkin, 1982, 28)

Likewise, Ovid wrote:

Women often wish to give unwillingly what they really like to give. (quoted *ibid.*)

Misogynist sentiments continued throughout New Testament writings, evident especially in Paul's epistles. Women's carnality meant they were to be excluded from the possibilities of priestly status (Cavanagh, 1971), and their roles as men's subordinate wives and helpmeets secured. Christian writing strengthened the association of Eve with sexuality:

Eve, the temptress, became the symbol of female subordination and the overindulgence of women in lustful thoughts and actions.... eventually the female was absolved of sin through an association with the virginity of Mary, mother of Jesus Christ. But attitudes about women have changed very little in regard to the pervasive and powerful attitudes derived from Judeo-Christian mythology. Women are still regarded as inferior creatures torn between the innocence of Mary and the lustful willfulness of Eve. (Highwater, 1990, 23)

Such thinking was supremely evident in the misogynistic writings of St Augustine, who urged men of faith to love their wives spiritually and despise them physically:

A good Christian is found toward one and the same woman, to love the creature of God whom he desires to be transformed and renewed, but to hate in her the corruptible and mortal conjugal connection, sexual intercourse and all that pertains to her as a wife. (quoted in Tong, 1984,100)

Woman's hope comes with the resurrection, when to equip her for a state 'suited to glory rather than to shame', she will be effectively reborn without the organs associated with intercourse and reproduction (Tong, 1984). As many of the Church Fathers went on to proclaim:

Because of her sexual being and reproductive function, woman was less rational and less spiritual than man; that is, less able to distinguish between truth and falsity and less able to discern between good and evil. (Tong, 1984, 100)

Early Christian writing by St. Augustine had posited the division of women into the polarised categories of madonna and whore (Summers, 1975). This duality was very evident in the Victorian age (Seidenberg, 1971), where prostitution laws enacted in the nineteenth century were built upon notions of 'good' and 'bad' women, with the latter viewed as harlots and harridans (Eldred-Grigg, 1984). Although morally divided, the realities of life for both 'good' and 'bad' women were similar – both were effectively controlled by this division, had little sexual autonomy, and, if raped, neither stood much chance of having the rapist convicted. As we saw earlier, until very recently, wives could not bring rape charges against their husbands, and prostitutes in some jurisdictions even today find it difficult to successfully prosecute men for rape (Gregory and Lees, 1999; Smart, 1995). This situation prompted Seidenberg to comment:

Thus the classic 'bad' woman has no more choice than the classic 'good' woman, the wife. (Seidenberg, 1971, 226)

The emphasis in Christian thought on the virtues of the Virgin Mary elevated one woman in status whilst simultaneously condemning all 'ordinary' women for failing to attain such purity (Bullough, 1974). Women were increasingly despised and reviled, and portrayed as the embodiment of evil. Examples of common sayings about women from the Middle Ages provide graphic examples of such sentiments:

Wouldst thou define or know what a woman is? She is glittering mud, a stinking rose, sweet poison, ever leaning towards that which is forbidden her.

Woman was evil from the beginnings, a gate of death, a disciple of the servant, the devil's accomplice, a fount of deception, a dogstar to godly labours, rust corrupting the saints; whose perilous face had overthrown such as had already become almost angels. (quoted in Bullough, 1974, 173-174)

Sayings such as these, and comments about women's general inferiority, have not been confined to single nations or particular epochs. The patterns of social control which emerged have assumed diverse forms historically and cross-culturally, although with similar underlying systems of belief and essentially common goals. In China, for instance, women's social status was painfully controlled from approximately 1000 A.D. through the practice of foot-binding, a custom which ensured women's complete dependence on men for their survival (Daly, 1979). Men defined as erotic a practice which deformed women for life. As Andrea Dworkin expressed it:

Men were positive and women were negative because men could walk and women could not. Men were strong and women were weak because men could walk and women could not. Men were independent and women were dependent because men could walk and women could not. Men were virile because women were crippled. (Dworkin, 1982, 99)

Likewise, the witchcraft purges of the 14th-17th centuries were directed predominantly at women (Daly, 1979; Hester, 1992), and were expressly linked to women's sexuality. In 1484, the German monks, Kramer and Sprenger, graphically described in the Malleus Maleficarum (The Witches Hammer) how women were defective from the start, formed as they were from a bent rib. Not only were women imperfect, they were also inherently deceptive. Thus the Malleus Maleficarum depicted women as cunning, evil, and prone to consorting and copulating with the Devil. Witches, it was claimed, through the use of glamour, were able to ensnare men's penises, effectively emasculating them. The writers seemed to be trying to reassure their male readership when they noted that the 'virile member' was not 'really torn right away from the body' but hidden by the devil so that it could be 'neither seen nor felt' (Kramer and Sprenger, 1486, translated by Summers, 1971, 119).

Of women's voice the monks said:

For as she is a liar by nature, so in her speech she stings while she delights us. Wherefore her voice is like the song of the Sirens, who with their sweet melody entice the passers-by and kill them. (ibid., 46)

The threat of being labelled a 'witch' was a powerful measure of social control, which effectively limited and constrained all women's behaviour (Hester, 1992). What provided the context for such fears to flourish was the belief that women were 'inferior and sinful', which was utilised to curtail changes to women's economic position (Hester, 1992, 200).

Much of the Malleus Maleficarum may be dismissed as fantastical superstition; nevertheless, many of the ideas underlying its edicts filtered through society to influence the minds and thinking of both men and women throughout the ages. This is evident in pronouncements made by prominent philosophers. For example, Balzac asks:

Have you ever observed a lie in the attitude and nature of women? Deceit is as easy to them as falling snow in Heaven. (quoted in Larson, 1969, 18).

Likewise, Schopenhauer asserts:

Nature has given women only one means of protection and defense – hypocrisy, this is congenital with them, and the use of it is as natural as the animal's use of its claws. Women feel they have a certain degree of justification for their hypocrisy. (quoted *ibid.*).

Schopenhauer also stated that a perjury in a court of justice is more often committed by a woman than a man, and that indeed it could generally be questioned whether a woman ought to be 'sworn' at all (*ibid.*, 20). In a similar vein, Nietzsche, in Beyond Good and Evil, claimed:

[Woman's] great art is the lie, her highest concern is mere appearance and beauty. (quoted in Cavanagh, 1971, 275)

Literature reinforced such sentiments. Lord Byron proclaimed, for instance:

Believe a woman or an epitaph; or any other thing that's false. (quoted in Larson, 1969, 20)

Byron also penned the following verse, which has been enthusiastically adopted by legal writers such as Glanville Williams for providing 'evidence' of women's fickleness:

*A little still she strove, and much repented,
And whispering 'I will ne'er consent' – consented.*
(Byron, quoted in Naffine, 1997, 106)

Such sentiments did not disappear with the dawning of the twentieth century. 'Romantic' novels and movies have portrayed rape as emblematic of love.⁸ The woman, once ravished, has her sensuality awakened; the man, in raping her, is not seen as taking something from her; rather, in his reconstruction, he convinces himself that he is doing her a favour. Through rape, he awakens her sexual self. Like Scarlett in Gone With the Wind, her protests fade away and she swoons in exquisite pleasure at being taken so forcefully, so manfully. If Rhett wants Scarlett so much that he will rape her, he must indeed love her very much. Similar themes are evident in the writings of D. H. Lawrence, Henry Miller, and Norman Mailer (Dworkin, 1982), not to mention the 'soft porn' versions in countless Harlequin and Mills and Boon novels. Hardcore pornography, of course, presents its own versions of 'rape-as-seduction' and even 'rape-to-the-death' scenarios (Caputi, 1987).

Historical studies of sexuality tended to restrict themselves to anatomical observations and the mechanics of the sexual organs (Highwater, 1990). They portrayed the sexual self as fixed and immutable, and presented a view of sex as

... an obsessive natural force, a biological imperative focused entirely in the genitals. (Highwater, 1990, 5)

It is only comparatively recently that sexuality has come to be viewed as a social and historical construct (Bell, 1993; Foucault, 1981; Highwater, 1990; Smart, 1995). Sexual expression is not 'natural' and universal but is learned, acquired and adapted within particular social, historical and cultural contexts (Highwater, 1990). Rape has been viewed as an extension of the 'natural' sexual urge in men, and women advised to take all precautions necessary to keep men's sexual instincts in abeyance. The notion of men's uncontrollable sex urge has had clear social utility in shifting sexual responsibility on to women (Shapcott, 1988). If men are biologically

⁸ A woman interviewed in Patton and Mannison's (1998) study, for example, spoke of accepting rape in marriage because she had learned from romantic novels that it was a 'normal' part of marriage (Patton and Mannison, 1998, 36).

programmed to penetrate any warm orifice in sight (even those of sheep or sharks⁹ if women are not available), then it is up to the sheep, shark, or woman to move away.

Even today, in this new millennium, notions of women persist which portray them as temptresses and seducers. Just as mermaids were said to lure sailors to their deaths, the seductive charms of land-based women entice men, even princes and presidents, to act in ways that can spell their demise. Women tempt, flirt and seduce; men, in response, rape. The notion that, thereby, women 'ask to be raped' remains frighteningly popular. Studies of the acceptance of rape myths still reveal comparatively high levels of acceptance, especially amongst male participants (Lonsway and Fitzgerald, 1994; Hinck and Thomas, 1999). The next section outlines the prevalence of such thinking in the field of academia.

Women: Dominant images and discourses

In the history of women under patriarchy, a major tool of social control has involved the use of stereotypical images concerning women's fundamental nature (Coveney et. al., 1984; Jackson, 1978; Pateman, 1988). The gendered discourse which has evolved involves the ascription of certain character traits to men and women, to such an extent that particular human qualities are perceived as either 'masculine' or 'feminine' (Johnson, 1997). The general underlying trend has been for the more active and positive traits to be used as descriptors of men and the more passive and negative traits applied to women. Thus women have traditionally been portrayed as weak, passive, manipulative, low in intellect, excessively emotional, and prone to hysteria. Popular images have included women as the alluring siren of the seas, women as witches charming and ensnaring men with their potions and, in more recent times, the Marilyn Monroe and Madonna type depictions of women as sex

⁹ In a farming country, such as New Zealand, sheep have long been constructed as an at-risk group; the practice of using dead sharks was relayed to me by an ex-fishing boat worker.

goddesses and temptresses. This section specifically addresses the significance of such imagery by considering examples drawn from academic writing.

Academia has by no means been immune from the influence of archaic myths and historical typifications. The work of many of the most prominent criminologists of the last hundred or so years is liberally laced with depictions of women which stress their 'naturally' deceptive and manipulative qualities. In the late 19th century, Caesar Lombroso and William Ferrero published one of the first works to deal exclusively with women as criminal offenders. The Female Offender stressed the underlying weaknesses of women which influenced them to lie and deceive. The book argued that, in their role as mothers, women frequently have to lie to their children about many things and were adept at concealment. Lombroso argued:

Women have many traits in common with children; that their moral sense is deficient; that they are revengeful, jealous, inclined to vengeance of a refined cruelty.... What terrific criminals children would be if they had strong passions, muscular strength, and sufficient intelligence.... And women are big children. (Lombroso and Ferrero, 1895, 151)

The picture of women painted by Lombroso stressed also their lack of moral sense and their inclinations to 'diabolical cruelty'.

Writing in 1914, Hargrave Adam reflected Lombrosian thinking in his accounts of criminal women, whom he described as *colossal petticoated atrocities*. Later, Freud depicted women as doomed to social inferiority because of their sexual inferiority, evidenced by the lack of a penis (Klein, 1973). For young girls growing up, knowledge that they lacked the 'superior' organ relegated them to a life of envy and vengeance. Otto Pollak's influential book, The Criminality of Women (1961)¹⁰, also depicted women as vengeful, arguing that women's physiology predisposes

¹⁰ This book was originally published in the United States of America in 1950.

them to crime and deception. Lying comes naturally to women, since not only do they learn early in life to conceal what they are ashamed of (menstruation), but women are also able to fake orgasm in ways men cannot. No wonder then, argued Pollak, that women are so skilled at crimes involving deception and concealment, since

... for women deceit ... (is) ... a socially prescribed form of behaviour.
(Pollak, 1961, 11)

Moreover, women have duped men in general, and the criminal justice system in particular, into perceiving them as weak and innocent, so that even when their criminal natures reveal themselves, women are treated with chivalry and accorded leniency. Hence, official crime statistics portraying men predominantly as the offenders are flawed, argued Pollak, and mask the true extent of women's carnality and criminality. Despite a lack of evidence to support his 'theories', the sentiments underlying Pollak's views appealed to subsequent writers (Heidensohn, 2000). In New Zealand, his influence was especially manifest in the writings of criminologist, Allan Nixon (1974), who maintained that the crime of rape

... might virtually disappear if it was made an offence for the woman ... to incite her own rape. (Nixon, 1974, 83)

Some of the arguments seriously advanced by male criminologists in theorising about women's involvement in crime would be laughable, if the assumptions they concealed were not so destructive and misogynist. Pauline Bart commented, in 1979, that:

Criminologists, like mental health professionals, are supposed to be experts on rape, because rape is a crime. Moreover, their textbooks are used to train law enforcement personnel. Therefore Wisan's findings (1978) that current American criminology textbooks embody cultural myths and

stereotypes, particularly 'she was asking for it' or 'victim precipitation' is both relevant and distressing. Other myths found in criminology textbooks are 'women want to be raped', 'you cannot rape a woman' and 'rape is simply explained by sexual frustration'. (Bart, 1979, 355)

Ten years later, Gary LaFree noted in the preface to his book:

Rape is an ancient crime that has been poorly understood by criminologists and citizens alike. It warrants our serious attention. (LaFree, 1989, viii)

Allison Morris (1987) likewise drew attention to criminology's meagre and stereotypical treatment of rape, and criticised the way in which some researchers in the sociology of deviance were committed to understanding the offender's world through his eyes only. She noted how, for example, one writer in his discussion of rape constantly placed quotation marks around the word victim, and referred to the rapist as an

uneducated, opportunistic, and basically goodhearted soul who takes his pleasure where he finds it. (Gibbons, 1977, quoted in Morris, 1987, 163)

Criminological and sociological writings concerning the victims of rape have been little better, even when supposedly the subject of academic critique (Bart, 1979; Mintz, 1973). For example, on one level, Amir's material on victim precipitation could be taken to refer to a man misinterpreting a woman agreeing to have a drink with him as really agreeing to have sex with him (Amir, 1971). Yet this theory exudes maleness, in that only men could (a) think that way, and (b) turn round and call it **victim** precipitation! Furthermore, Amir's list of factors indicating victim precipitation is revealing, and includes victims 'who met their offender in a bar, picnic or party'; situations where alcohol was present, 'particularly in the victim'; and victims identified as having a 'bad' reputation (Amir, 1967, 502). He asserts that:

... negligent and reckless behavior on the part of the victim.... does not make any offender innocent but allows us to consider some of these men, at least, less guilty and leads us to consider that the victim is perhaps also responsible for what happened to her. (ibid.)

Whilst theories of male offending were expanded throughout the twentieth century to consider social, cultural, and economic factors, accounts of women offenders remained stereotypically couched in the language of women's biology and sexuality (Klein, 1973; Morris, 1987; Smart, 1976). Women's sexuality, in fact, came to be portrayed as the equivalent of men's criminality. Even after economic motives were acknowledged as underlying men's property offending, theft by women was portrayed in sexualised terms. Hence, Stoller, for example, argued that when some women lay hands on objects with the intent to steal, they experienced orgasms (quoted in Al-Issa, 1980). More recently, attempts to explain terrorist involvement have resorted at times to highly gendered and, for women, sexualised, accounts (for example, Cooper, 1979). These have portrayed terrorist activity as resulting from strongly principled beliefs and political convictions for men, whilst women's involvement has been dismissed as the result of erotomania, a lusting after such heroic men. Accordingly, this 'observation' prompted one writer to assert that:

Clearly the sexual relationships of women terrorists have considerable influence on what they do and why they do it. The key to female terrorism undoubtedly lies hidden somewhere in women's complex sexual nature. (Cooper, 1979, 154)

It is unlikely that we would ever see, or be expected to take seriously, the above comment reproduced with the word 'women' replaced by the word 'men'.

Ngairé Naffine (1997) has been scathing of the way in which so much of what is proffered as academic criminology is little more than men's unsubstantiated musings

on women. As she comments in relation to most traditional, criminological writings on rape:

What we are seeing at work is the male imagination on women These male accounts of relations between the sexes are simplistic, reductive and masculine. They take no account of current feminist debates in the area.... The prevailing masculine analysis of rape gives no hint of the complicated and contested nature of sexuality in which men and women act for a variety of motives. There is no sense here that a woman's experience of sex with a man can be other than the one that he projects on to her; that she might possess a quite different, distinctive, sovereign sexuality. (Naffine, 1997, 107-108)

Taylor (1987), for example, suggests that men have planted responsibility for sexual aggressiveness on women by implying that women desire to be taken forcefully; when men dominate and overcome women, they are doing what women secretly want and desire. The use of force in sexual penetration can thus be justified on the basis that this is what women want. As stated in an American legal journal in the 1950s:

[A] woman's need for sexual satisfaction may lead to the unconscious desire for forceful penetration, the coercion serving neatly to avoid guilt feelings which might arise after willing participation. (quoted in McSherry, 1998, 29)

The fact that, for centuries, the law specified that rape was acceptable in certain contexts, such as marriage, served to undermine and diminish the seriousness of sexual violation. If wives could be legally violated on a nightly basis, yet still rise to cook their husband's breakfasts in the morning, where was the harm?

In the field of medicine also, the attitudes of physicians have had their patriarchal roots exposed (Mills, 1982). Writing in 1918, one doctor remarked to his colleagues:

Considering the sense of shame which woman ordinarily manifests in all matters pertaining to sex the false accusation of rape would appear to be unusual. Practical experience, however, has shown that in no field of simulation has greater ingenuity been displayed by hysterical and revengeful women than in accusations of rape. (Bronson, 1918, 539)

Concerns about the possibility of false accusations were stressed, partly to remind doctors of the importance of their testimony regarding physical evidence of rape. The view was routinely expressed that substantial numbers of rape charges were unfounded, with one writer claiming that women made 12 false accusations for every one true charge (Mapes, 1906, 937). Certain members of the community were believed to be at greater risk of having false allegations levelled against them than others. Not surprisingly, physicians and dentists were two such groups, and were urged to always take the precaution of having a witness nearby when administering anaesthetics to a woman, because

Women are peculiar and unreliable, and there is no accounting for the queer notions they may sometimes get into their heads. (The Medical and Surgical Reporter, 1882, quoted in Mills, 1982, 36)

Mapes was more specific concerning these 'queer notions', urging his colleagues when administering anaesthetics:

... that the fact must not be forgotten that emotional females under such conditions might readily imagine they were indulging in sexual congress with their husbands (or others), even with the physician or dentist who may be treating them at the time. (Mapes, 1906, 938)

Ninety years later, a woman whom I interviewed in New Zealand was one of several who had been sexually assaulted in hospital whilst under the influence of an anaesthetic. Despite the testimony of multiple victims and witnesses, the doctor involved was acquitted (Jordan, 1998a).

One prevalent and particularly insidious myth derives from the notion that false rape allegations emanate from women's sexual fantasies (Edwards, 1981; Katz and Mazur, 1979; Taslitz, 1999; Torrey, 1991). Within the field of medical jurisprudence, the notion was promulgated that false allegations were a particular form of 'gender-related lying' (Kanin, 1994, 82). Beliefs in female masochism reinforced the view that women often had a subconscious desire to be raped. For example, the neo-Freudian writer, Helene Deutsch, in her book, The Psychology of Women, maintained that girls were particularly prone to sexual fantasies in puberty, a developmental stage characterised by:

... ardent wishes to be desired, strong aspirations to egoistic possession, a normally completely passive attitude to the first attack, and a desire to be raped that asserts itself in dreams and fears. (Deutsch, 1944, 117)

Furthermore, asserted Deutsch,

... rape fantasies are variants of the seduction fantasies so familiar to us in the lying accounts of hysterical women patients. (Deutsch, 1944, 256)

Some medical writers asserted that women who were particularly neurotic might convert such fantasies into actual beliefs that they had been raped, until they reached a point of memory falsification (Horney, 1933). In legal literature, the term 'pseudologia phantastica' became the authoritative label for the condition responsible for false rape allegations by women, and was described as a

... delusional state in which the complainant truly believes that she had been raped although no rape, and perhaps no sexual contact of any kind, had taken place. Since she firmly believes this non-fact, her story is unshakable. (Bessmer, 1984, quoted in Kanin, 1994, 82)

Whenever the issue of rape fantasies is raised, the question arises: **whose** fantasies are being talked about? Who benefits from the notion that women secretly desire to be taken forcefully? As Tony Jefferson has recently observed:

The notion that 'no means yes' is a powerful, almost formulaic, masculinist fantasy within a certain discourse of sexuality. But note what it does: effectively, it transforms the fear of rejection ('no, I don't want it/you'), with all its attendant anxieties, into the positive 'come-on' of a 'yes, she wants it/me really.' (Jefferson, 1997, 291)

Women's so-called 'rape fantasies', it seems, may originate not within women's psyches but from men's fantastical imaginings. It is **men's** fantasy that women's heads are full of sexual fantasies about them, and it is men's anger when, faced with rejection, these fantasies shatter. As Susan Estrich stated:

Men have written for decades about women's rape fantasies – about our supposed desire to be forcibly ravished, to 'enjoy' sex without taking responsibility for it, to be passive participants in sexual ecstasy which, when we are spurned in the relationship or caught in the act, we then call 'rape'. (Estrich, 1987, 5)

Beliefs in women's capacity for fantastical imaginings, however, have surfaced within various academic guises (Edwards, 1981). In his legal treatise, On Evidence, Wigmore warned:

Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted partly by inherent defects, partly by diseased derangements or abnormal instincts, partly by bad social environment, partly by temporary physiological or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offenses by men. The unchaste (let us call it) mentality finds incidental but direct expression in the narration of imaginary sex incidents of which the narrator is straightforward and convincing. The real victim, however, too often is the innocent man; for the respect and sympathy naturally felt by any tribunal for a wronged female helps to give easy credit to such a plausible tale. (Wigmore, quoted in Bourque, 1989, 105)

Bourque (1989) notes that the so-called 'ample psychiatric evidence' which Wigmore refers to consists of five case studies from a 1915 book involving rape charges made by women undergoing psychiatric treatment, three of which never went to trial, and the opinions of a handful of psychiatrists prior to 1933; yet this was the 'scientific' basis on which Wigmore concluded women had a propensity for falsifying charges of sexual offences.

The views articulated by writers such as Wigmore reflect those of the dominant discourse surrounding false allegations that emerged from the mid-nineteenth century onwards (Edwards, 1981). Medical and legal writers promulgated the notion of the impossibility of rape, alleging, for example, that non-consenting sex could be achieved only by 'stupefying' a woman (ibid., 126). Edwards maintains that the media helped in the construction of a moral panic concerning false rape allegations, utilising the phenomenon of 'the railway compartment complainant' to this end (ibid., 127). While the design of the nineteenth century railway compartment may have provided men with both the opportunity and protective cover for rape, the 'gentleman' status of the accused was undoubtedly linked with acceptance of an alternative interpretation: that the complainants were lying. Allegations against

men of class and substance were increasingly viewed as suspect, and the difficulties associated with successfully charging such men with rape are still apparent today.¹¹

The academic and supposedly scientific disciplines of medicine, criminology, and psychology have, in fact, been constructed on mythical and ideological foundations. Myths, religion, and cultural beliefs and practices all reveal evidence of the undermining of women's voice and abasement of women's nature. Women are consistently portrayed as inferior, irrational, and irredeemable, lacking control socially but nonetheless being credited with responsibility for the downfall of humanity. The emphasis on mythology is, I believe, profoundly important in establishing the broader context of beliefs within which women are perceived, rape is defined, and criminal justice system processes operate. As Helena Kennedy has stated:

Myths are tent pegs which secure the status quo. In the law, mythology operates almost as powerfully as legal precedent in inhibiting change, and the law is full of mythology. Women are particularly at its mercy, although men do not escape its force, especially when issues of class and race emerge... Mythology is a triumph of belief over reality, depending for its survival not on evidence but on constant reiteration. (Kennedy, 1992, 32)

The response of the criminal justice system to rape complainants has been shaped by the beliefs outlined here: the first related to perceptions of the nature of rape and the second to perceptions of the nature of women. Both sets of assumptions have been challenged to some extent by significant shifts in thinking in the late twentieth century. Politically, developments in the areas of feminism and human rights have undermined men's traditional beliefs concerning their ownership of their wives and

¹¹ The fact that New Zealand doctor, Morgan Fahey, could sexually assault his patients without detection for so many years, trading on his credibility and their lack of it, exemplifies this point (Dominion, 26/5/00; New Zealand Herald, 2/6/00). As well as being a respected Christchurch medical practitioner, Fahey was Deputy Mayor and his conviction in June, 2000 for sexual offending against his patients provoked national outrage.

children. Traditional legal processes no longer have the authority and status they once commanded, and have been subject to stringent criticism regarding the need for extensive reform and for widespread education of key players, such as the judiciary (Kennedy, 1992; Gregory and Lees, 1999; Lees, 1996; Scutt, 1998; Thomas, 1994). Philosophically, beliefs in absolutes have been refuted and the age of relativism established, accompanied in academia by developments such as postmodernism.

Against this backdrop, the traditional assumptions about rape and women are struggling to retain their grip. The anchor that secures them is the legacy of patriarchy, thousands of years of belief in the rights and superiority of men over women. Assumptions of the 'natural' supremacy of men, however, came under increasing attack during the latter years of the twentieth century. Feminists' analyses stressed the ways in which stereotypical and negative views of women have impacted on the criminal justice system's response to them, not only as offenders but also as victims. Andrea Dworkin, for example, observes:

As women, we live in the midst of a society that regards us as contemptible. We are despised, as a gender class, as sluts and liars. We are the victims of continuous, malevolent, and sanctioned violence against us – against our bodies and our whole lives. Our characters are defamed, as a gender class, so that no individual woman has any credibility before the law or in society at large. Our enemies – rapists and their defenders – not only go unpunished; they remain influential arbiters of morality; they have high and esteemed places in the society; they are priests, lawyers, judges, lawmakers, politicians, doctors, artists, corporation executives, psychiatrists and teachers. (Dworkin, 1982, 42)

Men may have status as professionals; the most critical determinant of their status, however, derives simply from their gender. Men have status because, historically, having status meant being male. A woman's social status was derived from her husband; within the marriage, as we saw earlier, she had no independent status apart

from him. When she was an offender, the woman's husband was held accountable for her actions; when she was a victim, he was viewed as the aggrieved party.

As Dworkin identifies in the passage quoted above, a major factor affecting how women are treated stems from their lack of perceived credibility. As we saw earlier, themes recurrent in depictions of women portray them as irrational, confused, easily swayed and deceived, and prone to fantastical imaginings. While reason and self-determination supposedly underlie men's actions, women's actions are seen as reactions, determined in large part by their mental weaknesses and emotional vulnerabilities. Instead of making objective decisions informed by reason, women are presented as being at the mercy of their emotions, sex hormones and physiological processes.

The depiction of women not knowing their own minds has been evident in such pronouncements as 'when women say no, they mean yes' (Lees, 1997; Scutt, 1997; Taslitz, 1999). Women think they should resist men's sexual advances, initially at least, so as not to appear slutish, when what they really want is, coincidentally and conveniently for men, what the man wants – sex. Thus his proceeding sexually does not violate what she wants, for he knows what she wants more than she does. Being male equates with science, knowledge, and reason; being female is synonymous with art, imagination, and fabrication. As recently as 1990, a male judge in Britain maintained that all the gentleman of a jury would understand that when women say no, they do not always mean no (Lees, 1997, 76).

To argue that women say no when they mean yes powerfully undermines the validity of women's word. If it is commonly believed and advanced in the courts that a woman says she does not want sex when she does, then the argument can easily be made that she will say she did not want sex when she did, and say she was raped when she was not. A man who gives you his word gives you his 'truth', but what weight does the word of a woman carry? Such a view obviously has what Lees calls:

... dangerous implications. If the female body has an existence of its own, totally out of control of its occupant, evidence of lack of consent is rendered irrelevant. Implicit in these ideas is that not only does a woman not know her own desires, but that she is responsible for the 'uncontrollability' of male desire once it is aroused. The defence counsel then puts arguments forward such as, 'Did she lead him on, prostitute herself, or consent and then change her mind at the last minute when the man was unable to control himself?' The idea that male sexuality once aroused is uncontrollable firmly shifts the blame onto the woman. Despite her own irrationality and lack of control, she is expected to exercise control on behalf of both of them. (Lees, 1997, 76)

The conception of sex underlying rape trials implies an active male predator encountering a passive female who may offer token resistance, be overcome, and enjoys the 'sex' despite herself. Not only is the woman discredited for not knowing what she wants, but the man is credited both with knowing what she wants and ensuring that she gets it. As Sue Lees says:

It reduces the whole issue of consent to absurdity, in which the woman is denied any subjectivity of knowledge of her own desire. (Lees, 1997, 77).

The woman does not know her own mind, nor does she have control over her own body. If a man accosts her sexually, her body betrays her. Any 'natural' lubrication of the vagina during forced sexual stimulation can be interpreted erroneously as evidence of consent, rather than merely evidence of stimulation. Defendants will sometimes argue in court that evidence of lubrication can be interpreted as signifying that 'she really wanted it'. Furthermore, Lees said she was 'horrified' to find that at least one police officer interviewed believed that forensic tests could be conducted on vaginal fluids to ascertain 'evidence' of consent (Lees, 1997, 77).

She says such discourses reflect hysterization of women's bodies, which Foucault argues was one of the mechanisms of knowledge and power centring on sex (Foucault, 1981). In Lees's words:

The woman is a sexual being, her rationality is therefore always debatable and her claim of rape always suspect. Men know best what her body really wants, and she is not more than her body. This is what renders women fickle and untrustworthy. (Lees, 1997, 78)

Such thinking has been evident in legal formulations and the criminal justice system's responses to victims of rape and sexual assault.

III. CRIMINAL JUSTICE SYSTEM RESPONSES

Law reform initiatives

Law reform tends to be a frustrating exercise, given the difficulties associated with trying to achieve significant changes in a domain that has such conservative and patriarchal foundations. The questioning of a complainant's previous sexual history became an early platform for rape law reform. 'Rape shield' laws were introduced in many jurisdictions in an attempt to limit the impact of moral judgments about the complainant on trial outcomes (Allison and Wrightsman, 1993; Edwards and Heenan, 1994; Henning and Bronitt, 1998; Taslitz, 1999; Wiehe and Richards, 1995). In New Zealand, this resulted in changes to the Evidence Act prohibiting the questioning any witness about the previous sexual experience of a complainant, unless the leave of the Judge was obtained (Sullivan, 1986). This was extended in a 1985 amendment specifying that such questions could not be put 'directly or indirectly' (Sullivan, 1986, 45). In practice, however, defence lawyers still make insinuations and raise questions knowing the Judge will intervene, while also knowing that it is the raising of the doubt in the jury's mind which is paramount

(Adler, 1987; Lees, 1996; Taslitz, 1999). Thus, in some ways, raising such question-marks over the woman's reputation can damage her credibility as much, if not more, as when she was expected to provide answers to such questions.

Simon Bronitt (1998) has observed similar potential dangers in relation to judicial direction concerning delays in reporting by rape victims. He suggests that recent law reforms aimed at encouraging judges to instruct juries that delays by victims in reporting may or may not be of import could, in fact, be counterproductive in their effects (Bronitt, 1998, 49). This outcome could eventuate because the jury may not know the legal rules underlying this direction, and may think it signals that the judge has question-marks over the complainant's credibility (*ibid.*). In similar fashion, the abolition of judicial warnings regarding lack of corroboration in rape cases now leaves the situation entirely to the jury to assess, within the safe and secret confines of the jury room, beyond the reach of issues of transparency and accountability. Likewise, an unintended outcome of the promotion of gender neutrality may be that discrimination against women becomes more masked, with negative and stereotypical portrayals of women as unreliable complainants remaining pronounced but hidden and unable to be challenged (*ibid.*, 43 footnote). Thus the spectre of the untrustworthy complainant who is dishonest, vengeful, and prone to fantasy remains profoundly feminine.

Similar points could be raised with regard to testimony concerning the previous sexual history of the complainant. Historically, a major way to discredit a woman's allegation of rape was to discredit her sexual reputation (Adler, 1987; Estrich, 1987; Frohmann, 1995; Lees, 1996; Lees, 1997; Scutt, 1997; Smart, 1990; Taslitz, 1999). The dominant assumption, which defence lawyers often manipulated to the offender's advantage, was that an unmarried woman who agreed to consensual sex with any man was unlikely to be a genuine victim of rape. Women, it seemed, were completely lacking in discernment, and since, once their virginity was lost, they had nothing more to lose, wanton licentiousness followed! If such women ever said 'no', it could only be interpreted as 'yes', and even more so if it was to a man with

whom she had previously engaged in consensual sex. A woman's chastity, it seems, was like a locked door which, once either unlocked by her or kicked in by someone else, could never be locked again. Such thinking was particularly evident in relation to women working in the sex industry, who historically have been particularly vulnerable to sexual coercion yet denied 'legitimate' victim-status (Gilbert, 1993; O'Neill, 1997; Scutt, 1993). As Scutt puts it:

Sex-for-money is one aspect of a woman's sex life which, in the assessment of the court, means she is 'used to sex' and therefore (by some sleight of hand, or perverse 'logic') will not be 'so upset' by rape. (Scutt, 1997, 46)

From the mid-1980s onwards, then, significant legal changes have been enacted in New Zealand, Australia, North America, and the United Kingdom in response to feminist criticisms regarding rape injustices (New Zealand: Jordan, 1998a, 1998b; Australia: Heath, 1998; Mason, 1995; United States: Doerner and Lab, 1998; United Kingdom: Gregory and Lees, 1999). However, writing within the Australian context, Simon Bronitt has commented that recent empirical studies in the Australian states of New South Wales and Victoria

... suggest that the criminal justice system's treatment of women who allege rape has not significantly improved, and in some respects may be worse than before the reforms were enacted! (Bronitt, 1998, 42)

Similar conclusions have been drawn with respect to the United Kingdom (Brown et al., 1993a; Lees, 1997), specifically in relation to the difficulties involved in significantly improving police responses to rape complainants (New Zealand: Jordan, 1998a; United Kingdom: Lees and Gregory, 1999; Temkin, 1997). Entrenched patriarchal thinking within legal and police cultures is often stressed as a significant factor underlying resistance to change (Brown and Heidensohn, 2000; Gregory and Lees, 1999). Bronitt (1998) argues that alongside these cultural explanations for the failure of rape law reform lie deeper structural explanations. He draws on the

concept of 'counterproductive regulation', a term used by Peter Grabosky (1995) when describing the ways in which legal regulation can be resisted and subverted by individuals and organisations. This process of resistance can produce unintended consequences, in effect backfiring to produce a worsening of the situation which reforms were intended to remedy. Thus, argues Bronitt, the abolition of overtly discriminatory legal rules and definitions has been seen as progress in rape law reform,

... but often this substantive restructuring merely frees the trial judge and jury to apply discriminatory myths and misconceptions about female sexuality to the remodelled definitions of consent, relevance and credibility. (Bronitt, 1998, 42-43)

Directing a jury to ignore a remark, for instance, can unintentionally reinforce judgmental attitudes already present within jury members' minds. More important than warnings, directions and evidential requirements is the context within which dominant rape narratives and discourses are constructed (Taslitz, 1999). While adherence to traditional beliefs and attitudes persists, reforms will be limited in scope and effectiveness. In this sense, the most significant changes affecting rape laws have yet to be made.

Court and trial processes

Analyses of the criminal justice system's responses to female rape complainants have tended, for the most part, to focus on court and trial experiences. This is not surprising, given the relatively public nature of the courts and the extent of media coverage possible. Court trials provide a public spectacle, whereby legal rituals and authority symbols are utilised as devices for shaming and punishment. Feminist criticism of rape trials has typically argued that it is the alleged victim, rather than the alleged offender, who experiences the most arduous assaults on her character and

behaviour (Adler, 1987; Lees, 1996; Smart, 1989; Taslitz, 1999; van de Zandt, 1998). Thus the rape trial has repeatedly been referred to as a second victimisation for rape victims, experienced as a brutal and degrading violation akin in nature to that of the rape itself (Adler, 1987; Hall, 1985; Kennedy, 1992; Lees, 1996; Madigan and Gamble, 1991; McDonald, 1997; Stanko, 1982). One writer argued, in fact, that:

Rape continues to result in quadruple victimization, as the actual assault is followed by psychological assaults from police, medical personnel, and the judicial system. (Mills, 1982, 53)

Historically, as we saw earlier, the laws on rape reflected men's definitions of sexuality and their relationships with women. Women's experiences of sex or rape were not taken into account in the formulation of such laws (Easteal, 1998a; Lees, 1997, 78; Smart, 1989; Young, 1998). The views which predominated depicted men as having a biological need and imperative for sex, which women as wives and nurturers had an obligation to fulfil. Against this backdrop, what women want fades from view; it is simply not relevant. The quest for 'truth' and 'objectivity' in such a biased setting is destined to achieve neither. As Jocelyne Scutt has observed:

It is a truism that objectivity is the name given to men's subjectivities. 'Objectivity' operates generally against women's interests. (Scutt, 1998, 166)

In the court setting, a woman's word is not enough to show a genuine lack of consent. Even where the perpetrator intimidates with threats of, or actual, force and violence, strong evidence of physical resistance may still be demanded on her part (Firth, 1975; Lees, 1997, 78; Scutt, 1998). A lack of visible injuries may even be referred to in cases where the alleged offender and complainant know each other well, despite psychological evidence demonstrating that physical resistance may be even more unlikely in such relationship contexts (Wiehe and Richards, 1995).

A significant factor which may complicate judicial and court perceptions stems from the historic acceptance of violence within male-female relationships (Kelly, 1988; Stanko, 1985). This extends to sexual relationships, where the belief is still regularly advanced that at least some degree of coercion is the norm, prompting some writers to refer to men being effectively granted 'a licence to rape' (Stuart, 1993, 97). Such a view has been reflected in judicial pronouncements even comparatively recently. In a South Australian example from 1992, Justice Bollen asserted in his summing up:

*There is, of course, nothing wrong with a husband faced with his wife's initial refusal to engage in intercourse, in attempting, in an acceptable way, to persuade her to change her mind, and that may involve a measure of **rougher than usual handling**. It may be, in the end, that handling and persuasion will persuade the wife to agree. Sometimes it is a fine line between not agreeing, then changing of the mind, and consenting.* (Bollen, J. quoted in Easteal, 1998b, 115.) [My emphasis]

The cross-examination process in court has been uniformly described by complainants as savage and gruelling (Adler, 1987; Brown et. al., 1993a; Lees, 1997; McDonald, 1997; Scutt, 1997; Stuart, 1993; Taslitz, 1999; Thomas, 1994). Women are routinely asked personal and invasive questions that have been designed to provoke, shame, and compromise their integrity. Defence lawyers will focus in particular on aspects related to the woman's dress, behaviour, alcohol and drugs consumption, and her relationship to the alleged offender (Adler, 1987; Lees, 1997; Schuller and Stewart, 2000; Scutt, 1997; Shapcott, 1988). Although cross-examination of the complainant concerning her previous sexual history is now only admissible with the leave of the judge, inferences can be made, and questions can be posed which, even if overturned, nevertheless may plant doubts in the jury's mind regarding her sexual reputation or veracity (Lees, 1996; Taslitz, 1999). Anything that can be used to discredit her will be, in what has been described as a process akin to pornography (Smart, 1989). The witch trials of the 15th-17th centuries provided

pornographic 'thrills' for repressed monks (Daly, 1979), in ways which bear some parallels with the role played by modern-day rape trials (Hemming and Drenth, 1998).

mockingly so..... It is a consolidation of heterosexual privilege; the privilege of men to decide when a woman says 'yes'; the right of men to have sex when, how and when (sic) they want; the right of men to control female sexuality and prevent female autonomy. (Lees, 1997, 61-62; 88)

It is still the case that obtaining a rape conviction is a difficult undertaking. The attrition rate in cases of sexual assault is astonishingly high, and has also significantly increased in recent years (Gregory and Lees, 1999; Harris and Grace, 1999). While populist sentiment, fuelled by backlash reactions, claims that our prisons are full of the wrongfully convicted, for no other crime is a conviction apparently so difficult to secure.

The requirements of the court are often at odds with the reality of women's experience. For example, for evidence of a rape complaint to be admissible in court, it is preferred that the reporting of the alleged offence be made 'voluntarily, spontaneously and speedily' (van de Zandt, 1998, 134). This follows on from the historic belief cited earlier, which specified that the 'hue and cry' test be applied to victims' allegations of rape. Today this practice continues in the expectation that genuine sexual assault complaints will be made by the victim at the first opportunity (Bronitt, 1998; McDonald, 1994). In the New South Wales study, 55% of the complainants told someone about the sexual assault within an hour of its occurrence; and another 28% told someone within 12 hours; so, overall, 83% told someone within 12 hours (van de Zandt, 1998). In terms of reporting the assault to the police, half of the complainants told the police within 5 hours, 31% within one hour; and 81% reported it to the police within 7 days (ibid.). Despite this, in 59% of the trials studied, the defence raised the victim's delay in making the complaint as an issue during their cross-examination. Thus although women tended **not** to delay in telling others and police, they were nevertheless cross-examined over delaying and possible reasons for their hesitation (van de Zandt, 1998). Judges also on occasion reiterated this sentiment. One said, for example:

A complaint is admissible if made at the earliest possible opportunity – if a man runs out of a house and doesn't tell anyone the house is burning until the night following, it is not consistent with him believing that the house was on fire when he ran out of it. (quoted in van de Zandt, 1998, 137)

Such pronouncements reveal more about judicial ignorance concerning the effects of rape than they do about the veracity of rape complainants. The desire to minimise or deny they have been raped is uppermost in many victims' minds following the attack (Kelly, 1988). Thus, if there is any substantive truth in the statement that 'women lie about rape', it is most likely to be in under-estimating the severity of what has happened, concealing the violation from those close to them, refusing to inform police of its occurrence, and colluding to protect the identity of the offender. In other words, this is the complete opposite of what women are accused of doing, prompting one writer to proclaim:

The myth is false claims of rape; the reality is severe underreporting of rape.
(Torrey, 1991, 1030-1031)

In writing about the role of the judge in rape trials, Lees observed how, until recently, rape was the only crime where a warning was given to the jury concerning how easy it is to make rape allegations (Lees, 1997). No such similar warning is made regarding the likelihood of accused men lying to avoid conviction. As Temkin noted (1987), when women report other crimes, such as burglary, their word is not automatically doubted. There would be investigation of the woman's claim but not of her integrity or her whole life. Also glossed over are the difficulties women face in making complaints of rape, their fear and reluctance at doing so, and the fact that rape has one of the lowest reporting rates of any crime (Chambers and Millar, 1983; Feldman-Summers and Norris, 1984; Gilmore and Pittman, 1993; Kelly, 1988; Kilpatrick et. al., 1987; Koss et. al., 1988; Lees, 1997; Williams, 1984).

The assertion that women frequently lie about rape, however, continues to be one of the most influential rape myths. Doubts concerning the woman's credibility as a witness are routinely voiced, the underlying assumption being that she is prone to lying and fabrication. Such a perception outweighs, in many cases, evidence of resistance and visible injuries sustained by the victim, or even gross inconsistencies, changed stories and 'lies' in the defendant's account (Gregory and Lees, 1999; Mack, 1998). Writing within the Australian context, Annie Cossins has noted:

As the myths associated with lying, immoral women work to the disadvantage of the female complainant, they simultaneously work to the advantage of the male accused. The balance of justice in a sexual assault trial is clearly weighted against the complainant, since the mere allegation of sexual assault leaves a woman open to having 'her victimisation measured against the current rape mythologies'. (Cossins, 1998, 100)

The study of sexual assault trials conducted by van de Zandt revealed that the most common theme in cross-examination related to suggestions that a complainant had lied or made a false report, and to speculation concerning motivation (van de Zandt, 1998). Despite corroboration by others, or evidence of injuries, suggestions were frequently made by defence lawyers that complainants had ulterior motives in bringing cases to court. Of the complainants who were asked directly whether or not they were lying, each was on average asked seven questions (ibid.). In one case, the defence counsel accused the woman of trying to cover up her lies with tantrums; she was asked 178 questions regarding her general drug use, and it was put to her 70 times in court that she was lying or making the story up (ibid.). In over half the trials studied (54%), the complainant was questioned about a possible motive which may underlie her making a false report to the police. A vast array of possible motives were suggested by the defence, including the possibilities of the complainant fabricating such an allegation out of guilt, anger, or to support claims for residency, child custody, or financial compensation (ibid.). Similar 'reasons' for women lying have been identified elsewhere, generally emphasising reputation, self-protection,

revenge, and self-gain (Chambers and Millar, 1983; Lees, 1997; Mack, 1998). Sometimes, the question of motive is glossed over, as if no motive is necessary when deception is a 'natural' character trait.

Research on rape trials conducted in Victoria, Australia, revealed the law and judiciary still operate with a profound suspicion of women and perceptions of their inherent deceitfulness (Edwards and Heenan, 1994). This mistrust extends, not surprisingly, to jurors in rape trials, in ways that demonstrate the dominance of prevailing cultural narratives. Whilst on a rational level, notions of women 'asking for it' may be rejected, the power of these narratives means that, if presented with a case involving a drunk, scantily clad woman who accuses her date of raping her, jurors may be disinclined to accept her account (Taslitz, 1999). In addressing the inadequacies of the current adversarial justice system for adducing rape cases, United States Law Professor Andrew Taslitz has recently observed:

Our current adversarialism ... is modeled after male 'ways of speaking' in everyday life. Just as those ways of speaking mute the female voice in business, education, and politics, so do they mute that voice at trials. The inability to engage with cultural narratives and macho adversarialism explains rape-law reform's failure. These primary mechanisms by which rape jurors determine credibility are unchanged. Consequently, unjustified acquittals mount. (Taslitz, 1999, 154-155)

Similar sentiments have been echoed in the New Zealand context by Justice Thomas (1994), who publicly voiced his reservations concerning the ability of the criminal justice system to deliver 'justice' to rape victims.

Clearly there are significant problems to be addressed in rape and sexual assault trials when key legal players in a variety of countries state they have such little confidence in the system that, if they or someone close to them, was sexually assaulted, they would advise them **against** reporting the offence and becoming a complainant in

court (Dacre, 1996; van de Zandt, 1998). When those familiar with the court process want to see their loved ones protected from its rigours and injustices, what confidence can any victim of sexual assault have when deciding whether or not to report a rape?

The police

Whilst there have been many studies conducted of rape complainants' experiences of legal, court and trial processes, considerably less has been written about their interactions with the police. Studies on the effectiveness of law reform initiatives have largely focussed on the prosecutorial level of the criminal justice system (Frohmann, 1998; Spohn and Horney, 1992), rather than on the possible impacts of these on law enforcement practices (Campbell and Johnson, 1997). Police processes are considerably harder to observe and document, yet the police's position as the gatekeepers to the criminal justice system makes their role and response critical (Kerstetter, 1990; LaFree, 1980; Radford, 1987). As Goodstein and Lutze observed:

Police response to rape may be the most crucial link in the chain to ensure fair treatment for rape victims. The police officer is the first representative of the criminal justice system the reporting victim encounters; the quality of her contact with the police officer may color her perception of the entire prosecution process. (Goodstein and Lutze, 1992, 169)

Reporting a rape is not a straightforward process. The decision to report is extremely difficult for many victims, and can raise issues of denial, safety, fear, shame, and self-blame (Feldman-Summers and Norris, 1984; Gilmore and Pittman, 1993; Koss et. al., 1988; Williams, 1984). A reluctance to report the offence is further compounded in those situations where the rapist is someone known by the victim, possibly even a partner or family member (Gartner and Macmillan, 1995). The impact of reporting can also be fraught, depending on the reactions of those around the victim and also on the response of the police. The possibility is always there that

reporting may result in secondary victimisation, with the police occupying a pivotal role as the first agency that, through its processes and attitudes, may revictimise the complainant (Campbell and Raja, 1999; Epstein and Langenbahn, 1994; Gilmore and Pittman, 1993; Stuart, 1993; Winkel et al, 1991).

A negative police response can compound the trauma suffered by a rape victim, making it less likely that she will decide to proceed with legal action and a strong possibility that her experience will deter others from even making the initial police contact in similar circumstances (Gilmore and Pittman, 1993). If for no other reason, it is in the overall interests of law enforcement for the police to act in ways that are consistent with promoting the victim's emotional well-being (Burgess, 1999).

Irrespective of the kind of response received, reporting a rape is inevitably arduous. In the words of Gilmore and Pittman:

The very personal nature of the crime, the intimate and sexual explicitness of its detail, means the process of step by step description of the assault is, for the victim, invariably harrowing. The prospect of relaying such detail to anyone is daunting; how much more so when such detail must be relayed to uniformed and armed strangers as is the case when making a statement of formal complaint to the police. By virtue of their entry point function, these hitherto strangers have the power to decide whether or not to proceed with legal action. This is the power to formally invalidate the victim's experience or refer it to the courts in which reside the sole power to formally validate the woman's perception (and indeed her lived experience) that she has been the victim of a heinous crime. (Gilmore and Pittman, 1993, 9)

Police writers in the 1970s and 1980s referred to the skills needed for the 'interrogation' of rape victims (for example, Firth, 1975; Wagstaff, 1982), while rape complainants graphically described feeling as if they were being interrogated (Chambers and Millar, 1983; Hall, 1985; Holmstrom and Burgess 1978; Medea and

Thompson 1974; Toner, 1982). In England, the televising of a documentary in 1983 showed police interviewing a rape complainant (Adler, 1987; Dowdeswell, 1986; Gregory and Lees, 1999; Lees 1997; Smith, 1989; Temkin 1987). In a clear demonstration of the gulf which existed at that time between police officers and public sentiment, the police had expected reaction to the programme to be positive and to result in commendation of the officers' interviewing skills. Instead of applauding the detectives, however, their insensitive and brutal interrogation of a traumatised victim was soundly condemned in many quarters, such that to this day, Thames Valley Police still appear to be 'living this incident down' (Gregory and Lees, 1999, 4).¹²

In recent years, police departments around the world have attempted to improve their response to rape complainants. These efforts arose in part from criticisms of police practice, as well as from increasing concern over the extremely low reporting rates for rape and other sexual assault offences (Chambers and Millar, 1983; Nixon, 1992). In the mid-1980s, Ian Blair (1985) visited the United States to see what could be learned from police practices there which might help to improve the situation in Britain. The basic difference he observed involved a preparedness in the United States to deal with the victim from the perspective of understanding how rape affects her and her interactions with the police; Blair advocated that this 'new approach' should also be adopted within the United Kingdom. Internationally, various measures have been introduced such as rape examination suites in England (Gregory and Lees,

1999; Walklate, 1995); specialised sex crimes units in the United States (Epstein and Langenbahn, 1994; LaFree, 1981) and England (Brown and Heidensohn, 2000); greater deployment of female police officers to sexual assault cases (Goodstein and Lutze, 1992; Pike, 1992); and training programmes designed to increase officers'

¹² When I visited Thames Valley Police in 1996, two young officers, who would have been at school when the documentary was first screened in 1983, greeted me proclaiming that things were no longer like they had been on 'that programme'. The power of this incident probably lives on in the cultural memory of not only Thames Valley, but British police forces generally.

sensitivity and awareness (Burgess and Holmstrom, 1979; Epstein and Langenbahn, 1994; Feild, 1978; Nixon, 1992).

Despite such efforts, success, if taken to mean improved police understanding and increased victims' satisfaction, seems remote. Attrition rates in rape cases continue to be high, reporting rates remain low, and beliefs regarding false complaints seem firmly entrenched. Such limited success reflects the limited potential for change in a context characterised at worst by masculinism and at best by ambivalence. As Jill Radford has observed:

On the one hand, the police are a paid full-time, professional agency, theoretically concerned with protecting citizens from violence and crime. Many women do turn to the police after being attacked and it is right that they should be treated with respect and sensitivity. Withholding protection from women adds to their humiliation, pain and insecurity. Further, the failure to condemn men's violence legitimates violence as an acceptable means of controlling women. On the other hand, the role of the police is to protect the status quo which, as one of the women interviewed pointed out, is 'white, male and middle-class'. The police failure to provide an adequate response to men's violence is perfectly consistent with this role. (Radford, 1987, 41)

Increasing effort has been made to ascertain the views of rape complainants themselves regarding their treatment by the police. One of the first such studies conducted in Britain involved a postal survey of 103 women aged 18 and over who had reported a rape or similar serious sexual offence to the Metropolitan Police between May 1990 and February 1991 (Adler, 1991). The results of this study appeared encouraging, with more than 80% of the complainants stating that, in the first week following reporting of the offence, they found the police helpful and sensitive, and that this was irrespective of the victim's age, physical injuries, or relationship to the assailant. Accordingly, Zsuzsanna Adler commented:

Police attitudes were described in overwhelmingly positive terms, and most women indicated that they had found officers easy to talk to, supportive, patient, reassuring and considerate. (Adler, 1991, 1115)

The most commonly identified problem related to declining satisfaction levels over time, with 70% of the women expressing concern that the police failed to keep them adequately informed about case progress and developments. On the basis of the generally positive results overall, however, Adler commented:

... the conclusion must be that attitudes to victims of rape in the Met are now overwhelmingly caring and sympathetic. (ibid., 1115)

The results of Adler's study, however, seem not to have been supported by other research in this area. It is possible that the methodology she employed was at least partly responsible for the overall positive tone of the findings she obtained. Only women whose reports of rape were recorded as such by the police were contacted, meaning that no complainants were included whose cases had been 'no crimed' and which the police had decided to investigate no further. Moreover, postal surveys are not generally accepted as the most reliable of methodologies when it comes to sensitive subject areas such as rape, and it is interesting that subsequent studies based on interview procedures (Jordan, 1998a; Gregory and Lees, 1999; Temkin, 1997; 1999) have all produced significantly lower rates of complainants' satisfaction with police performance.

Jennifer Temkin has recently conducted two significant qualitative studies with rape complainants in England (Temkin, 1997; 1999). The first of these, conducted with women in Sussex, obtained in-depth information from 23 respondents. Some aspects of police procedures were greeted favourably by respondents; for example, all but one of the women was positive about the officers who took their statement and the way it was taken (Temkin, 1997, 514). Temkin also notes that all but two of the officers who took the statement were female, and links this to concerns about the

victim's credibility. In two cases, she states, the victims were initially treated with suspicion and disbelief, but the police changed their attitude later - in one of these, no female officer was present, and in the other, the victim said she was upset that there was a male officer present with a female officer (Temkin, 1997, 513-514).

Temkin divided the 23 respondents into three categories based on their overall levels of satisfaction with the police. Those women who were described as 'Positive' (N = 13; 57%) were wholly or mainly positive about their experience with the police; those in the 'Mixed' category (N = 7; 30%) made comments which were fairly evenly balanced in terms of positives and negatives; and those referred to as 'Negative' (N = 3; 13%) were wholly or mainly negative about their experience with the police. Positive evaluations, said Temkin, resulted particularly in situations where the women had not encountered disbelief from the police. Thus, she notes:

The experience of feeling believed was particularly vital... Feeling believed was of significant assistance both in dealing with the criminal justice system and also in coping with the trauma of the rape itself. (ibid., 519)

Also specified as important to complainants was the manner and attitude of the police. Since, as victims of rape, the women often had their own feelings of guilt and self-blame to manage, it was important for them not to feel judged by the police (Temkin 1997).

Temkin also conducted qualitative research with seventeen women in London whose cases were recorded as rape between 1993 and 1995, as well as interviewing 21 police officers, eight of whom were involved in cases in the sample of victims (Temkin, 1999). This study was significant in finding that police guidelines provide a framework for a system of care for victims, but in practice these guidelines are not always followed. Of concern was the fact that disbelieving and stereotypical attitudes about women who report rape persist in the minds of many officers.

Research I conducted within the New Zealand context revealed rape and sexual assault complainants to hold strongly divided views on their experiences with the police (Jordan, 1998a, 1998b). While half the respondents in a qualitative study rated the police favourably, the other half expressed dissatisfaction with the police, with some making damning criticisms of the officers they dealt with, especially for displaying insensitive, hostile and disbelieving attitudes.¹³

These results appear consistent with those found in an earlier New Zealand study by Anstiss (1995). Although her small sample of complainants expressed divided views concerning their treatment by the police, questionnaires completed by police officers yielded interesting results. Approximately half of the officers surveyed felt that women 'provoked' rape through their dress or behaviour (ibid., 63), while one in four officers considered with suspicion allegations of rape made by women working as bar girls, dance hostesses, or prostitutes (ibid., 164). Regarding false rape allegations, one in six officers felt that many women who reported rape were lying and wanted revenge, while roughly one in three agreed both that guilt about engaging in premarital sex, and protection of a woman's reputation, were reasons for falsely alleging rape (ibid.). Anstiss further notes that:

Of the officers that volunteered estimations of false rape allegations the figures given were, or in excess of, 60%. (ibid., 65)

High attrition rates in rape cases have long been noted, with concern expressed about the high proportion of reported cases of rape which are categorised by the police as 'no crimes' and not recorded (Chambers and Millar, 1983; Gregory and Lees, 1999; Harris and Grace, 1999). As Jeanne Gregory and Sue Lees recently commented:

It was clear from earlier research that the sexual assaults that are reported, whether to a rape crisis centre, a doctor or a police officer, are the mere tip

¹³ The results of this research are presented more fully in Chapter 3 of this thesis.

of an iceberg of staggering proportions. It is all the more puzzling to discover that a large proportion of these reports fall away at later stages in the criminal justice process. (Gregory and Lees, 1999, 59)

An early pattern observed was that, at each stage in the criminal justice process, if some prior relationship existed between the complainant and the suspect, the more likely the case was to be dropped, or downgraded, than if it involved a 'stranger' attack (Bouffard, 2000; Gregory and Lees, 1996; Harris and Grace, 1999). Studies in Scotland (Chambers and Millar 1983) and England and Wales (Wright 1984) found that approximately 25% of reported rapes were 'no-crimed'. The argument was advanced that, to improve their performance record, the police 'lost' from their records many cases which they considered were unlikely to proceed to court or be cleared in some other way (Blair, 1985; Gregory and Lees, 1996). The impression thus given was that thousands of women made false allegations of rape and sexual assault. Of course, 'no criming' occurs in other offence categories also, such as robbery and burglary, but usually as a result of the offender not being apprehended (Polk, 1985). The overall rate of 'no criming', across all offences, has, in fact, been estimated at only 3% (Bottomley and Coleman, 1981). Gregory and Lees (1999) suggest that, in contrast, the high rates of 'no criming' for rape and sexual assault demonstrate the low priority attached by the police to these offences.

During his study tour of the United States, Blair noted that some police departments had three different categories for the equivalent of cases that were 'no crimed'. These were: 'inactive' (undetected); 'unfounded'; and 'victim withdraws allegation.' Contrary to the Scottish and English police forces, officers in San Francisco, for example, were not encouraged to seek a complainant's withdrawal of the allegation or to unfound the case. As Blair noted:

The attitude of both investigators and administrators is that in the majority of cases, classifying cases as unfounded or withdrawn is acting as judge and jury without the full facts. It is an unnecessary additional burden for the

victim to bear. In order to protect the victim, therefore, doubtful cases are permitted to lie on file, often with little further investigation. (Blair, 1985, 58)

As a result, of 2,485 cases of serious sexual assault investigated, only 2% were classified as unfounded; in 14%, the victims withdrew the allegation; and half were deemed inactive (Blair, 1985).

In response to mounting criticism, the Home Office introduced new guidelines stating that rape complaints should not be 'no-crimed' unless the complainant herself retracted and admitted fabrication (Home Office Circulars 25/83 and 69/86, cited in Gregory and Lees, 1996, 4). This was further reinforced in Force Orders issued by the London Metropolitan Police, and the resulting fall in the 'no criming' rate from 61% in 1984 to 38% in 1986 was attributed to this directive (Smith 1989). However, more recent research by Gregory and Lees (1996) highlighted the fact that, despite a supposed shift towards more sensitive treatment of victims, a high proportion of reported sexual assault cases are still 'no crimed' by the police. They studied two London police stations over a two-year period, examining the processing of all reported cases of rape, attempted rape and indecent assault. Their research revealed the 'no criming' rate to be still 38% overall (116 of the 301 cases reported). When the rape and attempted rape cases were analyzed separately, the 'no criming' rate rose to 43% (47 of 109 cases) (ibid.). Gregory and Lees particularly wanted to include cases which were 'no crimed' within the first month, in contrast to other studies which sometimes excluded such cases. The reasons cited for 'no criming' included the complainant's failure to substantiate the allegation, and her withdrawing of the complaint (which was more likely when the perpetrator was known to her). In about one-third of the cases that were 'no crimed', the police said this was because there was insufficient evidence to substantiate the allegation. Police decisions in these cases were based on such factors as judgments made concerning the reliability of complainants as a source of evidence, and assessments of the extent to which they would be perceived as credible in court (ibid.).

Recent Home Office research (Harris and Grace, 1999) notes that there appears to have been a reduction in the 'no criming' rate from 45% in 1985 to 25% in 1999. Despite acknowledging that Home Office guidance advises police to 'no crime' a case if the complainant 'retracts completely and admits to fabrication' (Harris and Grace, 1999, xi), over one-third of cases were 'no crimed' because the complainant withdrew the allegation, and a further 15% because of insufficient evidence. Analysis showed that the cases least likely to be 'no crimed' involved complainants aged under 13 or incidents where the use of physical violence in the assault was evident (ibid.). The researchers also noted that the reduction in the 'no criming' rate appeared to have been offset by an increase in the proportion of cases in which the police decided to take no further action against the suspects. They concluded that the cases that the police were most likely to proceed with involved

... complainants under 13 where violence was used during the attack and there had been no prior contact between complainant and suspect. (Harris and Grace, 1999, xi)

High levels of 'no criming', however, have been confused with the issue of false allegations, as if the one signified the other (Gregory and Lees, 1999; Stace, 1983). Although this is a clearly erroneous equation, it has helped to reinforce an attitude of police disbelief and suspiciousness towards rape complainants.

Police, rape and false allegations

A central strand running through police involvement in rape investigations links the societal legacy of beliefs about the nature of women with the attributes of police occupational culture. Writing in 1975, Peters made the following observation:

If a woman alleges assault other than rape, she is generally believed, examined medically and treated if necessary. Police and court response is

direct and usually according to law. However, if the assault is sexual, that is, if she is alleging rape, the response may be quite different. No one wants to believe her. (Peters, 1975, 34)

A core of disbelief towards women reporting sexual assaults appears to lie at the heart of the police culture. The basis for this view lies in the legacy of attitudes towards women already identified in this chapter, which is further reinforced by the cynicism and masculine ethos of the police occupational culture. Whilst acknowledging that 'police culture' is not a distinct, homogeneous entity (Chan, 1996), nevertheless, common attributes identified have included traits of suspiciousness, conservatism, authoritarianism, and machismo (Reiner, 1994). Police officers are trained to be suspicious, alert for signs of discomfort, inconsistencies, and concealment (Chambers and Millar, 1983). Such traits can be both highly useful, and potentially counter-productive. For instance, in writing about a particular psychological, attentional type, Goleman termed it 'The Detective' because of obvious similarities with a Sherlock Holmes-style approach (Goleman, 1985). Of the kind of 'driven search' characteristic of these investigators, Goleman warns of a

*... distinctive distortion in The Detective's perception. He looks so keenly that he does not quite see; he hears so astutely that he fails to listen. In other words, his deficit is not in his attentional powers, which are often brilliantly attuned. His attention is off because it is guided by a lack of interest in the obvious. The surface of things is for him far from the truth of the matter; he seeks to piece through plain facts to the hidden reality. He listens and looks not to gather what is apparent, but what it **signifies**.*

*Looking so hard for the telling clue to a hidden meaning is like peering into a microscope. The Detective is apt to search so intently that he loses sight of the context that gives meaning to what he sees. That, of course, fits well with his basic stance toward it anyhow: its **seeming** context is the merely*

apparent, which is for him a false reality. He grasps at a small detail that fits his schema, while ignoring its actual context. The net effect is that he loses a sense of the fact's real significance, replacing it with a special interpretation.

While built upon factual details, such a subjective world can be totally askew in the meaning given those details. (Goleman, 1985, 138) [Emphasis in original]

Recent research on factors affecting police officers' perceptions exemplifies this well. Mulder and Winkel (1996) conducted studies in which the participants were shown reconstructions of an interview with a rape victim, with the sound removed. The results showed that the same scenario was interpreted completely differently based on the dominant perspective adopted by those viewing it. Those operating with a victim-focussed approach tried to appreciate the effects of trauma on how the victim might appear, and interpreted, for example, the complainant's nervousness as indicative of trauma. Conversely, those who viewed the scenario from a 'police' or truth-focussed perspective thought the victim appeared deceptive and concealing. The authors concluded that the study clearly revealed the need to train police officers more fully in interpreting non-verbal behaviour in victims of crime and in appreciating the destructive potential for police attitudes to cause secondary victimisation in rape complainants (Mulder and Winkel, 1996, 318).

One dominant and destructive characteristic underpinning police participation in rape investigations arises from exaggerated beliefs in the prevalence of false rape allegations. Concern has been expressed internationally regarding the high proportions of sexual assault complaints that are believed to be false (Blair, 1985; Chambers and Millar, 1983; Fairstein, 1993; Feldman-Summers and Palmer, 1980; Gregory and Lees, 1999; Kanin, 1994; London Rape Crisis Centre, 1984; Mintz, 1973). One early study conducted in the United States of America, for instance, revealed that the police officers who participated in the research believed approximately three out of every five rape complaints to be either false or mistaken

(Feldman-Summers and Palmer, 1980). Factors identified as relating to the perceived 'truthfulness' of an allegation were noted:

Specifically, a rape complainant who displays physical injuries, is consistent in her account of rape, is willing to take a lie detector test, doesn't wait 48 hours before reporting, does not engage in premarital or extramarital relations, has not had social contact with the assailant previously, and does not reach the location of the rape voluntarily is seen by others as having been raped. Given what information is currently available about rape complaints, most women who report being raped will not fare well under these criteria. (Feldman-Summers and Palmer, 1980, 16)

Likewise, in Chambers and Millar's (1983) Scottish study, many detectives estimated false complaints to be very common, with one saying he believed only 1:20 were 'real rapes' (Chambers and Millar, 1983, 85 footnote). Junior detectives would typically say that, although they had dealt with few false ones themselves, nevertheless they 'knew' false rape complaints were common (ibid.).

In New Zealand, recent media attention has been given to this issue. Lower Hutt police, for instance, were said to be concerned at the number of young women who get drunk and then make false sexual assault and rape complaints (NZ Herald, 22 October 1998). Likewise, police in Hamilton claimed that one quarter of all sex complaints made to them were false:

These are not all the cases the police decide are unfounded; these are the ones proved false. (COSA ¹⁴Newsletter, 6, (2), March/April 1999).

¹⁴ COSA is an advocates group for 'Casualties of Sexual Allegations'; referred to more fully in Chapter 8.

This estimate tallies with that found by Jennifer Temkin (1997) when interviewing police in Sussex, half of whom considered a quarter of all rapes reported to be false. She provided the following extreme example:

One CID officer, DC X, considered that there were 'few cases of genuine, very genuine rape'. Genuine rapes he described as 'off the street, didn't know the victim at all' rapes which he contrasted with 'we went out for the evening sort of rapes'. (Temkin 1997, 516)

Other detectives, however, believe the proportion of false complaints to be closer to one half (eg. Lees, 1997, 184), with Ian Blair noting:

... there is considerable evidence that investigators....seem prepared to give serious consideration to the proposition that between 50 per cent and 70 per cent of all allegations of rape are false. (Blair, 1985, 53-54)

One cynical detective even maintained:

After six years on the force, I don't believe any of them. (quoted in Burgess, 1999, 9)

In an Australian study, police officers were asked directly whether, at the time of the initial rape complaint, its possible falsity was uppermost in their mind: nearly two-thirds (64%) said 'yes' to this proposition (Wilson, 1978).

The motives said to provoke false rape complaints tend often to be based on notions of vengeful and fickle women, or on the women's protection of their sexual reputation (Burgess, 1999; Kanin, 1994). The latter explanation has often been proffered in relation to women needing to find an alibi or excuse for behaviour likely to be deemed 'immoral'. Writing on these matters, psychiatrist John Macdonald has maintained:

Pregnancy in an unmarried girl, in a woman who is divorced or separated from her husband, or in a married woman whose husband has had a vasectomy, was overseas, confined in a penitentiary or otherwise away from home at the time of conception is an awkward situation for which some explanation is desirable. A false claim of rape does much to maintain family harmony. (Macdonald, 1995, 88)

In a similar vein, officers in an Australian holiday resort commented that they turned 'droves' of young girls away over the Christmas period for wasting their time with false rape complaints, telling them simply to 'go home and forget about it' (Wilson, 1978, 73). Such scepticism permeates the criminal justice system, with both public and police cynicism being reinforced by comments from judges, such as

It is well known that women in particular, and small boys, are liable to be untruthful and invent stories. (Judge Sutcliffe, 1976, quoted in Chambers and Millar, 83)

Senior detectives have, at times, encouraged such scepticism to shape and inform police interviewing practices with sexual assault complainants. One such detective, for example, noted that:

Women and children complainants in sexual matters are notorious for embroidery or complete fabrication of complaints. (Firth, 1975, 1507)

He went on to comment:

It should be borne in mind that except in the case of a very young child, the offence of rape is extremely unlikely to have been committed against a woman who does not immediately show signs of extreme violence.

If a woman walks into a police station and complains of rape with no such signs of violence, she must be closely interrogated. Allow her to make her

statement to a Policewoman and then drive a horse and cart through it. It is always advisable if there is any doubt of the truthfulness of her allegations to call her an outright liar. It is very difficult for a person to put on genuine indignation who has been called a liar to her face. It should be possible to tell from the reaction received to such an accusation if in fact the complainant is a liar. If she is lying then she can clear up the crime she has alleged by retracting it.

Watch out for the girl who is pregnant or late getting home one night; such persons are notorious for alleging rape or indecent assault. Do not give her sympathy. If she is not lying, after the interrogator has upset her by accusing her of it, then at least the truth is verified and the genuine complaint made by her can be properly investigated. The good interrogator is very rarely loved by his subject. (ibid., 1507)

Considerable empirical evidence exists which demonstrates that police beliefs in false complaints have generally been greatly overstated. The New York Sex Crimes Unit, for example, noted only 2% of reported rapes to be false (Chappell and Singer, 1977; London Rape Crisis Centre, 1984); more recently, Fairstein commented that

Most law enforcement officials equate the amount of false reporting of sex offenses with that of every other category of crime, at approximately 5 percent of the total number of reports. (Fairstein, 1993, 229).

Likewise, writing within the British context, Temkin maintains that there is no evidence that allegations are more frequently fabricated in rape cases than in other crimes (Temkin, 1987). The exception to these findings is a study of false rape allegations conducted in a small metropolitan police agency in the mid-west of the United States (Kanin, 1994). On the basis of complainants recanting their initial allegation, Kanin maintained that false allegations constituted 41% of the total forcible rape cases (N = 109) reported over a nine-year period from 1978 to 1987

(Kanin, 1994). The author maintains, however, that it would be highly problematic to generalise from the results of this research, and notes the widespread variation in police agency policies on rape,

... variations so diverse, in fact, that some police agencies cannot find a single rape complaint with merit, while others cannot find a single rape complaint without merit. (Kanin, 1994, 89)

Kanin's study produced results that were described by some commentators as 'unusual' (Macdonald, 1995, 87), and the findings have not been replicated elsewhere. More recent research has continued to demonstrate high levels of scepticism in police officers, and adherence to traditional beliefs regarding 'lying women' (Gregory and Lees, 1999).

Why, then, is the belief in false complaints so high? One major reason identified pertains to the false picture which has been created by police recording practices. In the United States, for example, the percentage of unfounded cases has sometimes been mistakenly interpreted as equating to false complaints (Estrich, 1987). Cases that are 'unfounded', however, can include those for which there is insufficient evidence to prosecute or which the complainant withdraws. Neither of these outcomes means that the initial allegation was false. Aiken et. al. have noted:

Prosecutors and investigators find the term 'false allegation' of little use unless the claimant says in some way that the account is untrue. It is more common to use general terms such as unfounded, refusal to prosecute, and the like. These categories allow law enforcement to close cases without completing the investigations. Cases of false allegations are included in these categories. Some jurisdictions have reported that 35 to 40% of all cases are relegated to this disposition. This is one way in which rates of false allegation have been inflated and misrepresented. It may be reported that false allegations of rape occur at the rate of 30%, for example, when what is

really meant is that 30% of cases are 'unfounded'. (Aiken et. al., 1999, 223-224)

A similarly confusing picture has been identified in the United Kingdom through the use of 'no criming' (Gregory and Lees, 1999), and in New Zealand through the 'no offence disclosed' category (Stace, 1983; Young, 1983). Thus, in examining the overuse of the latter category, Stace remarked:

The police acknowledge that the 'no offence disclosed' category is a broad one and is used a little bit like a dust-bin category for the disposition of offences which do not fit in anywhere else - for example, if the woman withdraws the complaint. (Stace, 1983, 5)

Whilst efforts have been made in many jurisdictions to respond to criticisms and reduce the use of these categories (Blair, 1975), levels of police disbelief appear to have decreased little. The complexities surrounding corroborative evidence in sexual assault cases appear to have persuaded many police to assume the role of 'judge and jury' during the investigative process. In discussing police attitudes regarding the prior sexual behaviour of rape complainants, for example, Warren Young observed:

Some police officers seemed to use the evidential difficulties which might arise from such factors as a way of judging the genuineness of the complaint itself. They were thus inclined to assess the veracity of the complainant according to their view of possible jury attitudes and the likely outcome of a prosecution in court. Consequently, the amount of evidence required to convince them that a rape had occurred might have been higher than that needed to establish a prima facie case. (Young, 1983, 50)

Numerous rape researchers have pointed out that there appears to be little rational basis for such beliefs about the high number of false complaints (Blair, 1985;

Gregory and Lees, 1999; Lees, 1997; Nixon, 1992; Shapcott, 1988; Vogelmann, 1990). As Blair says:

The embarrassment and discomfort of investigation, medical examination and trial make it most unlikely that considerable numbers of women will make false reports where consensual sex has occurred. If the above arguments are accepted, then there can be no credible basis for the suggestion that 70 per cent, 50 per cent or even 20 per cent of allegations of sexual assault are false, in the sense of untrue. (Blair, 1985, 54)

Fundamental to police decision-making regarding the 'truth' or otherwise of rape allegations is the extent to which officers themselves accept that what happened was a serious criminal offence. The tendency to view 'real' rapes predominantly as violent, stranger attacks means that the majority of rape complaints, since they involve mostly known perpetrators and few visible injuries, may automatically have a shadow of suspicion hanging over them. Writing within the Australian policing context, Christine Nixon suggested:

The hidden issue may well be that police see little harm in most rapes. Statements such as 'she had no physical injuries' to describe someone violated by unwanted sexual intercourse confirms such suspicions. This view allows police to define many rapes as 'false complaints' and underplay the effect on the victims. In this sense, police culture has merely reflected the attitudes of a wider society, which also relies on mythology as the basis for understanding rape and sexual assault. (Nixon, 1992, 42)

Moreover, knowledge of the prevalence of such beliefs amongst the police can impact detrimentally on complainants (Feldman-Summers and Palmer, 1980; Gilmore and Pittman, 1993). Fearing disbelief and judgment, victims of rape may try to embellish their accounts, or conceal wrong-doing, in order to make themselves

appear more 'believable' to the police. From their interviews with complainants whose cases had been 'no crimed', Chambers and Millar remarked:

Some women told us that they knew that in order for the story to be well received they would have to appear to have been engaging in 'respectable' and 'acceptable' behaviour. Consequently women 'told lies' about the amount of alcohol consumed, for example, or 'invented' stories which they thought would make the circumstances seem to the police less compromising. Such 'inventions' were invariably spotted by detectives, and as a result, the credibility of the whole complaint was undermined. [Thus] police scepticism promoted the narration of the very inaccuracies which, in turn, consolidated the police view that women fabricate complaints and make false allegations. (Chambers and Millar, 1983, 86-87)

Perceptions of falseness, however, do not only emanate from complainants anticipating particular police responses. Many police themselves expect 'real' victims to look and behave in very specific ways, adhering to a victim 'script' which they believe should be followed. It has therefore been observed by Aiken et. al. that:

Credibility for victims is elusive. Women who are unemotional may also be conveying that they were not disturbed by the 'alleged' event, hence the absence of harm. Women who are overwrought come across as emotionally unstable, and thus not credible. (Aiken et. al., 1999, 222)

Rape complainants may be regarded suspiciously if they act in what investigators consider a bizarre fashion in relation to the offender who has supposedly just raped them. In a recent New Zealand case, for example, the complainant held the rapist's hand afterwards, in a manner which 'threw' the investigating officers and nearly resulted in the complaint being rejected (Male detective, pers. comm., 2000). Freckelton's comments regarding rape trials are also relevant with respect to police interviews:

What the cross-examiner seeks to invoke is the idealised attribution of the 'real victim'. The trouble is that such a victim is mythical, and the fact that a complainant behaved differently after a trauma does not necessarily mean that the complainant is not telling the truth about what happened to them. It may simply be that they have accommodated or adapted to an abnormal situation as best they could – a reasonable response in unreasonable circumstances. (Freckelton, 1998, 147)

In some ways, therefore, it appears that as long as a rape complainant's appearance and behaviour corresponds to that of a 'real victim', then she stands at least some chance of having her complaint believed. Her case may be helped by the presence of such factors as the assailant being a stranger, her having told the police immediately, and her having visible injuries resulting from her active resistance (Harris and Grace, 1999). As we have seen, however, none of these factors is common or typical. Most women know the offender, find it difficult to name, let alone report, what happened to them as rape, and do not have visible injuries (Gregory and Lees, 1999; Kelly, 1988). To not act like a 'real' victim may result in being viewed as a non-victim. More sinisterly, it may promote the redefinition of the victim as the offender, as one who falsely maligns and impugns the reputations of men.

Within the current debate over false complaints, a balance is needed between the binary opposition of 'women always lie' and 'women never lie'. Issues of belief, 'truth', and credibility occupy highly contested territory, and reflect the tensions and ambiguities surrounding women's sexuality and men's violence. As Liz Kelly has rightly observed:

... belief has become a more nuanced and complex matter. (Kelly, 1996, 45).

Women surviving violence will not always choose or feel able to tell the 'truth' about their experience. Sensing that their behaviour as the victim is also on trial, some may try to conceal aspects that they think may result in judgment and blame and that could detract attention from the offender. Examples of cases drawn from police files that reflect this scenario are contained in Chapter 5 of this thesis.

The last decade of the twentieth century saw many police departments around the world responding to pressure from feminists and victims' advocates to improve their service delivery to complainants of rape and sexual assault. As the community policing philosophy came to be more fully embraced in some quarters, even if only ideologically, police managers have been increasingly challenged to improve the quality of policing in their districts. The need to increase levels of citizen satisfaction with police performance has been noted, particularly in relation to those crimes for which the police have borne the brunt of public and media criticism (Gregory and Lees, 1999; Temkin, 1997). This shift within policing ideology has been accompanied by challenges for criminal justice system agencies to become increasingly victim-centred in their approach, particularly in relation to crimes involving sexual violence (Lees and Gregory, 1997; Mawby and Walklate, 1994; Shapland and Cohen, 1987; White and Perrone, 1997).

Conclusion

The historical and cultural legacy of mistrust of women has come to echo with a new resonance. Greater societal acknowledgement of rape has been evident in recent law reforms and criminal justice system initiatives. These, in turn, have encouraged increased reporting by victims, particularly in relation to non-stranger sexual assaults (Harris and Grace, 1999; Sorenson and White, 1992). Given the predominance of rape allegations against men already known by the victim, it is the woman's credibility which has increasingly been put on trial. Discredit the woman and the allegation can be dismissed. It is salient to recall that men's 'right of access' to their

wives has only very recently been challenged in law, and exists still as a site of disputation and conflict. Little surprise, then, that the sexual battleground remains a volatile and bloody scene. Not only is there a 'war against women' (French, 1992), but also a war **within** women. Women's lives, like those of trapeze artists, teeter on a highwire; one foot wrong, and the fine balance between approval and approbation, commendation or condemnation, is lost.

Perceptions about the nature of rape combine with perceptions about the nature of women to create a cultural environment within which victims of rape will inevitably struggle to be believed. The extent to which complainants are viewed as credible plays a major role in how they will be treated by the police, whether their case proceeds to further investigation, and, if so, how it is likely to be assessed and adjudicated.

For effective social change, it would be necessary to alter the cultural conception of woman as a sex object and completely change her economic position as an article of male property. Destroying the mythology surrounding the woman and her sexuality could perhaps remove part of the basis for her sexual exploitation. Without the old rationalizations, justifications, and ambiguities, rape could be defined by the woman, perceived by the man, and condemned by society as a violent and unjustified crime. Only then will it be possible to free the woman from the status of legitimate victim. (Weis and Borges, 1975, 141)

The chapters which follow present the results of a series of studies examining women's experiences of reporting rape to the police, focussing in particular on issues of belief and credibility. The next chapter summarises the rape research that I was involved in initially (Jordan, 1996; Jordan, 1998a) to show how credibility emerged as a significant issue and why I decided to undertake further research concentrating more fully on this aspect.

* * *

CHAPTER 3: REPORTING RAPE IN NEW ZEALAND ¹

The police were just wonderful to me... It gave me a lot of confidence in my belief of myself as a person of worth.

The police are a big waste of time, and they haven't really got the complainant's interest and priority right. If only they knew how victims felt...
(Jordan, 1998a, 56)

Introduction

As the previous chapter indicated, during the 1970s and 1980s, research on women who had been raped revealed inconsistencies in the ways in which sexual assault victims were treated by the police (Estrich 1987; Holmstrom and Burgess 1978; Medea and Thompson 1974; Smith 1989). Many women negatively recounted their experiences of police investigations and reported feeling disbelieved and unsupported by the police (Chambers and Millar 1983; Hall 1985; Wright 1984). It appeared that women's chances of receiving a sympathetic police response were most commonly linked to stranger attacks and increased in accordance with the extent of physical injuries suffered in the attack (Feldman-Summers and Norris 1984; Koss et. al. 1988; Williams 1984). Overall the reporting rate for rape was low (Adler 1987; Hall 1985; London Rape Crisis Centre 1984).

In New Zealand, feminists began expressing concern about rape in the early 1970s and in 1973 the Wellington Women's Workshop was the first in the country to establish a telephone service for victims of rape, a move prompted in part by the realisation that such victims were not deemed eligible to use existing emergency services (Dann, 1985). Soon after its establishment, a woman was raped who stated she had no confidence in taking her case through the legal system. She approached members of the Wellington Women's Workshop for assistance in devising an alternative strategy. The women decided to accuse the man of the crime publicly; they went to the bar he drank at and began whispering the rape accusation, raising the volume until it reached a crescendo and forced the man to leave. A furious management then evicted the women from the premises (Dann, 1985). In 1976, a staff reporter with the New Zealand Herald, Ann

¹ Sections of this chapter have been accepted for publication in *The British Journal of Criminology*.

Lloyd, interviewed victims, offenders, criminal justice system professionals and rape crisis workers for a publication aimed at increasing awareness and understanding of the crime of rape (Lloyd, 1976). The first New Zealand 'Reclaim the Night' march was held in 1979, the same year as self defence courses, combining martial arts with feminist principles, were begun by Sue Lytollis in Auckland (Dann, 1985).

Christine Dann, in her history of women's liberation in New Zealand, notes how it quickly became evident to feminist activists that information on sexual violence was lacking, and in 1979 Miriam Jackson (Saphira) undertook a survey on rape through the magazine, the New Zealand Woman's Weekly. The responses received helped to shatter some of the commonly held myths and showed rape to be more prevalent than was often assumed. The survey also indicated reporting rates to be low, and generally helped to establish rape as an issue of concern.

The first permanent rape crisis centre was established in Auckland in 1978, followed soon after in Wellington and other cities (Dann, 1985). In 1982, a national meeting of workers from rape crisis centres was held to conduct initial discussions regarding whether an umbrella agency should be formed, a move acted upon after three years of discussion (Dann, 1985). The 1982 gathering also discussed existing rape laws, and rape crisis workers later contributed to a Rape Symposium organised by the Justice Department and other agencies concerned with rape law reform (Dann, 1985). In 1983, feminists seeking law reform were amongst those who made submissions to the parliamentary committee considering changes to rape laws, and also participated in a Young Women's Christian Association (YWCA) conference that year on Rape and Sexual Violence to Women and Children (Dann, 1985).

New Zealand Rape Study 1983

Prompted by rising public concern over the incidence and treatment of rape victims, the Minister of Justice directed the Department of Justice and the Institute of Criminology at Victoria University of Wellington to undertake a study on rape (Young, 1983). Since very little information was available, several preliminary research studies were needed to establish a baseline of information (these Research Reports were published in Rape Study, Volume 2). The result was the first comprehensive examination of rape law and procedure in New Zealand (Young, 1983).

Significant findings from this study established that, contrary to popular beliefs about stranger rape, the victim and assailant were generally known to each other (Young, 1983), and almost half of all rapes occurred in either the victim's or assailant's home (Stone et. al., 1983). Included in this project was an interview-based study documenting the concerns and experiences of women who had been victims of rape. The findings reinforced what many women working in this area had long observed: namely, that the existing system was experienced by many complainants as a repeat violation, similar in its effects to the original rape incident (for example: Holmstrom and Burgess, 1978; Medea and Thompson, 1974). Concern was also expressed in the 1983 study that police officers involved in sexual assault investigations generally lacked an adequate understanding of the effects of rape on victims, particularly in relation to the immediate impacts on demeanour and behaviour (Stace, 1983).

Mounting criticism of the criminal justice system's response to rape victims prompted the introduction of the Rape Law Reform Bill, passed on 12 December 1985, and effective from 1 February 1986. Ginette Sullivan asserted at the time that this legislation went a considerable way towards acknowledging feminist perspectives on rape (Sullivan, 1986). The substantial reforms introduced included:

- (i) broadening the definition of rape to include other sexual violation offences, thereby acknowledging the severity of non-consenting anal and digital penetration, and violation by the use of a foreign object such as a bottle or broomstick;
- (ii) abolishing spousal immunity, thereby making it possible for sexual violation of a wife by her husband to be regarded in law as a criminal offence;
- (iii) enabling the complainant, as principal witness, to give evidence in writing at the hearing of depositions, rather than requiring this to be presented in person; and
- (iv) allowing for the court to be closed to the public while the complainant presents oral evidence (Sullivan 1986, 11).

Significant changes were also made at this time in relation to police training, the conducting of post-rape medical examinations, and the provision of crisis support counselling.

Ten years after these reforms were introduced, the Institute of Criminology and the Faculty of Law at Victoria University of Wellington began a research project to assess, from the woman's perspective, how she experienced in the 1990s both the reporting of the offence to the police and any subsequent trial processes (Jordan, 1998a). The data-gathering phase of the study was funded by the Foundation for Research, Science and Technology (FRST). The remainder of this chapter presents a summary of the methodology and key findings of this study.

RAPE STUDY 1998

Methodology

The overall aim of the research project was to evaluate how rape and sexual assault victims' complaints to the police were responded to and dealt with by the various agencies involved. In-depth, qualitative interviews were conducted with 48 women who had approached the police between 1990 and 1994 with a complaint of rape/sexual violation or the attempt thereof. The study aimed to obtain accounts of the women's dealings with the police, doctors, and support agencies (Jordan, 1998a) as well as their experiences in court and during the trial (McDonald, 1997).

Sampling and recruitment

The cases eligible for inclusion in the sample involved any report by an adult victim of rape, unlawful sexual connection, attempted unlawful sexual connection, or inducing or attempting to induce sexual connection by coercion (Sections 128, 128A, 128B, 129 and 129A of the Crimes Act 1961). Given the sensitive nature of the subject area, it did not seem appropriate for the sample to be randomly selected. Extensive discussions were held with counsellors involved in the crisis support area to determine sensitive recruitment procedures. Of principal concern was the need to minimise the stress to the women and to approach them in a manner designed to allow them freedom to choose whether or not to be interviewed. For these reasons, the decision was made to rely extensively on the agencies to make the initial contact and, accordingly, all women contacting the agencies in connection with any of the above offences were asked if they were willing to receive information about the study. Former clients were

also mailed information about the research by the agencies and invited to discuss their possible participation with an agency worker first if they wished.

While the majority of the women (N=40) were recruited through the support agencies, a minority were referred by the police (N=2). This arose from individual officers who were aware of the research deciding to canvass it with complainants whom they thought might be interested in the study. An additional six women initiated contact themselves following the publication of a feature article about the study in local newspapers. The eventual sample size comprised 48 women, who between them had reported 50 instances of rape/sexual assault to the police in the period 1990-1994.

The researchers personally contacted all women who had indicated they were interested in hearing more about the study. Once they were given the information concerning the research and what participation in it would involve, the women were able to choose whether or not to be interviewed. All of the women who agreed to the initial contact decided to participate in the study.

Difficulties were experienced during the recruitment phase in attaining an adequate sample size. Initially, the intention had been to interview only women in the Wellington area, where the researchers were based. Insufficient numbers of local women were able to be contacted, however, and in order to increase the sample size the study was extended to the cities of Auckland and Christchurch. The largest hurdle arose from the counselling agencies being unable to track the whereabouts of many of the women they had seen previously in relation to a reported rape or sexual assault. Most of their clients appeared to have moved addresses and were unable to be reached by mail or telephone, making the recruitment phase of the project one of its most difficult and time-consuming aspects.

Data collection

The primary means of data collection involved the use of in-depth, structured interviews with the women. The questionnaire schedule was based to some extent on the issues covered in the 1983 Rape Study (Young, 1983), and was constructed in consultation with both researchers and practitioners. The schedule was designed to obtain

information that could be analysed quantitatively, as well as to obtain extensive qualitative data concerning the women's subjective experiences and opinions.

The interviews lasted, on average, between one-and-a-half and two hours, although in some cases considerably longer (in excess of four hours). In five cases, the women had so much they wanted to communicate that the interviews could not be completed in one session and an additional time was arranged to ensure completion. Shorter, repeat interviews were also conducted with several women who wished to update their account as the case progressed through the various stages of the criminal justice system.

Interviews were conducted with the women at a time and place acceptable to them. Provision was also made for them to have an accompanying support person if they wished. The interviewers² recorded the women's answers and comments on the questionnaire schedule, and, if the women agreed, the interviews were also tape-recorded.

Details of the sexual assault itself were not requested; the explicit emphasis of the research was on the women's perceptions of events from the point at which the incident was first reported to the police. Acknowledgement was made that since the research questions dealt with issues that may still be unresolved, it was conceivable that the women might experience further distress in the interview situation. It was also recognised that the interview process itself might assist the women to articulate concerns, clarify needs, and seek help in ways that would not otherwise have occurred. Thus the interview itself could generate in a woman awareness of the need for assistance. Interviewers were therefore encouraged to be supportive and sympathetic in their responses, while ensuring they did not assume a counselling role. Where interviewers received requests for help, or held concerns for the woman, they were able to suggest an appropriate support agency, with all interviewers having information concerning support agencies in their area.

² The author conducted 18 of the Wellington interviews and two Auckland interviews; additional interviewers were employed to assist in data-gathering, and were paid for from the FRST grant.

Limitations

As with any piece of research, there were limitations in this study's methodology and generalisability that need to be acknowledged.

Firstly, only women were included in the study. This decision was made both to ensure comparability with the 1983 women-only study, and because the overwhelming majority of reported sexual assaults involve female victims. Male rape victims may encounter additional attitudinal issues when reporting sexual offences to the police, and this is clearly an area requiring further, sensitive research in this country.

Secondly, the women were questioned only about incidents which had occurred after they turned 16 (i.e. once they had reached the legal age of consent), thereby excluding cases of historic child abuse.

Thirdly, the information was obtained retrospectively and, for some women, the events they described had occurred several years before the interview was conducted. Subsequent events and experiences may have affected their accounts. No attempt was made to verify the women's accounts from other sources, since the explicit focus of this research was on how the women perceived their treatment and recounted their experiences.

Fourthly, recruitment of the sample was dependent primarily on referrals from counselling agencies and, to a lesser extent, the police and self-selection. The agencies contacted were primarily those whom the police routinely refer women to following a rape complaint, and efforts were made by these agencies to inform every woman who was eligible for inclusion in the study about the research. The final sample was therefore not necessarily representative of all women who report being raped.

Fifthly, participants for the study were drawn primarily from the cities of Auckland, Wellington and Christchurch, although in some cases the incident had occurred and been reported in smaller provincial areas. Generally, however, the research is likely to be more indicative of women's experiences of reporting sexual assaults in larger, metropolitan areas – there may be differences in the experiences of women in rural areas.

The sixth and final point arises from the fact that, despite employing Maori and Pacific Island interviewers in Auckland, very few non-New Zealand European/European women were interviewed, and so the results primarily reflect the experiences of New Zealand European/European women. This outcome was undoubtedly associated with the methodology, which relied largely on participants being approached through support agencies, and was restricted to women who had reported an incident of sexual violation to the police. Maori women, and women from ethnic minority groups generally, may be less likely to report sexual victimisation to the police, or approach external agencies for assistance. Issues pertaining to the additional barriers women of minority group status face in terms of accessing justice are undoubtedly significant and have been noted internationally (Bell, 1991; LaFree, 1989; Thomas, 1993; Wriggins, 1998). Within New Zealand, recent research on Maori and the police identified the very low confidence levels Maori place in the police as a traditionally monocultural institution (Te Whaiti and Roguski, 1999), as well as police distrust generally of Maori people (Maxwell and Smith, 1999). The particular ways in which these general attitudes are translated into the context of sexual violence in New Zealand have yet to be researched.

Characteristics of the women in the sample

A total of 48 women participated in the study. They had reported a total of 50 incidents of rape or sexual assault to the police since 1990 - two women had been raped on two separate occasions by the same perpetrator.

Age: The ages of the women at the time of the rape/assault ranged from 16 to the mid-70s. The single biggest category of women was young women in the 16-20 age group; they accounted for nearly one-third of those interviewed (31%).

Relationship status: In terms of their relationship status, the women were divided approximately equally between those who were currently partnered (i.e. either married or in a de facto relationship) (N=18); those who had been partnered (i.e. divorced or widowed) (N=15); and those who were single (N=15).

Ethnicity: Despite considerable effort to obtain Maori and Pacific Island participants for the study, the vast majority (92%) of the sample identified themselves as New

Zealand European/European. Only three women described themselves as Maori, and one woman described herself as belonging to a specific national identity (which is not disclosed here for reasons of confidentiality).

Occupation: The women came from a diverse range of occupational backgrounds. The two largest groups represented were students (19%, N=9) and professionals (17%, N=8); the next most frequent categories were those who described themselves as homemakers (13%, N= 6) and those on benefits (13%, N= 6); the remainder included secretarial/office workers (4%; N=2), kitchen/domestic workers (4%; N=2), and individual women who worked as a waitress, dancer, baker, fitness instructor, sex worker, or shop assistant.

Relationship to perpetrator: Of the 50 incidents reported to the police, less than one-third involved an offender who was a stranger. In 35 of the incidents (70%), the rape/sexual assault was perpetrated by someone previously known to the victim. This figure included spouses and ex-spouses, boyfriends, family members (including a brother-in-law and a future father-in-law), neighbours, acquaintances (including friends of friends or of partners, co-residents, or fellow party guests), and those with whom the woman may have had a professional relationship (such as a doctor, teacher, counsellor, or masseuse). In one case, two perpetrators were involved in the assault, one known and one a stranger, and another case involved two known perpetrators.

Complainants' previous contact with the police: For more than one-third of the women in the sample (37%; N=18), the reporting of this incident marked their first significant contact with the police. The majority, however (63%; N = 30), stated that this was not the first time they had been in contact with the police. Typically, their previous contact had been in the context of earlier victimisation experiences, such as burglary, theft or assault (80%; N=24).

Summary of research findings

The women were asked to provide details of their interactions with the police at different stages of the reporting and investigation process. Although individual variations occur, there are recognizable stages through which most rape victims proceed when contacting the police following a rape/sexual assault. These are:

- (1) Initial contact and reporting;
- (2) Medical examination;
- (3) Statement-taking and interviewing;
- (4) Case progress.

The women were asked to comment on their experiences at each stage of the process, where applicable. Reproduced here is a summary of the findings relating to the women's contact with the police – a fuller account, including the women's experiences of the medical examination, can be obtained in Jordan (1998a).

(1) Initial contact and reporting

Who she first told about rape/assault: In only six of the cases in the research sample were the police the first people the woman told about the incident. The women were, in fact, three times more likely to tell a friend about what had happened to them (36%; N=18) rather than call the police in the first instance. Others disclosed what had happened initially to family members, their partner, a colleague, a neighbour, or a counsellor, before deciding to approach the police.

Who informed the police: Although it may not have been the police whom the woman told first about the incident, nevertheless in over half the situations (54%; N=27), she was the person who informed them of the incident. On seven occasions it was a friend who told the police, and less frequently it was either other people she knew (such as her partner or other family members), or those she approached for assistance directly after the rape/assault.

How the police were contacted: The most common way of informing the police was by telephone. Of the 27 women who reported the incident themselves, 21 (78%) did so by telephone. The remainder did so in person: one went to a police caravan based at a music festival and the rest went to the police station. In two situations, it was the police who first contacted the woman as part of their investigation of the offender; in another, the woman's ex-husband went in person to the station; the remainder (N=20) all involved friends or family phoning the police on the woman's behalf. Some women referred to the embarrassment they felt at having to disclose sensitive information over

the phone, especially when their call was passed around the station. One woman summed up the feelings of many when she said:

When you finally make the decision to report it, you just want to talk to one person - you don't want to go through three or four different people. It's a very hard and very personal thing.

Factors influencing decision to report: In those instances where the complainant herself reported the rape/sexual assault to the police, she was asked what factors influenced her decision to do so. One-third of the women simply said: *I felt I should*; a further thirty per cent said *to protect others*; more than a quarter (26%) said *they didn't want him getting away with it*; and almost a quarter (22%) said they reported the rape because *they were scared of a repeat attack*. Other factors present in their decision included being persuaded to report by others or feeling pressured to report the rape.

How soon after the rape/sexual assault was the incident reported: Of the 50 incidents, well over half (62%) were reported to the police either immediately after the rape/sexual assault or on the same day. There were delays in reporting the rape/sexual assault in just under two-fifths of cases (38%). While half of these were reported within a fortnight of the incident's occurrence, the remainder took considerably longer to be brought to police attention and, in three cases, it took more than ten years. There were a number of reasons for delays in reporting. Some said they needed time to accept what had happened to them, or to acknowledge their need for assistance. At least two of the women said they held back because they felt confused about the incident and whether it constituted rape. Sometimes the reason given for delayed reporting seems to have been fear-based, arising from the woman's concern over how the offender, the police, or family and friends would respond. In one case, the offender's death threats against the woman and her relatives kept her *silent*, she said, for ten years before contacting the police.

Women's satisfaction with how the police treated them at the reporting stage: Nearly two-thirds (64%) of the women felt either satisfied (40%; N=20) or very satisfied (24%; N=12) with the treatment they received from the police during the initial reporting phase. Thirty-two percent, however, were either dissatisfied (20%; N=10) or very dissatisfied (12%; N=6). The remainder (4%; N=2) said they felt neutral. The

women who rated the police highly cited the importance of being believed, being taken seriously, and feeling cared for and supported. Even small gestures of friendliness counted for a lot when the women were feeling so vulnerable - for instance, the police officer getting the woman a cup of coffee, allowing her a smoke, or letting her stop and have a break when she got upset. Some women felt they needed clear information at this stage about the procedures to be followed and appreciated being provided with this and given some choice over whether and how to proceed.

The women who were dissatisfied with the initial police response identified particular behaviours and attitudes which they found distressing. Several commented on the lack of empathy they felt they encountered at a time when they desperately needed some caring and validation. Feeling as if the police did not believe them and that they were judging them was also mentioned by several of the women at the reporting stage. One young woman expressed this forcefully:

They asked me so many questions I felt like the bad person. They really made me feel so stink. I just wanted to cry. They should be more sensitive. He was like a pig to me (you know how they call police pigs? - he even looked like a pig, he reminded me of a pig.) They should be more direct and up front, and say they have to sort out the truth for court. It made me very angry.

A further source of dissatisfaction for some women arose from their feeling that their complaint was unimportant to the police. This could be conveyed in various ways, including a cold and dismissive attitude or by indicating that other jobs had greater priority.

Summary of initial contact and reporting: The initial reporting experience emerged from this study as a critical determinant of whether complainants will be able to develop sufficient trust in the police to feel able to proceed with an investigation. It occurs at a time when the woman is feeling highly vulnerable, with heightened needs for safety and reassurance. Overall, the comments made by the women reflected their desire for the entire reporting process to become more victim-centred and cognisant of their needs rather than being oriented exclusively around police operational requirements.

(2) Police statement-taking and interviewing

Following the reporting of a rape/sexual assault, the complainant will usually be referred for the forensic medical examination and put in contact with a support agency before returning to the police to provide a full statement. Subsequent police interviews may also eventuate as details are checked and the court case prepared.

Location and atmosphere during statement-taking: In the main, the woman's statement was taken in a police station. This occurred in nearly three-quarters (73%; N=35) of cases. Less commonly, it took place in the victim's home (19%; N=9) or in support agency rooms (4%; N=2). In one case, the interview was conducted in the woman's workplace, and in the remaining situation, the level of injuries sustained in the rape attack necessitated the statement being taken while the woman was in hospital. Nearly half (49%; N=21) of the 43 women who commented on the atmosphere during interviewing and statement-taking considered it to be warm and supportive. Other women experienced the interviewing atmosphere in less positive ways. Nearly a quarter (23%; N=10) described it as a cold, clinical environment, and the remainder (28%; N=12) used a range of other descriptions, such as unreal, grotty, or overwhelming. One woman, for example, said it was hard to feel comfortable being interviewed in a room full of police riot gear. Others were distressed at the number of interruptions while they gave their statement, with some feeling on show as the latest 'rape'. Overall, what the women said they valued the most was being in a comfortable and relaxed environment where they were treated in a friendly, caring manner and could be guaranteed privacy.

Number of people present during the interview: The most common interviewing scenario involved the woman complainant with one police officer. This occurred in 41% (N=20) of cases. The next most common arrangement was when the woman had one support person present (22%; N=11). Sometimes, two officers would be present with the woman on her own (8%; N=4), or with her and a support person (14%; N=7). On other occasions (14%; N=7), there could be five or more people present during the interview, and there were up to eight in one case. Whether or not it was possible to have a support person present during statement-taking became problematic for some women. Not all the women who wanted support during the interview felt strong enough to request this, and occasionally a request for support was refused.

Gender of the interviewing officer: Half of the women (51%; N=25) were interviewed by male officers; most of the remainder were interviewed by female officers (41%; N=20), although a small number of women (8%; N=4) were interviewed by officers of both genders. In general, a preference for female officers being involved was apparent (Jordan 1998a).

Given the sensitive nature of the incident, and the intimate questions which needed to be asked, some of the women found it very difficult to be questioned by a male. Several said categorically *it had to be a woman*, especially if the interview was conducted in their own home. Disclosing explicit, sexual details about the incident to male officers could compound the woman's sense of vulnerability: *It's like you're sitting there with your legs open, you might as well be*. Some women also commented about the lack of sensitivity and awareness displayed by male detectives towards them as rape victims.

Maleness per se, however, did not appear to determine the quality of an officer's response to sexual assault victims. Several of the women interviewed, in fact, said they had requested a woman officer only to end up feeling disappointed with the outcome. Some of the women expressed surprise when the women officers they saw displayed hostile, disbelieving attitudes. Since policewomen operate within the same organizational culture as policemen, and may struggle even harder for acceptance within it, such outcomes should probably not be totally unexpected.

In terms of gender, then, it was clear that while some women found it traumatic being interviewed by a man, others felt this was not nearly as important as the officer's attitude. This could be conveyed non-verbally at times and, for some women, it was reflected in the tone of the general interviewing environment. For instance, one woman felt uncomfortable being asked intimate details about her rape in a room in which pictures of semi-naked women were displayed on the wall calendar. Likewise, another felt the detective interviewing her was being reasonable until she overheard his male colleagues telling a sexist, anti-woman joke in the next room, which went unacknowledged by him.

Overall, the characteristics the women said they appreciated in the police can be summarised as those reflecting a caring professionalism underpinned by respect for and belief in the victim/survivor.

Number of interviews: Approximately three-quarters of the women (N=35) were interviewed by the police more than once. These ranged from one additional interview simply to clear up a few details, to at least five of the women having six or seven follow-up sessions with the police. Multiple interviewing appears to have arisen for a variety of reasons. In some cases, for example, additional details needed to be obtained from the woman; her assistance was required in assembling an identikit picture of the offender; or the police wanted her to return to the crime scene for a reconstruction of the incident. In two cases, further details were necessary to enable the police to arrange appropriate witness protection measures.

Continuity of interviewing officers: Approximately half of the women (N=18) who had more than one police interview had the same interviewing officer throughout; the remainder were interviewed by different officers. The women who were re-interviewed by the same officer often felt pleased at the continuity. Of those who experienced a change of officer, their feelings varied depending on whether or not they felt the change was for the better.

Advice to women in a similar situation about contacting the police: Three-quarters of the 40 women (N = 30) who answered a question about what women in a similar situation should do said they would advise them to report the offence to the police. Nine of the women said they would advise women to go to the police only if they had a support person to accompany them. Even women who expressed very negative views concerning how they were treated said they would still advise others to go to the police. Six women (15%) were emphatic, however, that after their experience, they would not encourage others in a similar situation to report the offence; a further four women (10%) indicated that they were unsure what they would advise, and articulated mixed views on this question.

Extent to which the complainant was satisfied/dissatisfied with the police response overall: The women were asked to provide an overall rating as to how they felt their complaint was responded to and dealt with by the police. Table 3.1 sets out this information.

Table 3.1: Women's Overall Satisfaction with Police: Numbers and Percentages

	N	%
Very satisfied	11	22
Satisfied	9	18
Neither/Nor	0	0
Dissatisfied	6	12
Very dissatisfied	13	26
Both/Mixed	6	12
Not sure/Can't say	3	6
Didn't proceed with complaint	2	4
Total	50	

There was virtually a 50:50 split between those who expressed overall satisfaction or dissatisfaction with the police. A total of 20 women (40%) said they were either satisfied/very satisfied compared with 19 (38%) who said they were dissatisfied/very dissatisfied. At the two extremes within these categories, 11 women were very satisfied and 13 were very dissatisfied. Generally, therefore, the women's responses were quite polarised. In addition, a small number (6) felt unable to summarise their overall satisfaction level because, while they were pleased with some aspects of the police response, this was compromised by their dissatisfaction with other aspects. A further two women could not provide an overall satisfaction rating, stating that the negative police attitude expressed when they made their initial complaint deterred them from proceeding any further with it.

Several of the women said they had requested a woman officer to interview them only to end up feeling disappointed with the outcome. Since policewomen operate within the same organisational culture as policemen, and may struggle even harder for acceptance within it, negative attitudes should probably not be totally unexpected. These could be conveyed non-verbally at times and were sometimes reflected in the tone of the general interviewing environment. For instance, one woman felt uncomfortable being asked intimate details about her rape in a room in which pictures of semi-naked women were displayed on the wall calendar. Likewise, another felt the

detective interviewing her was being reasonable until she overheard his male colleagues telling a sexist, anti-woman joke in the next room, which went unacknowledged by him.

It is, therefore, clear that while a significant number of the women felt very positive about the response they received from the police, an equally significant number were highly dissatisfied. Precisely why such a polarisation exists is difficult to determine. It may be related in part to the nature of rape itself, and the fact that it is such an overwhelmingly traumatic experience for the woman to experience, combined with the undoubtedly strong views held by many police officers on its occurrence. Because rape is such an intense and sensitive area, when the police act with professional caring and demonstrate their respect for the victim, this is noticeable and greatly appreciated. When such qualities are lacking, however, their absence is also very noticeable. Either way, this results in heightened emotional responses and polarised views.

The issue of gender did not emerge overall as a determining variable of complainant satisfaction.

The women's satisfaction ratings were examined against several other key variables, in order to determine the possible impact of these. No significant differences emerged in women's overall satisfaction with the police depending on the age of the complainant.³ Similarly, no significant differences emerged which were related to whether or not the perpetrator was a stranger.⁴ The only variable analysed that did seem to be associated with the women's satisfaction ratings of the police was case outcome. Of the 20 cases where the offender was either not detected (N=8) or detected but not prosecuted (N = 13), three-quarters of the complainants (75%; N=15) stated their dissatisfaction with the police. A further two said they decided not to proceed with the case because of encountering a negative police response. One said she felt she had received a mixed response, leaving only two women expressing any level of satisfaction with the police. Conversely, of the total number of cases resulting in prosecution (N= 31), 18 women recorded satisfaction with the police; four expressed dissatisfaction; seven had a mixed response; and 2 felt unsure. In ten cases the offender pleaded guilty while the

³ Of those aged 25 and under (N = 24), 10 expressed overall satisfaction and 10 dissatisfaction. Similarly, of those aged over 25, 9 expressed overall satisfaction and 10 dissatisfaction. In both age groups, the remainder gave a mixed response in their replies to this question.

⁴ Of those attacked by strangers (N = 15), half expressed satisfaction (N = 7) and half dissatisfaction (N = 7), while one gave a mixed response. Of those attacked by someone known to them (N = 35), 13 women expressed satisfaction and 14 dissatisfaction, with the remainder giving mixed (N = 5) or unsure (N = 3) responses.

remaining 21 went to a defended hearing. The final verdict did not appear to be as influential on women's views of the police as the fact of prosecution - the four women who expressed dissatisfaction with the police all had cases resulting in conviction (including one offender who pleaded guilty), while none of the seven women whose cases resulted in acquittals expressed clear dissatisfaction with the police (although two women had a mixed response).

Overall, the characteristics the women said they appreciated in the police can be summarised as those reflecting a caring professionalism underpinned by respect for and belief in the victim/survivor.

(3) Case progress

Being kept informed by the police about the progress of one's case is a factor of vital importance to rape complainants (Adler, 1991; Chambers and Millar, 1986; Temkin, 1997, 1999) and this finding was further reinforced in this study.

Informing the women about what would be involved in a prosecution: Over half the women (59%; N=26) said the police gave them information concerning what would be involved in a prosecution, and some commented that they appreciated in particular being fully informed as to what the trial would involve. Eighteen women (41%) said they were not told what would be involved in a prosecution. In five cases this was related to the offender not having been identified or apprehended, and in at least two others it was related to the police deciding not to press charges. In the remainder, the women said that although their case appeared to be proceeding, they felt poorly prepared by the police and felt uninformed as to how the process should operate and what to expect. Some of the women commented that they were given no explanations by the police concerning reasons for case delays or postponements, and felt frustrated that they were unable to meet the Crown Prosecutor until the day of the trial.

Concern was also expressed by some that the police expected them to proceed to trial without explaining exactly what would be involved, leaving them dependent on support agencies for information they believed the police should have provided. One woman, for instance, said she specifically asked the detective what kinds of questions she might face only to be told dismissively that he did not know, leaving her to seek preparation

for court from elsewhere. One aspect that she and other women felt strongly about concerned their perception that at times the police deliberately withheld information from them regarding the most potentially harrowing aspects of a courtroom trial in order to try to protect or insulate them. The women criticised this practice for its potential to misinform and mislead them about the realities of the trial process. Comments from the women suggest that what is valued most is realistic information from the police concerning how they expect a trial to proceed, and that this is communicated in a way which validates the woman's experience, irrespective of the eventual case outcome. Knowing that the police believed them and that the justice system was often flawed helped some women to accept the possibilities of a 'not guilty' verdict without feeling completely invalidated by the process.

On the other hand, over a quarter of those who were given information about the prosecution process believed that this was for negative reasons and that the police wanted to deter them from continuing with the case. Some related this to a perception that the police did not believe them; with one woman commenting how she felt threatened in this regard:

They said to me that if there's anything in my statement that I'm lying about then to fix it up now before it went to court, otherwise if it went to court and they found out I was lying I'd get imprisonment for lying in my statement.

This need not be an intractable catch-22 situation for the police, but emerged as an issue requiring increased levels of understanding and acknowledgement.

Often, therefore, it seemed to be the process that mattered more to many of the women, rather than necessarily the final case outcome. This factor possibly underlies the apparent tension which exists at times between the police and rape victims, and which is explored more fully later in this thesis.

Comparison of the 1983 and 1998 rape studies

In the introduction to this chapter, reference was made to the 1983 Rape Study conducted by the Institute of Criminology and the Department of Justice (Young, 1983). One aim of the 1998 research project was to provide material which could be

compared with the earlier study, in order to ascertain the extent to which women's experiences of the reporting process may have changed.

The 1983 Rape Study states that the women's descriptions of how the police treated them varied considerably,

... ranging from glowing praise to severe criticism. Overall, their positive and negative responses were fairly evenly balanced. In fact, only two women had predominantly negative perceptions of the police. Most felt that they had generally received 'a good deal', as one woman put it, and that at least some of the police officers they had encountered had been helpful and sympathetic. (Young, 1983, 46)

What the women interviewed in 1983 said they most appreciated was having their complaint dealt with by understanding and supportive detectives who displayed a degree of kindness as well as professionalism. Such qualities continued to be highlighted as important by the women who participated in the 1998 study. Both studies, in fact, indicated the same, common themes within the women's responses.

These themes can be summarised as:

- the need to be believed;
- the need to be treated with respect and understanding;
- the need to be allowed to retain some degree of control over proceedings; and
- the need to be provided with adequate information.⁵

The results of the 1998 study suggested that, despite changes in the law and police training since 1983, little has altered in terms of women's experiences of the reporting process. Analysis of the content of the women's concerns, as revealed in their stories and comments, confirms that, as Temkin (1997) also found in the Sussex study, little of substance has changed. Despite apparent improvements in police processes, women reporting rape/sexual assaults to the police now are likely to encounter similar police attitudes and behaviours to those experienced by women in the early 1980s. While it is clear that some individual police officers may respond supportively to rape complainants, it is equally apparent that such a response cannot be guaranteed. This

lack of consistency runs counter to increasing expectations of acceptable professional conduct in the 1990s. As one of the women in the 1998 study commented:

Individual cops are really, really good and deal with these situations really, really well, and probably now there are more individual cops who are good than there were, but it shouldn't be an individual thing. They're paid by us and they need to be able to respond to things appropriately and it's not good enough when it's just left up to individuals. It shouldn't be a case of just who you happen to get.

One of the recurrent themes within both studies, and which provoked some of the strongest utterances, related to issues of belief and complainant credibility. Comments and examples from the 1998 study are presented below to illustrate the influence and potency of police scepticism on rape complainants' feelings and experiences.

Belief and complainants' credibility

Rape complaints have always posed difficulties for the police because so often, in the absence of other evidence, they essentially become the victim's word against the offender's. At least 18 women in this study (one-third of the total sample) considered belief had been an issue at some stage during the reporting process. They felt the police regarded their complaint with scepticism and spoke of feeling as if it was up to them to persuade the police of the genuineness of their allegation before an investigation would proceed.

Examples provided by the women suggest an initial range of factors that appear to be correlated with police distrust. These included:

- (i) desire for self-gain;
- (ii) perceived motivation of revenge or malice;
- (iii) reluctance to accept accounts implicating partners/husbands as the perpetrator;
- (iv) expectation that rape victims will present in a particular emotional manner;

⁵ Further detail concerning each of these themes is available in Jordan (1998a).

- (v) perceived credibility of the victim; and
- (vi) perceived credibility of the alleged offender.

Each of these is explored briefly below, using relevant examples from the research.

(i) Desire for self-gain

Some women expressed strong resentment at police officers' presumptions that they were manipulating the system for financial purposes. In the case which follows, the detective appeared to waste no time before directly accusing the complainant of such behaviour.

After years of therapy, Hannah decided she wished to lay charges against the man who had raped her years previously. On phoning the police, she asked initially to speak with a female detective but was told none was available. After a prolonged rigmarole (see Jordan, 1998a, 18), Hannah was finally interviewed by a male detective in a police station where she felt very uncomfortable. Rather than finding this detective understanding about her tentativeness in coming forward, he asked if she was making the complaint just to get an ACC (Accident Compensation Corporation) lump sum payment, explaining that: *'You wouldn't believe how many women make statements to the police in order to get lump sum payouts from ACC.'*

Hannah's response reflects her anger and frustration: *The bastards, eh? For goodness sake, lump sum payments finished in 1992!* (It was 1994 when she contacted the police)

At the time of being interviewed, as far as Hannah knew, the alleged offender still had not been spoken to by the police.

(ii) Perceived motivation of revenge or malice

A classic stereotype exists of women making rape complaints out of revenge or malice. Only two women mentioned this explicitly, however, saying they had been accused of

being malicious by the police officer dealing with them. In Melissa's case, for instance, she alleged having been raped on a date and was later accused by the police of trying to get back at the guy concerned. The police accused her of being a liar and told her she was lucky not to be charged with wasting police time.

(iii) Reluctance to accept accounts implicating partners/husbands as the perpetrator

Women who were sexually assaulted by men they knew, or had known, intimately recounted how difficult it was to have their accusations believed and taken seriously. In Lydia's case, for example, her husband had attempted to rape her and threatened to kill her very early one morning. She had pretended she was going to work and driven straight to the nearest place open, a petrol station, where the attendant phoned the police. She had no visible injuries and felt the police played the attack down, despite her husband having previously received diversion on an assault charge against her. She felt the officer minimised the seriousness of the incident and attributed blame to her, implying that if her husband was so terrible she should have left the relationship long ago. Finally, the police persuaded Lydia not to go ahead with the charges because of her apparent lack of injuries and because, they said, marital rape was very hard to prove.

(iv) Expectation that rape victims will present in a particular emotional manner

Women commented that at times they felt the police were looking for them to behave or act in a particular way, as if there was a typical mode of expression or behaviour that would be exhibited by genuine rape victims. Emma, for example, believed her lack of visible distress was a factor in the police expressing disbelief that she had been raped:

I think that was something that they really couldn't understand, that I was so calm. There were no tears, there was no hysteria, there was nothing, and I think they couldn't accept that I wasn't dissolving.

(v) Perceived credibility of the victim

Many of the women felt that the police were judgmental of them and doubted their veracity. As one woman said:

I went seeking help but then it turned and I was accused of false allegations.

In several cases, diminished credibility appeared to be associated with the complainant being young and intoxicated. In Jane's case, for example, she was raped at her 21st birthday party. She found the police aggressive and blaming.

It was disgusting. No wonder they are working with dogs – something to yell at and boss around. It felt like, 'Look, she's pissed so she asked for it.' I felt like they came up with their own decision on the spot.

The factors associated with whether or not the women were likely to be believed did not always appear clearcut. In some cases (for example, see Beth's story, Jordan, 1998a, 35-36) the women felt, like Jane, that the officers' responses were influenced by rape myths regarding good and bad victims.⁶ When the police saw Beth, for example, she feels they saw a young woman who had been drinking at a party, had sex with an acquaintance, then regretted it, and accused the man of rape. Other women, however, expressed surprise when their fears that the police would judge them according to such moral beliefs proved to be unfounded (for example, see Harriet's story, Jordan, 1998a, 44).

(vi) Perceived credibility of the alleged offender

In some cases, the women felt that the police perceived the alleged offender as more respectable and credible than they were. This made it difficult to secure police co-operation and commitment to their case. One woman, Sarah, said she felt it was hard to convince the police that the man who raped her, a well-known local businessman, had in fact done this to her. She felt that the detective was continually trying to catch her out

⁶ Relevant literature on this distinction includes Weis and Borges, 1975; Warshaw, 1988; Kerstetter, 1990; LaFree, 1981; Shapcott, 1988.

and saw her as having less credibility than the man who raped and subsequently threatened her. Sarah commented:

Right from the very beginning the detective in charge of my case said to me that fifty percent of the cases who come forth with rape complaints are false, and I thought, 'Oh, gosh, no wonder they are like they are, if they (police) have to suss people out like that'. I don't know if it's true or not, but that's just what he told me. He said women get themselves in situations, like if a married woman gets caught by her husband with another man she's going to cry rape to save her marriage - or that's how he explained it to me.

Another complainant, Peggy, was convinced that police hostility and disbelief towards her was directly related to the status of her suspected attackers. In her case, she was accused by a detective of fabricating the entire incident, despite the presence of multiple fractures and bruising.

Effects of police attitudes of disbelief

The effects of a disbelieving attitude on the part of the police can be destructive and counter-productive. For instance, at least four of the women said the police's apparent disbelief prevented them from saying all they wanted to during the interview. As one woman said:

I did (give my account), but I felt very uneasy towards the end, as if I wasn't being believed or they were playing down the crime. I felt like I couldn't convince the detective - he just thought I was wasting his time.

Some women felt that the police officer's attitude made it impossible for them to say everything they wanted or thought relevant:

She (constable) said their (boyfriend's and offender's) statements were all truth and mine was all lies.

It was difficult in such an environment for the women to be forthcoming and provide full disclosure to the police.

In two cases, the women said categorically that the negative and disbelieving attitudes expressed by the police were the reason they decided to withdraw their complaint. In other cases, the investigation did not proceed because the police decided not to continue with it after concluding the complainant was lying. Sometimes this decision appeared to be based on perceived inconsistencies in the complainant's account of events. At times, however, the women said the circumstances in which the police obtained their statement directly contributed to such inconsistencies being present. Such a situation often arose when the women felt that the police neglected the victim's needs in favour of adherence to investigation procedures. This resulted in women sometimes being required to make their formal statement whilst in a state of physical and emotional exhaustion.

I suppose some of my reactions came from the tiredness and the thought of having to focus on detail when I was just barely managing to not walk out the door. I think it was counter-productive for me in the long term that they insisted on getting details from me when I wasn't really capable of giving them what they needed.

In Kylie's case also, she felt it was the police's insistence on continuing to obtain details from her when she was 'past it' that began what she termed 'the slippery slope'. When the police subsequently re-questioned her, they became upset at apparent inconsistencies and gaps in her memory. She said:

It was a little bit like what you laugh at in the movies with the good guy and the bad guy. That interview that morning began with a detective constable, female, saying to me, 'We need to go back over your statement, there are holes, there are inconsistencies.'... In the middle of the afternoon she left and he (her 'boss') walked in the room and he accused me of making a false statement, just completely out of the blue, and I was on my own, there wasn't even another police officer, just me and him.

Kylie describes being interviewed 'for hours and hours and hours' on end, with the re-questioning culminating in the police cautioning Kylie three times and threatening to charge her with making a false allegation.

Encountering such belief clearly does not make for a positive police-client relationship. Some women expressed strong feelings over the way they felt the police kept trying to catch them out, to see if they were lying. Emma, for example, said:

*What really worried me was that after two hours of sitting there going through all this the gentleman said to me, '(Emma), have you **really** been raped?' I just about exploded.... When he said, 'Were you really raped?', I said, 'Ha ha, of course not! I wake up at 4 o'clock every morning and I think, What am I going to talk about this morning at morning tea? And this morning I thought I'd say, Oh, yes, I've been raped!' I was just spitting. I was so angry (that's why) I just said, 'Yes, I've made the whole thing up!'*

It is of vital importance to the police that they establish a supportive relationship with complainants. The possibility of taking any case as far as the courtroom depends on a co-operative complainant, and to alienate her on first contact is likely to sink the prospects of this happening.

Conclusion

Being believed emerges from the women's accounts as being of critical importance, since this is one of the major ways in which a rape victim receives validation concerning the trauma she has experienced and its impact upon her life. Given the extent to which New Zealand and most other countries are still such victim-blaming cultures, the significance of being believed is associated also with the victim's need to be assured that the rape was not asked for and that she is not to blame for its occurrence. While being believed was experienced as extremely validating by the women in the study, **not** being believed was also hugely significant in its impact, having the potential to compound the devastating effects of the rape.

Several of the women recounted how the detectives investigating their case kept emphasising the high numbers of false rape complaints received by the police, with some putting the figure at 50% or higher. Sometimes, as in the examples listed above, the police gave the women reasons for their disbelief; thus one woman was accused of making it up as an attention-seeking device; another was told she seemed too calm to have been raped; and a third was asked on two separate occasions if she was making it

up out of malice or revenge. At least three of the women interviewed said the police had threatened to charge them with laying a false complaint

It appears that little has changed concerning the vexed question of false complaints since the 1983 research. In both studies, the respondents identified belief as both critical in importance to them and invariably problematic to the police. This finding has been also repeatedly evident in overseas research (Chambers and Millar, 1983; Gilmore and Pittman, 1993; Gregory and Lees, 1999; Hall, 1985; Temkin, 1997). Despite its importance, little research appears to have been done which has focussed specifically on the issue of belief. Key questions for researchers, however, are: What makes a rape complainant credible? How are the police influenced in their assessment of complaints? What factors do they attach central significance to when deciding whether or not to proceed with a rape investigation? What do police officers believe about false complaints, their frequency, and the motives underlying them?

The 1998 study of sexual complainants' experiences with the police provided the impetus for my subsequent research. Identification of the centrality of the issue of belief and victims' credibility prompted a research design that incorporated three diverse but related studies to enhance understanding of police perceptions of victims' credibility. These three studies, which were outlined in Chapter 1, are presented in subsequent chapters of this thesis. Each study provides a different lens on the issue of credibility. Considered together, the results of these three studies provide greatly enhanced understanding of police responses to women rape complainants, and enable the construction of an explanatory model in relation to police processes and decision-making.

* * *

CHAPTER 4: POLICE FILE ANALYSIS, PART I

In practice, the average policeman exercises greater judicial discretion over cases than does a judge. (Blumberg and Niederhoffer, 1973, quoted in LeDoux and Hazelwood, 1999, 13)

Introduction

In the year 2000, many of the New Zealand public were outraged at publicity that an historic charge of rape had been made against then Cabinet Minister Dover Samuels. Others were sceptical, and believed their perspective was supported by the police's decision that there was insufficient evidence to prosecute the accused, who was loudly proclaiming his innocence. Samuels admitted that he had been sexually involved with a teenage girl in his care, and helped her to obtain an abortion, but disputed that he had raped her. In a speech made to his Parliamentary colleagues, Samuels proclaimed:

I find the offence of rape or sexual abuse of women and children abhorrent and repugnant. There is only one offence more abhorrent, repugnant or contemptible, and that is for a person or persons to fabricate the allegation of rape knowing that the person being accused is completely innocent. (quoted in Dominion, 26/7/00)

Subsequent media reports alleged that Samuels had been 'cleared' of wrongdoing, and the strong impression given portrayed the politician as an innocent man who had been wrongfully accused (for example, The Age, 8/8/00).

This recent example illustrates the widespread public confusion surrounding police terminology. The police decision not to proceed with a prosecution may or may not mean there was no wrong-doing on the part of the alleged offender. All we can deduce with any certainty is that the police felt it would be a difficult case

to prove. While this decision may indicate the suspect's innocence, it could equally indicate culpability, but in a case where there was insufficient evidence available to support this conclusion in a court case. A lack of proof can in no way be seen to correlate automatically with a lack of guilt.

The Dover Samuels case raised questions regarding issues of proof, evidence, and complainants' credibility. The following two chapters attempt to shed light on the reasons underlying police decision-making in rape and sexual assault cases and to identify factors that emerge as key determinants of police judgements and actions.

Reporting rates

The offences of rape and sexual violation have notoriously low reporting rates (Epstein and Langenbahn, 1994; Gilmore and Pittman, 1993; Gregory and Lees, 1999; Kemmer, 1977; Kilpatrick et al, 1987; Koss et al, 1987; Mack, 1998; National Victims' Center, 1992; Schultz, 1975). Few victims approach the police of their own accord, and even fewer cases proceed to the point of prosecution (Gregory and Lees, 1996; Harris and Grace, 1999; Holmstrom and Burgess, 1991). Many studies have been conducted of rape cases which resulted in prosecution, examining in particular the progress of such cases through the court system, and the ways in which victims of rape experience trial procedures (for example, Adler 1987; Lees, 1997; McDonald, 1994; van de Zandt, 1998). This chapter presents the results of a study primarily focussed on rape and sexual violation cases that did **not** proceed to trial.

A high proportion of reported sexual assault offences are cleared by the police as 'no offence disclosed', the equivalent of the English category of 'no criming'. The use of this clearance code, however, is highly ambiguous. 'No offence disclosed' may be intended to convey the non-disclosure of a criminal offence, with the emphasis being on the absence not of a crime but of evidence of that

crime – in other words, an offence may have been committed but there is insufficient evidence, including testimony by the complainant and any witnesses, to support the claim. The other way in which ‘no offence disclosed’ can be interpreted is to emphasise the ‘no offence’ part of the phrase, implying that investigation reveals there to have been no crime actually committed. In the latter option, the inference is that the complainant may have attempted to mislead the police into believing sexual violation occurred when it did not – either because the complainant was a consenting partner to sexual intercourse with the accused, or because there was no sexual intercourse at all.

In the 1983 Rape Study, the ‘no offence disclosed’ category was roundly criticised for its overuse and the misleading impressions this created (Stace, 1983; Young, 1983). In particular, it was criticised for being misleading in terms of its implication that there was no actual offence. Stace (1983) noted that:

It may well be that some of the concern about the police processing of rape complaints comes from a literal reading of what is, in fact, a statistical artefact. At the least it would seem that a separate category of ‘insufficient evidence to proceed’ should be created. (Stace, 1983,14).

A Police circular in December 1982 instructed officers not to clear rape complaints as no offence disclosed when there was insufficient evidence, but instead to file such cases as ‘uncleared’. Stace notes that, if adopted, this practice would result in a larger number of uncleared files in the future. However, the no offence disclosed category continued to be sizeable and throughout the 1990s, approximately 30 per cent of rape complaints have been cleared as ‘no offence disclosed’ (Newbold, 2000, 139). As the following 1997 analysis of cases shows, 15 years after the concerns expressed in the 1983 Rape Study, this category was still being applied to a wide range of cases, including those where there was insufficient evidence¹. Statistics provided by the New Zealand Police for the year

¹ It should be noted that, in 1998, the police instituted major changes to their method of recording offences, in effect doing away with the statistics for reported offences and replacing these with

ended 30 June 1997 show that of 520 reported offences of Male Rapes Female, 198 (38%) were cleared as no offence disclosed (refer Table 4.1).

Table 4.1: Selected Sexual Violation Offences, Reported, Cleared and Cleared by No Offence Disclosed (N.O.D.) for the Year Ended 30 June 1997

Offence	Total Reported	Total Cleared	% Cleared	Cleared by N.O.D.	% Cleared by N.O.D.
Male rapes female over 16 years	520	393	6	198	38
Husband rapes wife	22	19	86	7	32
Unlawful sexual connection female over 16 years	135	88	65	24	18
Total sexual violation²	772	533	71	252	33

Also of concern is the fact that in the year 2000, academic commentators were still erroneously equating a police determination of 'no offence disclosed' with false complaints (for example, Newbold, 2000).

The overall aim of the current study was to acquire greater understanding of the factors affecting police decision-making processes in relation to rape and sexual assault investigations, focusing in particular on cases where the investigation was

recorded and resolved categories. Cases where the offence was declared to be 'no offence disclosed' are no longer being recorded as such, and the proportion of such cases is now extremely difficult to determine.

² The figures in this row include all offences within the Sexual Violation category, including complainants over 16 years.

terminated prior to the arrest and prosecution of an offender. The research objectives were:

- to analyse police procedures from the initial report of an incident through to the decision as to whether or not to proceed with a prosecution;
- to identify the factors affecting police decision-making concerning whether or not to proceed with an investigation; and
- to examine the circumstances surrounding cases in which complainants decide to withdraw the complaint.

Data gathering involved the analysis of a sample of police rape and sexual assault investigation files. Central themes were identified and the relevant cases were grouped together for further examination.

Sampling and methodology

Access to police sexual violation files was negotiated through senior police personnel at the Police National Headquarters in Wellington (now known as the Office of the Commissioner). A protracted period of negotiation resulted, necessitated not so much by the sensitivities of this particular request as by the decision to make this study the test case for developing a protocol and contract to be used in subsequent research involving Victoria University staff access to police records and personnel. The result was an eight-month period of legal negotiation before a final contract was produced and could be signed that would authorise my access to police files and specify the conditions on which such access was dependent.

One of the conditions stipulated was that requests for files could not be made directly by me but would need to be actioned by a police staff member. This

meant I was dependent on the time and goodwill of what became a constantly changing number of staff to submit, process and receive files on my behalf. Also specified were the conditions surrounding file access; for example, files could on no account be removed from Police Headquarters in any form, necessitating on-site inspection only and the need for thorough note-taking in the absence of any photocopying or scanning options.

In order to obtain a file sample, an INCOFF (Incident Offence) Search Statistics Request (R1732) was initially made to Police Information and Technology to provide the offence statistics for specific rape/indecent assault/sexual violation offences for the year 1997, by clearance mode, for ten police districts in the greater Auckland, Wellington and Christchurch areas. These areas were selected primarily because of population size and their inclusion of city and surrounding environs, and partly to provide comparability with the districts within which my earlier study involving interviews with complainants (Jordan, 1998a) had been undertaken. The year 1997 was selected in order to provide a recent data-set, but one not so recent as to mean that large numbers of files may still be active and hence unavailable.

The districts covered were as follows:

Auckland

AW = Waitakere

AC = Auckland City

AN = North Shore

AS = Manukau

UK = Papakura

Wellington

WL = Wellington

WH = Hutt

WW = Kapiti Mana

Christchurch

CR = Canterbury

CU = Christchurch Rural

As a result of the Structures Project being conducted by Police National Headquarters Police District boundaries were changed on 1 July 1997 with the following relevant effects:

- Waitakere (AW) records are now contained within North Shore (AN)
- Papakura (UK) records are now contained within Counties/Manukau (AS)
- Hutt (WH) and Kapiti Mana (WW) records are now contained within Wellington (WL)
- Christchurch Rural (CU) records are now contained within Canterbury (CR).

The above list shows that, in each of the three areas, records were sought from central city, suburban and semi-rural areas.

All files eligible for inclusion were requested from Records sections in the appropriate police districts, who were asked to send them to Police National Headquarters, where I was authorised to access them on the premises. Repeat requests were subsequently made for files which were not able to be located on the initial search. Each file was assigned a case number for the purposes of analysis.

The files were individually studied and key points from each were summarised directly on to a laptop computer. Details recorded included the victims' and offenders' characteristics, the nature of the offence, abbreviated versions of key statements from witnesses and others, significant evidential findings, comments made by police regarding the outcome recommended and evidence of police reasoning.

In total, 213 files were identified and requested. These represented all Male Rapes Female, Unlawful Sexual Connection or Sexual Violation files involving adult offenders and adult complainants, which had been resulted as either K3, K4, K5, or K6 in the areas specified – Auckland, Wellington and Christchurch.

The K3, K4 and K5 files were all likely to be eligible for inclusion given that these codes indicate that no prosecution resulted:

K3 = no offence disclosed,

K4 = Discretionary caution, and

K5 = Reporting further on the incident on a Police 258 form.

Files resulted as K6 were included because this code indicates that an Offence Report was being submitted and there was further investigation to be carried out on the file, so until each K6 file was individually examined, there was no way of determining whether or not a prosecution resulted. The eventual outcomes of the K6 files studied were included in the sample, in order to provide further elucidation as to which factors were interpreted by the police as indicating genuine or false complaints. Any cases that resulted in the immediate apprehension of an offender, resulted as K9, were excluded from the sample.

Of the 213 files requested, 26 were not located or provided – in one case this was because the file was with the Police Complaints Authority, another was a restricted access file, and the remainder (N = 24) were unable to be located, usually because they were still ‘active’ ie under investigation, and sometimes because they simply could not be located. A further 23 files were obtained which, on examination, were ineligible for inclusion because they had been wrongly coded, most commonly because adult offence codes had been attributed to offences against children.

The final sample comprised 164 files, as set out below:

Police Offence Types (Total = 164)

Unlawful sexual connection = 31 (19%)

Other Sexual Violation = 10 (6%)

Male rapes female = 123 (75%)³

Area (Total = 164)

Auckland = 85 (52%)

³ This category included three cases of Husband Rapes Wife and three Attempts to Rape.

AC = 31
AN = 20
AS = 30
AW = 1
UK = 3

Wellington = 33 (20%)
WH = 5
WL = 23
WW = 5

Christchurch = 46 (28%)

Clearance code (Total = 164)

K3 = 78 (48%)
K4 = 5 (3%)
K5 = 17 (10%)
K6 = 64 (39%)

The 164 sexual violation files included cases involving multiple offenders and victims, as shown on Table 4.2. This indicates that the majority of cases (N = 152) involved single offenders, plus one case in which two women friends were sexually assaulted by a joint acquaintance. Table 4.2 also shows that the most typical multiple scenario involved two offenders, in three cases two acquaintances of the complainant, in one two strangers, in one two work colleagues, and in one the woman's partner in conjunction with his friend. In the case involving three offenders, they were acquaintances of the complainant; the four-offender attack involved strangers, and the six-offender incident involved seamen who had initially contracted the services of a sex worker. In a further two cases, the complainants stated they had been raped by gang members, the exact number of whom was unspecified. One additional case involved two victims and two alleged offenders. Taken together, these figures equate to the 164 cases studied involving a total of 166 victims and 181 offenders.

Table 4.2: Single and Multiple Offender Cases

No. of Offenders per Case	No. of Cases	Total No. of Offenders	Total No. of Victims
Single Offender Cases			
1	152	152	153
Multiple Offender Cases			
2	7	14	8
3	1	3	1
4	1	4	1
6	1	6	1
Multiple	2	2*	2
Total	164	181	166

NB. * = number unspecified

Rationale for case inclusion

The rationale for case inclusion was as follows. Cases coded as K3, K4, K5 were all examined because it was clear that no arrest followed and the files were examined to ascertain the reasons for this – for example, because no offender could be identified, because investigation of the case was halted

Cases resulted as K6 were also requested – this code indicates that a report form was completed and the case deemed worthy of further police investigation. Such investigation could result in any of three main outcomes:

(i) the decision that further police action was not warranted

This decision could be made because:

- the complaint was seen as arising from a situation where no criminal offence could be identified;

- no offender could be detected or apprehended; or because
- there was insufficient evidence to proceed. With the latter, it was often too hard to determine on the information available whether or not a criminal offence had occurred.

(ii) the decision by the complainant to withdraw the complaint.

This decision could be made because:

- the complainant realised that what occurred did not constitute a criminal offence;
- the complainant admitted there never had been any offence;
- the complainant felt the police did not believe her; or because
- the complainant was too scared to proceed with the case (she may have been scared of the offender, of the reactions of those around, or of going to court).

(iii) further police action

Some cases initially coded K6 did, however, result in further police action. If the complaint was accepted as genuine, the police then needed to consider whether sufficient evidence existed for the offender to be charged and prosecuted.

The K6 code emerged as one of the most commonly used categories, accounting for 64 of the cases overall. These cases were particularly useful for this research because the files tended to be larger and contained fuller details, statements, and evidential material than the K3, K4 and K5 cases.

The information contained in police files does not, of course, represent neutral facts alone. There is, in fact, no such thing – all information is filtered through the eyes and attitudes of the person observing it, so my classification and analysis is already at least one step removed. To this can be added the fact that I am reliant on what the police observed and chose to note as significant, and how they

recorded that information. This is not a problem for this particular study, however, given that what is of vital concern here is police perceptions. Case files usually contain remarks by police indicating whether they believe a complaint to be genuine or not, or this can be inferred from police actions recorded on file – for example, the officer issuing a verbal warning to the alleged offender. The aim is to determine what police ‘see’ and to understand what informs how they see it and **their** interpretation of its significance.

For example, the issue of police perception and interpretation is evident in cases involving complainants with intellectual disability. When the police see someone with such a disability, do they see someone vulnerable to manipulation and/or attack or do they see someone who will not be a credible witness on the stand should the case go to court? Do they see someone who will not be able to hold her/his own against the tricks and barrages of an aggressive defence lawyer? Do the police even get as far as imagining this individual’s performance in the witness box? Or do they see someone who is slow and unconvincing, and assume them to have a tenuous grip on ‘reality’ and be prone to fanciful and delusional thinking?

The 164 sexual violation files were divided into four main categories, determined largely by police perceptions of the legitimacy of the complaint. In reality, of course, this classification relied on my interpretation of police comments recorded on file. Thus the subjectivities of both the police and myself inevitably underlie these categories. Given that one might expect police files to reflect only what officers feel is acceptable to commit themselves to in writing, however, biases in interpretation are more likely to show the police in a positive than a negative light. In other words, comments actually recorded on files may have been ‘censored’ and reveal simply the tip of an iceberg of police attitudes and judgements.

The categories identified were as follows:

I. Genuine Cases: N = 34 (21 %)

Cases categorised as genuine represent those about which the police gave clear indications on the file concerning their legitimacy. For example, prosecution action may have been commenced against the alleged offender, a warning may have been issued, or comments may have been made which indicated the complainant's account was believed by police.

Within this category, four small but distinct subgroups emerged:

- (i) Cases clearly perceived as genuine, for which an offender was detected, and prosecution action was commenced (N = 13; 38% of genuine cases overall);
- (ii) Cases clearly perceived as genuine, for which no offender was detected (N = 5; 15% of genuine cases overall);
- (iii) Cases clearly perceived as genuine and for which an offender was detected, but where the police made the decision not to prosecute (N = 3; 9% of genuine cases overall); and
- (iv) Cases where the police clearly believed the complaint was genuine but the complainant insisted on withdrawing the complaint (N = 13; 38% of genuine cases overall).

II. Possibly True/Possibly False Cases: N = 62 (38 %)

The second category comprised cases which fell into a grey area. The police seemed unsure, from their file comments, whether or not to treat these complaints as genuine. Remarks were often made suggesting that, from the evidence available, it was impossible to determine if the complainant was telling the truth, or whether the incident reported constituted a criminal offence. Frequently the phrase 'insufficient evidence' was used in relation to these cases. Cases were also included in this category where the police noted some irregularities or

discrepancies in the complainant's testimony but refrained from declaring the complaint false. Those cases which the complainant withdrew, and about which the police also expressed some misgivings, were included as part of this grouping.

III. Cases which the Police said were False: N = 55 (33%)

Cases were included in this third category when comments on the file clearly stated that the police considered the complaint to be false. This included cases which the police decided to halt investigating, as well as those suspected of being false for which the complainant withdrew the charge. Officers sometimes tried to identify motives underlying the complaint – for example, 'cried rape to avoid a hiding', and 'a woman scorned'. In other cases, the police maintained it likely that sex had occurred but was consensual, and that for some reason the complainant wanted to conceal this fact. A suspicion of falsehood was not enough for a case to be placed in this category; if the police seemed at all equivocal, the case was categorised as possibly true/possibly false.

IV. Cases which the Complainant said were False: N = 13 (8%)

The final category is the smallest. It comprised those reports of sexual assault which the complainant decided to withdraw after having stated that the allegations were false, in that sex had been consensual, or that there had been no sex and the report of a sexual attack had been fabricated for personal reasons.

Closer examination of file content may help to clarify the factors that influence police perceptions and decision-making. Before embarking on qualitative analysis of these files, however, it is important to present a broad, statistical overview of the complainants' and offenders' characteristics and relationships.

STATISTICAL PROFILE

i. Age

The age of the complainant was recorded on most files, and reveals the majority to be 25 and under, as set out in Table 4.3.

Table 4.3: Age of Complainant

Age	No.	%
16-20	75	45
21-25	25	15
26-30	27	16
31-40	24	15
41-50	8	5
51-60	2	1
60+	2	1
Not recorded	3	2
Total complainants	166	

The age of the alleged offender was not always recorded, or may have been estimated, and thus the figures in Table 4.4 provide a less accurate and complete picture than the information we have available on complainants. The figures available suggest alleged offenders are typically significantly older than complainants – whereas 60% of complainants were in the 25 and under bracket, only 19% of alleged offenders were in this category. This comparison becomes even more marked in the youngest age group, with 45% of complainants being 20 and under compared with only 6% of the alleged offenders.

Table 4.4: Age of Alleged Offender(s)

Age	No.	%
16-20	10	6
21-25	23	13
26-30	17	9
31-40	28	15
41-50	12	7
51-60	5	3
60+	2	1
Not recorded	84	46
Total no. of alleged offenders	181	

ii. Ethnicity

Information on ethnicity was not always recorded, hence the figures in Tables 4.5 and 4.6 should be regarded as approximations only. These indicate the largest groups of both complainants and alleged offenders to be Caucasian, with significant numbers of Maori and Pacific Island peoples also evident. Those identified as 'Other' included persons from Asian and Middle Eastern countries.

Table 4.5: Ethnicity of Complainant

Ethnicity	No.	%
Caucasian	72	43
Maori	28	17
Pacific Island	23	14
Other	5	3
Not recorded	38	23
Total no. of complainants	166	

Table 4.6: Ethnicity of Alleged Offender(s)

Ethnicity	No.	%
Caucasian	53	29
Maori	19	10
Pacific Island	34	19
Other	16	9
Not recorded	59	33
Total no. of alleged offenders	181	

iii. Relationship of complainant to alleged offender

File analysis was also conducted to determine the relationship between the complainant and the alleged offender, as set out in Table 4.7.

Table 4.7: Relationship of Complainant to Alleged Offender

Relationship	No.	%
<i>Known to victim</i>		
Acquaintance	89	54
Partner ⁴	29	18
Work ⁵	13	8
Family	7	4
<i>Stranger</i>	26	16
<i>Total⁶</i>	164	

Table 4.7 shows that over half of the cases involved persons who were acquaintances at the time of the alleged sexual assault. The next largest category involved assaults by partners (18%), closely followed by stranger assaults (16%).

These results are significant in demonstrating that the sample of cases in this study involved mostly perpetrators already known by the victim (84%). These figures are not necessarily indicative of all cases reported to the police, but suggest that New Zealand rape reporting trends may be similar to those in England, where substantially increased numbers of non-stranger incidents are now being reported (Harris and Grace, 1999).

Table 4.8 shows the ways in which offence outcomes are related to the complainant /offender relationship.

⁴ Includes current and ex-partners, in married, de facto, and boyfriend/girlfriend relationships.

⁵ Refers to situations where the place of work is central to the incident – for example, alleged offences between colleagues or employers/employees at their place of work, or between a service provider and client, such as a taxi driver and passenger or client and prostitute.

⁶ Cases with multiple offenders and victims were counted once because the relationship between the complainant and the alleged offenders was the same, with the exception of one case where the woman's partner and his friend jointly violated her. This case was recorded as a partner offence because he was the instigator.

Table 4.8: Relationship of Complainant to Alleged Offender by Outcome Category

	Stranger N = 26	Work N = 13	Family N = 7	Acquaintance N = 89	Partner N = 29
Genuine N = 34	6 23%	4 31%	2 29%	16 18%	6 21%
Possibly true/false N = 62	6 23%	7 54%	2 29%	37 42%	10 34%
Police said false N = 55	11 42%	0 0%	3 42%	28 31%	13 45%
Complainant said false N = 13	3 12%	2 15%	0 0%	8 9%	0 0%
Total	100	100	100	100	100

Table 4.8 suggests that, virtually irrespective of the relationship between complainant and alleged offender, the police viewed the majority of complaints with suspicion. Of cases involving strangers, less than a quarter of the complaints were deemed by police to be genuine, while almost two-thirds were regarded as false or possibly true/false. With respect to alleged acquaintance attacks, 18% of complaints were perceived to be genuine, compared with 73% where police expressed doubts about the allegation.

Comparing outcomes in this manner may be misleading, however, because it is likely that the figures for reported stranger attacks would include some fictional accounts. As the interviews with detectives revealed, women alleging false complaints seldom name an offender, claiming instead that, for example, a masked stranger abducted them. It is also possible that some women say their attacker was a stranger to deflect attention away from a person known to them. These issues are discussed further in Chapter 6.

Table 4.9 considers the relationship of the complainant's age to the outcome of the police investigation.

Table 4.9: Age of Complainant by Outcome Category

	16-20 N=75	21-25 N=25	26-30 N=27	31-40 N=24	41-50 N=8	51-60 N=2	60+ N=2	Not recorded N=3
Genuine N = 34	17 23%	4 16%	6 22%	4 17%	0	0	2 100%	1 33.3%
Possibly true/false N = 62	27 36%	12 48%	7 26%	11 46%	2 25%	1 50%	0	2 66.6%
Police said false N = 57	23 31%	8 32%	12 45%	8 33%	5 63%	1 50%	0	0
Complainant said false N = 13	8 10 %	1 4%	2 7%	1 4%	1 12%	0	0	0
Total N = 166	100	100	100	100	100	100	100	100

Numbers are small in some categories in the above table, but the overall picture suggests that age, as a distinct variable, is not related to case outcome.

With relation to ethnicity, Table 4.10 suggests likewise that the ethnicity of the complainant does not appear to be particularly linked to case outcome.

Table 4.10: Ethnicity of Complainant by Outcome Category

	Caucasian N = 72	Maori N = 28	Pacific Island N = 23	Other N = 5	Not recorded N = 38
Genuine N = 34	13 18.1%	6 21.4%	5 22.7%	1 20%	9 24.3%
Possibly true/false N = 62	28 38.9%	12 42.9%	11 45.5%	2 40%	9 27.1%
Police said false N = 57	24 33.3%	8 28.6%	5 22.7%	2 40%	18 43.2%
Complainant said false N = 13	7 9.7%	2 7.1%	2 9.1%	0	2 5.4%
Total N=166	100	100	100	100	100

Considered together, Tables 4.9 and 4.10 show that it would be too simplistic to state, for instance, that young women or Maori women were more at risk of having the police doubt the genuineness of their complaint. High percentages of every ethnic group, in fact, had the police doubting the veracity of their complaint in the cases included in this sample.

iv. Complainants' characteristics

File analysis yielded information on additional factors concerning complainants' characteristics. These included noting the relative frequencies of inclusion on police files of information concerning the state of the complainant – for example, comments concerning perceptions of alcohol and drug use, intellectual impairment, and psychiatric conditions. Reference was also made on police files concerning whether or not the complainant had experienced previous rape or

sexual abuse. There is, however, no way of knowing how consistently such information was either obtained or recorded. Given the noted reluctance of many victims to disclose sexual victimisation in particular (Bachman, 1993; Gilmore and Pittman, 1993; Gregory and Lees, 1999; Kelly, 1988; Kilpatrick et al, 1987; Williams, 1984), it is likely that the information recorded on police files and presented in Tables 4.11 and 4.12 is an under-estimate.

Table 4.11: Victim Attributions

	% drunk or stoned N = 84 51%	% intellectually impaired N = 16 10%	% psychiatric disturbance N = 30 18%	% previous rape or abuse N = 31 19%
Genuine N = 34	17 20%	3 19%	3 10%	4 13%
Possibly true/false N = 62	33 39%	5 31%	8 27%	13 42%
Police said false N = 57	28 33%	7 44%	18 60%	13 42%
Complainant said false N = 13	7 8%	1 6%	1 3%	1 3%
Total N=166	100	100	100	100

Table 4.11 provides an initial window into some of the complainants' characteristics which may influence police perceptions and responses. In relation to alcohol and drug use, for instance, it is clear that over half of all the files analysed involved complainants whom the police described as drunk, intoxicated, or high/stoned. While one-fifth of cases involving drunk complainants were perceived as genuine complaints, nearly three-quarters (72%) were regarded by

the police as false or possibly true/false. This suggests that drunkenness continues to be correlated with doubts about complainants' credibility.

While drunkenness was the most commonly recorded factor, other victim attributions were also noted by police. Over one quarter of the files studied involved complainants who were described as either intellectually impaired⁷ or psychiatrically disturbed⁸ in some way. As Table 4.11 shows, the largest proportions of cases involving either intellectual impairment or psychiatric disturbance were regarded by the police as false complaints. Of cases involving complainants with some degree of psychiatric disturbance or disorder, 87% were viewed by the police as false or possibly true/false. Similarly, three-quarters of the cases involving victims with intellectual disability were viewed as suspicious. Of all complaints made by intellectually impaired or psychiatrically disturbed persons, only 13% were regarded as genuine by the police.

In 31 of the files studied (19%), reference was made to the complainant having

The issue of how complainants generally decide to respond if they suspect that the police regard their allegation with scepticism is also vexed, and is discussed in the next section.

v. Complainant withdrew case category

The most common reason for why the police investigation of cases was halted was because the complainant withdrew the allegation. This is discussed separately here because it suggests cause for concern. Of rape and sexual violation complaints that did not proceed, nearly half (47%; N = 77) were because the complainant withdrew the allegation. One major assumption by the police is that a complainant's withdrawal of an allegation should be viewed as a retraction, a denial that any offence occurred. It was clear from the files studied that numerous other reasons existed and warrant consideration. These include the fact that some complainants withdrew the charge because they never wanted their case to involve the police in the first place, a point which becomes more evident later in the file analysis. Others did not want to see the offender prosecuted and were satisfied if their reporting of the incident gave him the message that his behaviour was violating and unacceptable. It is also possible that, in some cases, the initial police response to the complainant influenced her to withdraw the complaint. This could be because she felt disbelieved by the police, or because they told her that she would lack credibility in court.

Table 4.13 was calculated to enable the category of 'complainant withdrew' to be evident in relation to the other categories. The figures here differ from those in Table 4.9, because complaints which were withdrawn by the complainant have been deducted from each category; for example, the figure of 34 cases deemed to be genuine in Table 4.9, included 13 cases which the complainant subsequently withdrew. Table 4.12 has thus been recalculated to permit consideration of the complainant withdrawal category.

Table 4.12: Relationship of Complainant to Alleged Offender Recalculated to Show the Complainant Withdrew Category

	Stranger N = 26	Work N = 13	Family N = 7	Acquaintance N = 89	Partner N = 29	Total N = 164⁹
Genuine N = 21	6 29%	3 14%	2 9%	9 43%	1 5%	100
Possibly true/false N = 37	3 8%	5 14%	2 5%	22 59%	5 14%	100
Police said false N = 29	6 21%	0	2 7%	16 55%	5 17%	100
Complainant said false N = 77	11 14%	5 7%	1 1%	42 55%	18 23%	100

Table 4.12 shows that more than three-quarters of cases where the complainant withdrew the allegation involved acquaintances and partners. Cases involving sexual assaults perpetrated by acquaintances or partners of the complainant may have high withdrawal rates for a variety of factors. Police doubts concerning the chances of successful prosecution in such cases may be communicated in some way to complainants, thereby dissuading them from continuing with the process. Moreover, the complexities involved in taking someone known to you to court will undoubtedly deter many complainants from proceeding. In some cases, this will be because of fear-related issues; in others, it will arise from a desire to see the offender warned but not necessarily prosecuted; and in still others, it will be because factors of self-blame and recrimination may be linked to case withdrawal.

⁹ Cases with multiple offenders and victims were counted once because the relationship between the complainant and the alleged offenders was the same, with the exception of one case where the woman's partner and his friend jointly violated her. This case was recorded as a partner offence because he was the instigator.

In Table 4.13 the category of complainants' withdrawals is presented to show the distribution of the figures considered earlier regarding police perceptions of complainant credibility.

Table 4.13: Police Perceptions of Complainants' Credibility

Category	Complainant withdrawal	Police decision	Total
Police considered complaint genuine	13 17%	21 24%	34 21%
Police thought complaint possibly true/possibly false	25 32%	37 43%	62 38%
Police thought complaint false	26 34%	29 33%	55 33%
Complainant said complaint false	13 17%		13 8%
Total complainant withdrawals	77	87	164

The two largest subgroups involve cases where the police clearly suspected the complaint was false and the complainant withdrew the case (accounting for just over a third of the complaints withdrawn category), and cases where the police seemed unsure whether or not the complaint was true or false, but investigation was halted when the complainant withdrew the case (accounting for just under a third). Less common were cases where the police clearly believed the complaint was genuine but the complainant insisted on withdrawing the complaint, and cases where the complainant withdrew the complaint after admitting the complaint was false and no offence had been committed (both accounting for under a fifth of the complaints withdrawn category).

The division of the complainant withdrawal category into these sub-groups suggests elements strongly reflective of the other major categories. In other

words, a proportion of cases withdrawn were perceived by the police to be genuine; others were viewed as false; and still others were seen as possibly true or possibly false. A final category remains, which is analysed separately below. This includes those cases which a complainant withdrew after stating that the initial report of a sexual assault was false.

Throughout the analysis which follows, cases within the complainant withdrawal category are considered jointly with cases where the investigation was terminated by the police (as shown on Table 4.13). This decision was made because my principal interest is in understanding what gives a complainant credibility from a police perspective. In trying to ascertain the significance placed by the police on different factors and cues, the issue of whose decision causes the investigation to be halted becomes a secondary consideration. Thus, the category divisions outlined on Table 4.13 depict police perceptions of all the complaints included in this study, irrespective of who made the decision to halt the investigation.

The categories identified form the basis for the qualitative analysis that follows. While the statistical analysis suggested particular complainants' characteristics to be associated with police perceptions of victims' credibility, deeper discourse analysis of the file material provides a richer picture of the factors involved.

QUALITATIVE ANALYSIS

In the remainder of this chapter and in the following chapter, the categories outlined earlier regarding police perceptions of rape complainants' credibility form the basis for a fuller, qualitative examination of the data. The categories used, as outlined earlier, were as follows:

- Cases perceived by the police as relating to genuine complaints;
- Cases perceived by the police with some scepticism, involving complaints that were perceived as possibly true or possibly false;

- Cases perceived by the police as false complaints; and
- Cases that the complainant said were false.

The aim is to present a broad overview of the kinds of cases within each category and acquire a deeper understanding of the factors influencing police attitudes, responses, and decision-making in relation to sexual assault investigations.

A summary of findings relating to each of these categories is presented below.

GENUINE CASES

(i) Cases clearly perceived as genuine, for which an offender was detected, and prosecution action commenced

Cases resulting in police prosecution of an offender were rare, in part due to the method of case selection which omitted all offences cleared by immediate arrest. The cases included here resulted mostly from situations in which the offence was initially cleared K6 for further investigation, and this investigation later resulted in the offender's detection and prosecution. Of the 13 cases in this category, half involved attacks by acquaintances/friends (N =7), two involved attacks by strangers, two arose in the context of work relationships, one involved a family member, and one involved a partner.

Of the 13 cases where the police decided to prosecute, five resulted in conviction and the offender received penalties ranging from imprisonment (in two cases) to periodic detention (in three cases). In three cases, conviction resulted from the offender pleading guilty (in two cases after agreeing to lesser charges of indecent assault or assault). In the fourth case, the complainant asked that the charge of sexual violation against her ex-partner be dropped and he was charged only with Male Assaults Female. Only one case that went to trial by jury resulted in conviction (Case 122); this case involved a young Pacific Island schizophrenic

who raped a Caucasian woman in her 60s in her home one morning. She reported the attack immediately, sustained physical injury, and there was clear evidence linking the offender to the crime scene.

In five of the cases prosecuted, the defendant was found not guilty at jury trial – in three of these cases the complainant had met the defendant while out drinking, and the other two involved situations where young women said they awoke to find a visiting male violating them.

A further three cases did not proceed. In one, this was because the charges were withdrawn because the complainant was not a competent witness (Case 92); in another, it was because the complainant withdrew the charge and the defendant was committed as a psychiatric patient (Case 128); in the other, the offender was discharged halfway through the trial after the judge expressed concerns about the reliability and consistency of the evidence being presented (this case involved the alleged kidnapping and sexual violation of an escort, whose manager raised doubts concerning her veracity) (Case 142).

The police cannot, of course, determine court outcomes, but do control the access gates to criminal trial processes. It is, therefore, of interest to attempt to understand which factors influenced them in deciding to proceed with these cases. The complainant being drunk, for instance, did not automatically exclude their case from advancing through the process, although, as we will see when discussing the other categories, drunkenness can certainly place a question-mark over a complainant's credibility as a witness. Closer examination of some cases helps to elucidate the reasoning processes involved in police decision-making.

Case 7, for instance, involved a young Caucasian woman who was in a highly intoxicated state when friends, including an off-duty police officer, put her in a taxi. She began drifting in and out of consciousness, and vomited over the cab. The driver informed her that an additional \$50 to the fare would be needed and she asked him to stop at a cashflow machine.

She fell over on the footpath and said she was too drunk to get the money, so gave the driver her pin number and asked him to withdraw \$60, which bank records show he did. This was despite the advice of other taxi drivers driving by, and the taxi base, telling him that in such circumstances he should not use her cashflow card, for his own protection, but instead drive her to the police station. No-one knew where he went when he drove off with her in the back of his cab. She says she came to in a closed garage at the taxi driver's home, to find him sucking her nipple and rubbing her vagina. She leapt out of the cab and demanded to be taken home, which he agreed to do. When they arrived she jumped out quickly, leaving her wallet behind. Later that day the driver handed the wallet into the police. He subsequently admitted to the police that she had spent three hours in his cab but denied assaulting her. The fact that he had handed her wallet in was, he said, 'proof' that he had done nothing.

It is clear from the file notes that the police did not believe that the driver's action in handing in the wallet proved his innocence. What made them suspicious was the fact that he had, by his own admission, kept the young woman in his car for three hours, when the journey to her address should have taken less than ten minutes. Moreover, the taxi driver agreed that he had driven her instead to his home address. This had been simply so he could change his clothes, he said. The police were not convinced, and he was charged with Unlawful Sexual Connection. It is possible that the police were influenced by the driver being nearly 30 years older than his female passenger, and by his being from a culture in which women have low status. In court, the defence lawyer emphasised the bad circumstances currently surrounding the driver – a bitter custody dispute, a recent burglary, imminent bankruptcy – and the young woman's account was rejected by the jury, who found in the driver's favour. On the police file, it states that the driver's taxi licence had been suspended pending the outcome of the prosecution, and the sergeant was emphatic in declaring this man to be unsuitable for this line of work and advised him strongly against updating his licence. Thus, in this case, the

police interpreted the woman's drunkenness as rendering her vulnerable and saw the taxi driver as abusing her dependency on him to transport her safely home.

As with drunkenness, it was also clear that, at times, delayed reporting of a rape did not automatically preclude it from further investigation and police action.

In Case 93, a Maori woman in her early twenties waited three weeks before approaching the police. She said she had woken one night to find her boyfriend's mate sodomising her, and screamed. Her boyfriend was in the bathroom at the time, and when he came into the room and found her crying, and his mate out on the verandah, he was not sympathetic. Instead, he began abusing and threatening her. She told the police:

I couldn't tell [partner] what had happened. I was too scared. I couldn't tell my partner someone had sex with me. We started arguing and in the end I had the Police come and remove [partner] from my home. I was angry and upset and wanted [partner] out of my house. I told the Police that he might kill me because [he] is possessive of me and if he knew what had happened I was afraid he might kill me....I told [him] about three weeks after the attack what had happened. Before then I hadn't spoken to anybody else about this. I kept it to myself because I felt yuck, disgusted and ashamed of myself. I went and spoke to [partner] once I felt strong enough to deal with it myself.

The complainant tried to explain to the police why she found it hard to speak about the attack and felt the need to tell her partner about it first. Yet she was in a bind, because she feared his reaction:

I felt I had to talk to [partner] about it first but was too scared to talk to him because I was afraid he'd give me a hiding and break my nose or something.

In this case, the police seemed to consider several factors when assessing the genuineness of the complaint. The victim had delayed reporting, but explained reasons for her hesitancy, reasons which in her case the police knew to be valid. Her partner and his mate, the offender, had been in prison together and often met up in the early hours of the morning to commit burglaries. The latter had multiple previous convictions, including two convictions for Male Assaults Female, had gang associates, and had his application for bail opposed by the police because they felt concerned for the victim's safety. Meanwhile, she had sought medical assistance for the injuries sustained to her anus and vagina, and seen counselling services who validated the serious impact of the offence on her life. The police probably hoped this was one way to get a known repeat offender behind bars for a while, so seemed prepared to overlook delayed reporting and the questionable circumstances of the incident and proceed with the case. In other words, the alleged offender's lack of credibility was also considered to be relevant. At the High Court trial, however, the jury returned a verdict of Not Guilty against the defendant.

From the cases studied, it is also apparent that the complainant having a previous police record did not always cancel the validity of any rape allegation she might make subsequently.

In Case 128, for example, a Maori woman in her mid-twenties accused a man of rape. She had met him at a night club through a woman friend of hers, and all three of them had gone to the friend's house at about four one morning. They all climbed into the only bed together, clothed or semi-clothed, then later the friend left the room. The complainant woke to find the accused raping her and began hitting and striking him. Later he admitted having sex with her but claimed it was consensual. Medical evidence showed some bruising and evidence of hair-pulling, consistent with self defence. The police noted that the case was proceeding because of the

... victim's consistent attitude and behaviour. Eyewitness to alleged rape. (Offender) maintains he had consensual sexual intercourse.

The police opposed bail, but it was granted; the defendant, however, failed to report or meet the no-alcohol conditions of his bail and was later remanded in custody. From prison he chose a woman's name at random from the telephone book and sent her an abusive and threatening letter, claiming that she was a witness against him. When the offender was clinically assessed, he was found to be incapable of entering a plea and committed to a psychiatric hospital. The complainant, meanwhile, had moved into a Women's Refuge with her children and decided shortly before the depositions hearing that it would be too stressful to go ahead with the trial. In the end, this complaint was cleared as K3, no offence disclosed.

Little explicit information is contained on this file regarding the police decision to proceed with the case. They stated that the consistent attitude of the complainant was an important factor, and her account was supported to some extent both by medical evidence and by the testimony of the woman friend. It is possible that the police were also influenced, as in Case 93 above, by the criminal record of the alleged offender, which included convictions for violence. Thus, although there were some factors which might have diminished the victim's credibility (her drinking and previous criminal record for youth offences), these other factors were interpreted as supportive of her account and the case was proceeded with by the police.

There were other cases which the police regarded as genuine but which did not proceed to prosecution. These included cases where no offender was detected (N = 5; 3%), cases where an offender was detected but not prosecuted (N = 3; 2%), and cases which the complainant decided to withdraw (N = 13).

(ii) Cases clearly perceived as genuine, for which no offender detected

Four of the five cases which the police perceived as genuine and for which no offender was detected involved stranger attacks, all on women aged between 16 and 29, two of whom were Maori and two Caucasian. One of the stranger attacks occurred in the complainant's home – this case was referred to the Offender Profiling Squad for further investigation. The remainder occurred in street settings. Two of these incidents were recorded as Unlawful Sexual Connection, one as Attempted Rape, and one as Inducing Unlawful Sexual Connection. The police appeared to accept the complainants' accounts of these incidents as genuine, in part because most of these could be substantiated by recent complaint witnesses.

The complainant in Case 39 was a 17-year-old who had been drinking at a house with friends. She said she was attacked while walking home, and indecently assaulted before she was able to kick herself free. She ran to a service station, where the attendant said she sat, crying and shaking, while he called a taxi. Both he and the taxi driver asked if she wanted to go to the police station, or have the police called, but she insisted that she be taken home. Both men confirmed her account of these conversations. Shortly after she arrived home, her boyfriend and his friends arrived, and they rang the police. With no other evidence being retrievable, the police recorded the incident as an Attempted Rape and filed it.

In this case, the victim's demeanour seemed consistent with how the police expected a sexual assault victim to present. This factor was mentioned in another similar case in this category.

In Case 55, a woman said she had an argument with her boyfriend late one night while they were travelling home in a taxi. She left the vehicle to walk home alone, and was attacked and sexually assaulted by a man with his jersey pulled over his face. She went immediately to the police station

to report the incident. The police interviewed her boyfriend, who denied any involvement in the assault, and she also was adamant that he was not the attacker. He said in relation to her that he believed she had been attacked, adding: *she's not the type to lie*. Examination by a police doctor revealed bruising, torn clothing, and evidence of the use of force and finger grip marks on her upper arms. What the police also noted was that her demeanour seemed *consistent with the offences as described*.

The fifth case in this category involved the rape of a 17-year-old intellectually disabled woman by a family member, in circumstances where the fact of her abuse was clearly evident, but it was impossible for the police to determine who in the family was responsible. Hence this case was filed as no offender detected.

(iii) Cases clearly perceived as genuine and for which an offender was detected, but where the police made the decision not to prosecute

A small number of cases in the study sample involved situations which the police determined to be genuine offences and which had been committed by an identifiable offender, but for which no prosecution action resulted. The cases included here all depended on the police deciding not to charge the alleged offender, even when they considered him to have committed a criminal offence. It is the fact of police decision-making which distinguishes these cases from other cases, perceived as genuine, which did not proceed because the complainant withdrew the allegation.

Two of these cases involved Male Rapes Female offences while the third was recorded as Other Sexual Violation. Two involved sexual assaults perpetrated by acquaintances and one occurred in a work context. The workplace incident which occurred involved the rape of a young naval woman by naval officers overseas; in this case (Case 43) the police referred the incident to the navy for further investigation.

In another case, the police chose to give the offender a warning rather than prosecute. This case, Case 119, involved a young Caucasian woman who met a good friend of her boyfriend's while she was in a bar. He told her she was welcome to 'crash' the night at his parents' inner city apartment. She said she woke to find him raping her. He denied the offence. The police made it clear that they believed her but decided not to charge him. Instead, the detective noted that the offender was:

... brought in with his lawyer, and warned of the consequences of any similar behaviour in the future. He was told that I believed [complainant], however would not arrest him in this instance because of the effect that a jury trial would have on the complainant in these circumstances.

The police said they explained to the complainant and her mother how the situation would look if the case went to court and they were happy to accept the offender being let off with a warning.

The third case, Case 167, involved the only situation in which the alleged offender was female. Staff at a rest home feared that a 92-year-old woman had sexually assaulted a woman co-resident, a situation further complicated by the fact that the victim had dementia. The victim's son was notified and mention was made on the file that he was aware the police would not prosecute a 92-year-old.

There are insufficient cases here from which to draw definite conclusions. What these cases suggest, however, is that the police decision to prosecute appears not only to be affected by available evidence but also, at times, by factors such as the victim's competency or willingness to proceed, the offender's age, and the context in which a rape or sexual assault occurs.

(iv) Cases where the police clearly believed the complaint was genuine but the complainant insisted on withdrawing the complaint

This category included cases where, despite the police clearly believing that the report of a sexual assault occurring was genuine, the complainant insisted on withdrawing the allegation. All but one of these cases was cleared by the police as no offence disclosed, despite evidence of victimisation being obvious. If the complainant would not disclose details of the offence, or wished to withdraw an allegation made earlier, then from a police point of view there was no offence to investigate. This is different from police policies regarding family violence, which, in theory at least, no longer have to depend on the victim's willingness to make a complaint for the police to charge an assailant. In cases of family violence, however, the victims are more likely to bear visible evidence of physical injuries which can be used against the defendant; most sexual assaults lack such visible evidence. The impact of psychological shock and trauma on the victim, however, often effectively silences her. Since the assailant is, as in family violence disputes, most likely to be already known to her, she is faced with having to decide whether to make a police report against someone she loves, or fears, or both.

There was little information recorded on the files studied concerning the reasons for these victims withdrawing the complaint. In five cases, it appears that the victim and perpetrator were either partners or ex-partners, and the complainant wanted them warned but not charged. These cases may, therefore, parallel quite closely cases of physical family violence in which the complainant voices a desire for the violence to stop but not necessarily the relationship, or where she is too scared of the perpetrator's reaction to press charges. In two further cases, at least, the complainant also appeared to want the police to give the offender a warning and desired no further action. Two complainants, whose offences were reported without their full agreement, declined police involvement on the basis that they wanted to forget about the attack and 'get on with life'. There were also several cases where it seems, from what is recorded on file, that although the police

believed the sexual assault allegation was genuine, they had strong doubts concerning how credible the complainant would appear if the case went to court.

Police comments on the file indicated that they believed the complainant was telling the truth in these 13 cases, despite the fact that she decided to withdraw the complaint. In at least three cases, the level of physical injury sustained appeared to be a factor in convincing the police that the complaint of sexual violation was genuine.

Case 26, for example, involved a young prostitute who, while drunk, was violated by a client. The victim showed clearly visible signs of physical attack, and was found curled up and hysterical, in the street by a passing taxi driver and his passenger. The victim had not wanted the police called and was insistent that *she just wanted to forget the whole incident and go to bed*. Concern was expressed by the sexual assault counsellor who was called that the complainant had injuries to her wrists from a recent suicide attempt and the 'Psych' team¹⁰ were notified.

The above case involved a victim who was drunk, a prostitute, and perceived as mentally unstable. The report of her rape was accepted as valid by the police, however, partly because the obvious physical injuries provided corroborative evidence. The fact that the complainant had not called the police herself may also have bolstered her claim – she was not alleging rape but had, in effect, two recent complaint witnesses (the taxi driver and his passenger) whose testimony supported her account of her attack.

In some cases, the victim's complaint was substantiated not only by the injuries she received but also by police knowledge that the offender had a previous record of violence, and his own incriminating remarks.

¹⁰ Hospital-based psychiatric teams are notified of patients who may require mental health assessment and treatment.

Case 126, for instance, involved a teenager who, by her own admission, had a heavy night of parties, alcohol and drugs. She felt cold and exhausted when a guy asked her to have sex with him, and said she told him: *I don't care, because I'm freezing cold.* Later, the pair climbed into a bed already occupied by a man in his thirties. The latter woke up and forced her to give him and the first guy oral sex, then raped and sodomised her. She escaped when he let her go to the toilet, left most of her belongings in the house and told her friends and the police what had happened. When interviewed, the offender admitted to having been rough with her, and to forcing her head down on his penis repeatedly, but said it was all *part of the game. Being forceful.* A woman detective spoke with the complainant, after which the latter decided not to proceed with the complaint. The file notes:

[Complainant] appreciates that it would be her word against [theirs] , and she accepts that two against one would be difficult in a Court of Law.

She understands that the whole allegation rests on the matter of consent, and she does not want to put herself in a Court of Law, and have her credibility cross examined.

She was told [offender] would be warned officially for his behaviour, and was happy with the outcome, and will be following up with counselling through Rape Crisis and her doctor.

In several cases, police awareness of previous family violence incidents involving the offender appeared to substantiate the victim's allegation; however, her knowledge of the same facts sometimes clearly dissuaded her from continuing with the complaint.

Case 173 involved a woman who had been separated from her husband for nine months. He arrived drunk at her house one evening, ostensibly to see

the children, and asked her to have sex with him. When she refused, he raped her. She said she tried to resist him but did not scream for fear of waking and frightening the children. After he left, she rang her sister who phoned the police. The sister informed the police of previous sexual violence in the relationship, necessitating stays at Women's Refuge, and the rape allegation was further substantiated the next day when the offender delivered an apology note to the complainant. The police in this case were clearly willing to proceed, noting:

Both [sister] and I made an effort to try and persuade {complainant} to go ahead with the complaint, however she was adamant she did not want to do so. I have since spoken to [offender] and warned him for his actions and what will happen if there is ever a repeat performance.

Also on the police file was a letter of appreciation from the complainant's sister, congratulating the police for their handling of the incident:

At all times from all staff there was an empathetic approach which has/is enabling my sister to put in place steps for her and their children's personal safety... Thank you for having such great people available during such a difficult time - they certainly made a difference for my sister to be able to make good choices for the future.

In Case 118 it was also clear that the police tried to persuade a young Maori woman to proceed with her complaint of rape against her older, immigrant ex-partner. He was well-known for his violence, and had been arrested previously for assaults on the victim and another family member. The detective, in summarising his interactions with the complainant, notes:

Advise her of serious nature of allegations. The invasion of her that the investigation will cause. That I am 100 percent committed to taking a complaint of rape from her. Outline court procedure, support mechanisms. Victim states that she wishes to speak to her mother privately.

The complainant was later adamant that she did not want to proceed further with the complaint, and spoke of her continuing fear of this man and the futility of relying on protection orders and criminal justice system mechanisms for protection.

A previous history of rape or abuse can seriously impact on a woman's responses to subsequent victimisation. Case 102 provides a useful example:

The complainant in Case 102 went to a party at the house next door, and was followed home by one of the hosts. She says he was very drunk, got into bed with her and had sex with her without her consent; he says she was very drunk and consenting. Both parties had previous property offences, and the complainant also had a history of family violence. Two years previously her partner had tied her to the bed and raped her. In the latest incident, the police questioned her about delaying reporting for a week, but appeared to accept the reasons she gave for this:

I didn't phone the Police that night because I have given statements to the Police before. The first time it took about 8 hours. The next morning, my bus was leaving for [another town] the next day at 12.15. I knew that if I called the Police that I would miss my bus. My mother was due to arrive the next morning.

I also think that I was partly in shock and that it hadn't sunk in as to what had happened and how I felt about it. I also felt that I was partly to blame for what had happened. I felt that I had placed

myself in the situation where that could have happened, and that I had been drinking.

But I still know that I told him earlier on to go, before all this happened.

The complainant explained that she had arranged a pre-paid holiday for her and her children, which she did not want to jeopardise. She also needed time to take stock of what had happened. She decided that she did not want to press charges and take the offender through the court system. She did, however, want him to be given the message that what he did was not acceptable. As she explained it:

I was angry, but that has subsided a bit. I think [offender] needs to be taught that what he did was not OK and that what happened to me was not right. He can not do that to me, or to anyone.

I do not fear him, but I would feel uncomfortable seeing or speaking with him again. I don't hold heaps of anger towards him and as an example, I don't want him to go to jail because of this.

He needs to learn, and to learn some manners.

I want him to be accountable for what he did and to realise that what he did was not OK. I want him to know that he didn't get away with it. I want him to know that I did something about it and that I involved the Police.

I almost went into auto pilot. I feel like a victim all over again. It brought up issues from the past that have made me angry. I don't like to be treated or used as some sort of person for his satisfaction.

Notes on the file indicate that the police gave the offender a warning by police, and add:

He was also supplied with the relevant section of the Crimes Act relating to Sexual Violation and Consent. He was given guidance in regard to clarifying consent in any future like circumstances.

[Complainant] was both advised of the file result and also given guidance in regard to clarifying consent in any future like circumstances.

This woman's allegation appears to have been accepted as genuine by the police detective she was dealing with, despite the fact that it contained elements which may typically provoke scepticism. These include her apparent lack of resistance, allegations that she was drunk, and the delay in reporting. However, it seems that the detective involved was able to set aside any knee-jerk reactions he might have had to her initial report, and was prepared to give her the room to explain her reasons and reveal something of her background. Time was spent resolving the case to the complainant's satisfaction. No detail was included in the file outlining the content of the guidance given to both parties concerning how to clarify consent.

Overall, it appears that many of the cases in this category were treated by the police as genuine because there was clear evidence of physical injury and/or of previous violence by the alleged offender. These factors, however, should not be interpreted as sufficient and consistent indicators - analysis of some of the incidents deemed by police to be false complaints showed these factors to be present in some of these cases also. Police assessment of a complaint is also affected by who reports it and when, and by the perceived credibility of the complainant compared with the alleged assailant. It is also possible that I included some cases in this category which, had the victim wanted to proceed, the police may have been reluctant to continue with. The police actually state, in

relation to one case (Case 168), that the victim's poor recollection of events would probably have deterred them from proceeding with the investigation.

Police reluctance to proceed is, as we shall see later, not only linked to perceptions of the genuineness of a case but also to the perceived credibility of the victim. It is possible for a report of rape to be accepted as legitimate even in situations where the complainant appears to be lacking in credibility. Some men deliberately target women who appear less credible knowing that this makes them easier prey. Rape allegations are hard enough to prove when the victim is a sober nun, much less so a drunk prostitute. Yet, as we have seen, the presence of other corroborative factors can mean that, in some circumstances, drunk prostitutes can still be seen as genuine victims.

Conclusion

The characteristics of complainants in the cases perceived by the police as genuine are not dissimilar to the characteristics of complainants in the other categories. As Tables 4.3, 4.5 and 4.7 show, the majority of the complainants in all categories were young, knew their attacker as an acquaintance, and were Caucasian. The assessment of these cases as genuine by the police appears complex in some cases. Traditionally questionable factors such as the victims' drunkenness and delayed reporting did not always ensure the placement of an incident in the 'do not proceed' category. Where other corroborative evidence was available, and the complainant behaved in ways which the police deemed consistent with a rape victim, then there was a possibility that the case would proceed. This possibility was further strengthened if the alleged offender was someone whom the police considered it desirable to remove from society for a while. Thus case progression could be affected by police perceptions of the credibility of either the victim or the offender.

The principal focus in this piece of research is to identify what factors affect whether or not a rape complaint proceeds beyond first base? What sends a complainant's credibility plummeting, and how do the police decide whose version of events to believe? These questions are considered further in cases analysed in the next chapter.

* * *

CHAPTER 5: POLICE FILE ANALYSIS, PART II

Female victims are a special category in the police world. Viewed as helpless and/or unpredictable, women are usually more trouble for a police officer.
(Pike, 1992, 265)

This chapter continues the analysis of police file data. In contrast to the emphasis in the previous chapter on complaints perceived to be genuine, it focuses on cases that were perceived by the police to be of dubious credibility, as well as on the small number of cases which complainants themselves stated to be false.

The cases presented here have been included for their utility in demonstrating the factors which the police take into account when trying to ascertain whether or not a woman's allegations of rape or sexual assault are credible.

POSSIBLY TRUE/POSSIBLY FALSE COMPLAINT

Thirty-seven sexual violation cases were categorised by the police as falling into the grey area where the latter seemed unsure whether or not to treat the complaint as genuine. Three-quarters of these were Male Rapes Female cases, plus there was one Husband Rapes Wife case. The remainder constituted cases of Unlawful Sexual Connection (N = 7), and one case that was recorded as Other Sexual Violation. Also included in this category are 25 cases which the complainant withdrew and which the police had regarded as possibly true or possibly false. Most of these were Male Rapes Female charges (N = 22), plus two of Unlawful Sexual Connection, and one of Other Sexual Violation. In total, therefore, this category comprises 62 cases, making it the largest single grouping.

As in the cases perceived as genuine, the highest proportions of complainants in this category were young (with 63% being 25 years and under), and Caucasian (45%). In terms of the relationship between the victim and the offender, the overall profile was similar, but there was a slightly higher proportion of Possibly True/Possibly False complaints involving acquaintances (60% involved acquaintances, compared with 47% where the complaints were viewed as genuine) and slightly fewer involved stranger attacks (10% compared with 18% where the complaints were viewed as genuine).

As Table 4.7 in the previous chapter shows, the majority of the cases in this category arose from complaints involving acquaintances, followed by partner attacks and incidents involving persons connected through workplace relationships. There were also six accounts of stranger attacks and two arising within the family that had doubts raised regarding their legitimacy.

Of all the cases in this category, in 37 the police decided to halt the investigation, while in the remaining 25 cases it was the complainant who decided to withdraw the allegation.

Cases withdrawn by the complainant

In at least half of the 'Possibly true/possibly false' cases withdrawn by the complainant ($N = 14$), it was clear from the files that the complainant had not wanted the police involved from the outset. Someone else had reported the incident on the complainant's behalf, often against her wishes. Case 50, for instance, demonstrates this. It involved a schoolgirl who sought medical examination following a rape, and the clinic advised the police about the incident.

The girl had been drinking and smoking marijuana with friends, one of whom raped her when he was supposed to be driving her home. She was very

reluctant to proceed with a complaint, citing as a major reason her knowledge that the offender had already influenced others to accept his version of events and she feared the consequences of taking the case further. Her mother tried to persuade her to change her mind but she was adamant that she wanted the complaint withdrawn. The police recommended counselling and gave her referral information to a support agency. The report was cleared as no offence disclosed.

Likewise, in Case 129 a young woman told the police that she had found her friend very distressed, and that she had been raped repeatedly the night before by gang members.

When the police arrived, they found the victim in a drunken sleep; when she came to, the victim swore loudly at the 'pigs' and told them in no uncertain terms to clear off. This case was also cleared as no offence disclosed.

In Case 138, a young Pacific Island woman was walking, emotionally upset and intoxicated, through city streets when she accepted a lift from a carload of men.

They drove to a beach, where in turn they had sex with her, despite the fact that this was not what she wanted. She says she went along with it because she was scared, and pretended she was fine because she did not want them to know she was scared. Afterwards, she felt as if she had been raped and her friend informed the police. The woman, however, said she blamed herself for what happened and could not face the thought of going to court. It is doubtful whether the police would have proceeded with this case, anyway, given the difficulties there would be in proving that the victim was not consenting.

In other cases where the police felt corroborative evidence was lacking, the complainant's fear of the repercussions of reporting seems to be a factor in the complaint being withdrawn.

Case 106, for example, involved a young Maori woman who accepted a ride home from a night-club. The man drove her to a house where he detained and raped her. Initial police investigations yielded some corroborative evidence from a witness next door, and they were willing to take the case further. The complainant, however, refused to make a formal complaint and was reluctant to provide any details. The police note on the file:

[Victim] is very concerned that the offender and his associates are all gang members and she fears for her safety should this complaint be made. Her hesitation in making the complaint is solely her fear of any retribution.

Also noted was the fact that the complainant had apparently made a previous rape allegation, for which the offender was convicted but served only a minimal sentence.

She stated that she had no faith in the justice system and feared that if she pursued a complaint again, that the offender prior to the trial would be given bail and that if he was convicted there would only be a short period of incarceration.

She was extremely fearful of gang retaliation and wished now, she said, simply *to get on with things.*

The primary focus of this thesis is on police assessments and decision-making; hence, the remaining discussion of the 'Possibly true/Possibly false' category considers those 37 cases where the police decided there was insufficient evidence to proceed.

Cases where the police decided to proceed no further

It is important to examine further those complaints deemed to be questionable by the police in order to identify any themes or characteristics linking cases in this grey area. Do the cases in this category share common characteristics? Why did the police place a question mark over the legitimacy of these complaints? This discussion attempts to identify the different themes which emerged from further analysis of these cases. It is difficult to try to quantify how frequently these themes were present since individual cases generally contained a range of factors, the boundaries of which were often blurred. The qualitative analysis contained here aims primarily to convey the apparent reasoning behind police decision-making and to identify significant criteria in their decisions.

In practice, it was difficult to identify fundamental differences in the criteria which the police used to decide that a complaint was dubious, and separate these from those evident in the 'Police said false' category. This is not surprising, given that the factors seen as giving rise to doubts over a case's legitimacy are likely to be similar in all these cases. The main reason determining why cases were included in the 'Possibly true/Possibly false' category rather than the 'Police said false' category revolves around what the police said on the file concerning the complainant's legitimacy. In situations where the police discussed the evidence available as being insufficient for them to make a definitive judgement, cases were included in the 'Possibly true/Possibly false' category. If the police stated outright that a complaint was false, and/or speculated as to what they believed were the motives underlying the complainant's actions, then the case was included in the 'Police said false' category.

The criteria evident in many of these cases echo the findings of overseas studies concerning factors that diminish the credibility of rape complainants (Adler, 1987; Burgess, 1999; Estrich, 1987; Harris and Grace, 1999; Gregory and Lees, 1999; Lees, 1997; Scutt, 1997; Taslitz, 1999). For example, a delay in reporting a rape by the

victim is often interpreted as questionable; the assumption is that the first thing any genuine victim would do is to contact the police (Bronitt, 1998; Torrey, 1991).

Case 23, for example, was labelled as an 'historic rape' although the time lapse between the incident's occurrence and its reporting was less than three weeks. A woman student, who had recently broken up with her boyfriend, reported drinking and smoking cannabis with another male friend. She alleged that she became very intoxicated and, while lapsing in and out of consciousness, was raped by this man. Police clearly viewed with some suspicion the fact that she then left the house, told no-one else about the incident for several days, and did not inform the police for more than a fortnight. The complainant claims that, when she came to and found him on top of her, she insisted he stop and tried to fight him off. He told a male friend, however, that it was she who had *jumped on him* and had sex with him. When spoken to again by a detective, the file noted that she admitted she had only made the complaint at the insistence of her ex-boyfriend, whom she wished to get back with. The detective also noted:

She told me she did not believe she had been raped. She was just annoyed that [alleged offender] had not stopped having sex with her when she said no.

Conversely, prompt reporting by a complainant may be interpreted positively by police. In Case 140, for example, while weighing up the credibility of a case, the detective specified that one of the factors in support of her allegation was that the complainant reported within 24 hours of the alleged rape.

Historic reports of rape often seemed to be regarded as dubious. From a police perspective, historic complaints are problematic because of the lack of physical/medical evidence. However, it appears that greater weighting is attached to the delay factor than this. The majority of sexual violation cases, even those reported within the 72-hour 'window' (the maximum time that can lapse for retrieving medical

evidence), do not in fact yield conclusive medical evidence. To do so, the attack needs to have been accompanied by both penile-vaginal penetration and ejaculation, and the victim needs not to have bathed nor, preferably, urinated before examination. Despite these caveats, however, it seems that the belief continues to be strong that immediate reporting by the victim is an indicator of credibility. While evidentially there may be advantages in early reporting, the belief that this factor indicates genuineness may be misplaced.

Earlier New Zealand research (Jordan, 1998a) showed that rapes are typically reported by persons other than the victim. The decision to report a rape is not a straightforward one (Chambers and Millar, 1983; Epstein and Langenbahn, 1994; Feldman-Summers and Norris, 1984; Gilmore and Pittman, 1993; Kelly, 1988). Whereas victims of burglary may feel an immediate sense of anger and injustice at returning to find the sanctity of their home violated in their absence, the victim of rape's physical presence during the offence both heightens the effects and complicates the response. Choosing to expose one's self to police scrutiny is a complex, painful and often terrifying decision. Victims of rape know only too well that it is not just the offender's actions that will be scrutinised, nor simply the victim's actions either, but her character, morality and integrity (Estrich, 1987; Kennedy, 1992; Lees, 1997; Scutt, 1997). This is illustrated to some extent in the following case.

Case 89 involved a woman in her thirties who went ten-pin bowling with her neighbour. They met up with friends of the neighbour and all went on to a night-club together. Considerable amounts of alcohol were consumed and the women danced with men they met at the club. At about 1.30am the neighbour decided to go home, leaving the complainant at the club. She was, by her own admission, quite intoxicated and about 3am told the people she was with that she was going to catch a taxi home. One of the men she had been dancing with offered to walk outside with her, there were no taxis outside and he said he would walk her to a taxi stand. En route she said he knocked her to the ground and tried to sexually violate her but she struggled violently and he ran off.

She walked home, distressed, called her ex de facto and he encouraged her to contact the police, which she agreed to do. The police were not in fact notified until a few days later when her former partner took her into a police station. The detective admitted to having considerable doubts about the validity of the complaint, some of which involved judgements made about the complainant's actions on the night:

When I spoke to the complainant she was crying, shaking and very distressed.

I have concerns about this complaint, in that she remained at a night-club, after her friend left when she claimed not to know anyone she was drinking with. She walked home after the assault, rather than calling Police or catching a taxi. She lied to her ex boyfriend about making a complaint to Police. The scene is not where she said it was (It was further along — Road); the circumstances of her recent break-up with her boyfriend, and that she seeks reconciliation with him, (it is possible that the complaint (sic) is attention seeking from him.)

I developed rapport with the complainant, and did question her about the validity of her complaint (but didn't force/push the issue what-so-ever.) She maintained that she was telling the truth. She also had the scratches to her chest.

One way in which credibility became problematic arose in situations where the complainant had initially concealed factors associated with the incident, or subsequently changed her/his 'story'. In Case 11, for example, a young woman initially alleged abduction and rape from a suburban party. When challenged concerning aspects of this incident, she admitted the incident had occurred in the context of a prostitute-client relationship. She maintained she had been abducted and raped, but in a different context to that initially alleged. The original story had been

quickly concocted to conceal her identity as a sex worker and to protect her manager – understandable concerns on her part - but the fact of concealment damaged her reputation in the eyes of the police more, it seems, than the fact that she worked in the sex industry.

Thus some of the cases in this category became suspicious to the police once it emerged that the complainant had attempted to conceal parts of the story or lie about certain aspects associated with it. In some cases, such concealment arose from efforts by the complainant to minimise the amount she had been drinking or to obscure the fact that she had taken drugs.

The drunkenness of the complainant was noted as a factor in nearly half of the cases in this category (46%) and has been identified previously as contributing towards police scepticism (Torrey, 1991). Drunkenness per se did not appear to be a significant determinant of police suspicion, however, and this is evidenced in part by its high occurrence in all the categories discussed in Chapter 4 and this chapter. Alcohol and drug use in women may not carry the same negative connotations it once did, although vestiges of the double standard remain. While it may now be more acceptable for both men and women to drink, drunkenness still tends to be viewed less favourably in women than men (Etorre, 1992; Otto, 1981). One major difficulty posed by high alcohol use is the poor recall usually associated with it. This makes it difficult for the police to obtain clear and consistent accounts. However, these seem to be interpreted more often as raising doubts concerning the complainant's testimony than the alleged offender's. In part, this may be influenced by the legal safeguards accorded to accused persons, safeguards which are necessary to prevent wrongful convictions. This appears to have been a factor in Case 156, involving an alleged rape of a woman in the toilets of a central city night-club.

Both the complainant and alleged offender were Caucasian, mid-late twenties in age. High levels of distress in the complainant resulted in her referral to the hospital Accident and Emergency department, where a doctor asked if she was

upset as a result of rape. She answered in the affirmative, and a woman detective interviewed her at the hospital. However, the complainant was confused about the order of events and could remember being in the toilets but not how she got there. A barmaid said she and the alleged offender had gone in there together, and he denied any offence. The detective said she was unable in such circumstances to do anything other than file the complaint as no offence disclosed, stating:

Because the levels of intoxication were so great and the inability of the complainant to coherently recall all of the events of the evening, including what happened in the toilets, there would be inherent difficulties taking this matter any further. I do not doubt that something may have occurred against the complainant's will, however, as I have explained to her, the matter will be noted and filed.

More weight than this, however, was attached to other cases involving a victim's intoxication.

In Case 131, a Pacific Island student went on a drinking binge with a female friend, met up with some guys they knew, and later that night one of them allegedly forced her to perform oral sex on him. She approached a counselling agency in some distress and the police were informed. The detective reviewed the circumstances and concluded:

In all fairness, the defences in this matter were numerous and unfortunately there were a large number we could not refute.

- Drunkenness

- her drinking is a regular occurrence at [----]

- Consent – or lack of

- bruising possibly self-inflicted (Victim states her friend told her she was falling over a lot and admits she was wasted).

Investigation was ceased and the file cleared as no offence disclosed.

It is important not to attach too much significance to any individual factor when, in reality, most cases incorporate a range of influential variables. Case 159 demonstrates this well.

The complainant was 17 and alleged that she had been raped following her abduction from this party by an old school friend and his mates. She was heavily intoxicated at the time and police had to wait for the effects of alcohol to lessen before they could obtain a statement from her. The detective noted that earlier in the evening she had engaged in consensual oral sex with another male at the same party, stating that her behaviour was clearly affected by alcohol *because she is not normally inclined to sexual activity with virtual strangers (her flatmates refer to her as the 'nun' of their group)*. Later that night this guy encouraged her to get into a vehicle, which was full of other males including the former schoolmate whom, she says, raped her. Friends described seeing her struggling to get away as the car sped off from the party and assumed she had been abducted.

A medical examination revealed a number of recent injuries on the complainant's body, especially around the genital area. The detective said:

After interviewing the complainant, it is difficult to believe she is lying and her demeanour is entirely consistent with other rape victims I have interviewed. Having said that, however, there were a number of inconsistencies both in her behaviour and according to witnesses which would undoubtedly be taken advantage of under cross-examination.

This detective goes on to note that:

Although it has no legal relevance to the issue of consent to any sexual activity with [accused], the complainant did admit to engaging in oral sex in a toilet with a person she had only met that night at the party.... The implication is that she was intoxicated to the point where her normal inhibitions were almost completely absent.

Additional factors mentioned that could be used against the complainant included the fact that she seemed reluctant to discuss intimate details associated with the rape;

While this reticence could simply be a result of acute embarrassment, it could also be seen as an attempt to play down her behaviour that night.

It was also noted that she appeared to have made no effort to run away:

Even allowing for her to have acquiesced out of fear, there was no mention in her statement of any force being used or threats being made.

The detective noted in conclusion:

This is unfortunately a situation where a young woman who is not accustomed to drinking large quantities of alcohol has become intoxicated at a party, and as a result, has engaged in sexual activity which she later regretted. She presents as a genuine victim of sexual violation, but it is my view that with the combination of generous portions of self-recrimination and regret, together with some over-zealous [intervention] from her piers (sic), [the complainant] is trapped in a lie or even actually believes that she was raped.

Although one must be sober to consent to sexual activity of course, there is no evidence that any of the youths concerned (and especially

[the accused]) believed that [she] was anything but willing to go along with them...

[The complainant] has had these matters explained to her and although she maintains her position, she realises that a conviction would be unlikely in the circumstances. She does not wish to have to give evidence anyway.

No further action by police indicated - for filing.

This case clearly illustrates the way in which different factors may combine to reduce the apparent credibility of sexual assault complainants. Intoxication, the suggestion of promiscuity, seemingly compliant behaviour by the victim, embarrassment and probable shame – these all combine to place a question-mark over the allegation. Sometimes detectives seemed to disagree as to which way the evidence was weighted; in Case 159, however, the battle seems to rage within an individual detective as he attempts to assess the complainant's credibility in what was perceived as a borderline case.

One additional factor that appears to be correlated with police closure of an investigation is that of diminished competency in the victim. This may be seen as resulting from intellectual disability or psychiatric illness. Complainants in such cases undoubtedly pose difficulties for the police, ranging from possibly poor or confused recall through to concerns about their competency in the witness box. Of particular concern to police will be apprehension over the vulnerability of such victims to defence lawyers' tactics and intimidation. Whilst not disputing the legitimacy of police concerns, the result may unwittingly be that victims with intellectual or psychiatric disabilities have diminished access to justice. Case 88 illustrates some of these difficulties.

The report form outlines how the complainant phoned the police for assistance ten days after an alleged rape, when the offender rang to say he was coming to pay her another visit. Detectives were at the house when the offender arrived and questioned both parties about the alleged rape.

The accounts differed somewhat in that, although both said they had met when she was dating his brother, she denied previous consensual sex with the accused whilst he claimed it had occurred infrequently between them. He referred to her *kissing like a chicken*, being a *lousy screw*, and said *I'd never rape her – I'm not that desperate*. Despite these insults and utterances, however, he admitted that he rang her that night because he wanted *to see her, for a fuck, or whatever you want to call it*.

The detective clearly had some doubts about the complainant's account and noted:

[Complainant] was quite happy talking to me concerning the background information about her relationship between the [brothers], but as soon as questions were asked of her concerning the events of the morning in question, she would start crying, withdraw into herself and refuse to answer questions. She refused to read the statement and sign it, and would not say anything more.

The police said that, whilst being questioned, the complainant *changed her story* and claimed not to have seen the accused for two years prior to the rape. She was also inconsistent in her recall of some events and the order in which they occurred – for example, whether or not she had made other phone calls that night, and when. When the police challenged her about an error in her recall, the file notes:

[Complainant] then started crying and blubbing and saying that everything is just a lie and everyone's calling her a liar and no one believes her.

The interview was stopped and the services of a Victim Support worker were obtained to explain why the truth was important. Four pages into the report form, mention is made for the first time of the complainant's intellectual disability. The complainant's situation was discussed with a manager for the IHC (Intellectually Handicapped Children's Society) who stated that, given the level of disability, the complainant may suffer memory loss in relation to events such as the one alleged.

Despite police concerns over the complainant's reliability, some evidence seemed to support her account. One of the major discrepancies noted was between the accounts of the complainant and the accused concerning the timing of his phone calls and his subsequent arrival at her flat. She alleged he rang her about 3am to invite himself over; he claimed it was only about 10.30pm; a police check of phone records later showed her account to be the more accurate. Other evidence emerged when the doctor who examined the complainant noted that *the findings were consistent with upper body restraint and a struggle.*

Police re-questioned the accused, who was now in prison on an unrelated matter, but clearly still held concerns about the complainant's veracity. What seemed to raise further doubts in the minds of police was the discovery of a rape complaint made four years previously by the same complainant. In the midst of conflicting accounts, the fact of this earlier rape complaint had pivotal significance attached to it. The detective decided to make the latest complaint an associated file of the former case:

This is in case [complainant] makes any further allegations against other people for similar offences. In light of the afore-mentioned discrepancies and the unreliability of [complainant] as a witness, I recommend that the matter be filed and of course, the [complainant's] family informed accordingly.

The assumption in Case 88 seemed to be that if the complainant had made a previous complaint which had not been proven, any subsequent complaint was also likely to be false. The complainant's intellectual disability and the ways in which this might make her vulnerable, firstly, to sexual assault and, secondly, to not being viewed as a credible witness, did not appear to be acknowledged by the police involved with this case.

Complainants with psychiatric problems may also struggle to have rape accounts perceived as credible.

In Case 157, a man in his mid-fifties bought a number of drinks in a hotel bar for a 22 year old woman, who was described on the police file as an alcoholic with borderline personality disorder. He invited her up to his room for more drinks where she claims he raped her, while he claims they consumed more alcohol, watched television and had sex a couple of times. This was despite the fact that he says he was warned *she was trouble*, and the bar manager had told her she was being *a bludger* and not to put any more drinks on his tab.

The complainant was too intoxicated to recall many details, but said she managed to leave his room to go to the toilet and ran across to a fast food restaurant, where staff noted she seemed distressed and insisted that the police were called. She did not say why, but when the alleged offender came in to the restaurant looking for her, she became very distraught and said it was him. The detective states in the report form about the complainant that:

In her statement of interview she acknowledges that she was grossly intoxicated, has a personality disorder and is an alcoholic.

Police checks on the background of her alleged attacker also revealed some interesting results – a whole page of aliases, four pages of previous convictions, and records of prison terms including one for having sex with a girl aged 12-16. The detective concluded:

There is nothing to corroborate the allegation of rape made by [complainant]. While there is a possibility that a rape has occurred, there is an equal possibility that the events as described above were consensual but due to her intoxication and personality disorder she subsequently regretted her actions.

In light of the complainant's inability to give specifics as regards the allegation of rape and the absence of corroborative evidence, there is insufficient evidence to justify charging [alleged offender] with sexual violation.

Summary

What is it, then, that makes cases grey as opposed to black and white? Since similar factors seem to underlie both the grey and the black/white categories, what tips the scales one way or the other? The scales of justice analogy may well be useful here, since in practice it does often seem to be a question of balance. Do the factors interpreted as adding plausibility to a complaint outweigh those seen as undermining it? Seldom does one individual factor seem to tip the balance; rather, clusters of variables emerge that, considered together, are interpreted as indicators of a complainant's credibility.

In some files, this process was clearly described as detectives drew up lists of evidence confirming and evidence rejecting the complainant's testimony.

Case 140, for instance, involved a rape allegation made by a 32 year old woman, noted as having a mental age of 10 years, against a man in his late thirties. The police noted evidence that supported the complainant's allegation, including the fact that she 'made a fairly credible statement given her disability', and told her flatmate and her caregiver within 24 hours. These factors appeared to be diluted in significance, however, by the fact that she initially said the incident was one of indecent assault, rather than rape, and also by the observation that she said nothing to her mother whom she saw within a few hours of the incident. Evidence was then cited that supported the alleged offender's denial, including:

[Offender], who has only a small amount of history for disorderly behaviour, came into the Police station of his own accord and gave a video statement of a reasonably credible version of events.

The police also noted in his favour that he provided a blood sample voluntarily, and no evidence of semen was found.

This file clearly lays out what the police interpreted as evidence in relation to both parties. A final point is then factored into the equation which tips the balance further against the complainant's account; the detective adds:

Although I can find no record of previous dealings with [complainant], a number of senior members have some anecdotal knowledge of a previous complaint made by [her] in similar circumstances.

This complaint did not proceed. Although I cannot say with any certainty that the rape did not take place, I would be reluctant to pursue the matter on the basis of the current evidence.

Many of the factors identified as significant, therefore, may not be sufficient on their own to dent a complainant's credibility but clusters of these factors clearly raise suspicion. Some of these doubts may be well-founded and should prompt further investigation. The police do, in fact, have to tread a fine line between the victim and the accused as they attempt to preserve the balance of justice and guard against the possibilities of wrongful conviction. However, an over-zealous commitment to the rights of the accused may unwittingly tip the balance the other way. The police may become in effect the adjudicators, applying their own judgements and interpretations to individual cases. Within this context, factors identified as determinants of complainants' credibility assume enhanced significance and can result in the premature closure of investigations. Whether or not an offence actually occurred is different from whether or not it **can be proven** to have occurred; for victims of rape, the first concern is understandably the more pressing, but because of their role in the prosecution process, it is the latter which is of primary importance to the police.

These considerations become even more pronounced in the next category, involving cases determined by the police to be not simply of dubious credibility but actually false.

POLICE SAID THE COMPLAINT WAS FALSE

Cases deemed to be false included those where the police halted the investigation as well as some cases which were perceived as false by the police but were withdrawn by the complainant.

There were 29 cases (17.7% of the total sample) which the police ceased to investigate because they concluded the complaint to be false. Most of these were 'Male Rapes Female' cases (N = 24, including one 'Attempted Rape'), but this category also includes three 'Other Sexual Violation' offences and two offences of 'Unlawful Sexual Connection'.

In addition, in 26 cases withdrawn by the complainant, police file notes made it clear that they suspected the complaint to be false. Of these, 19 were Male Rapes Female cases, three were Other Sexual Violation offences, three involved Unlawful Sexual Connection, and one was recorded as Husband Rapes Wife.¹

As in the previous categories, the largest numbers of complainants were young and Caucasian (as shown on Tables 4.9 and 4.10 in Chapter 4). In terms of the complainant's relationship with the offender (Table 4.8), the majority of incidents involved acquaintances, followed by partner attacks and stranger attacks. The remaining three incidents arose in the context of family relationships.

The incidents in this category were perceived by the police as being more black and white than the grey terrain of the previous category. Many of the same factors were evident, such as delayed reporting, and contributed to police doubts in similar ways to those already identified. So what made the police so sure that the cases in this category were false?

It is possible that some of the difference in emphasis was simply the result of variability amongst detectives, or even within the same detective responding to different complainants. However, what is worth noting in this category is that, overall, the cases provide even clearer indications of the factors identified by police as

¹ It should be noted that the latter involved a young woman of 17 years making a charge against the man who was now her ex-partner, and who had been her de facto partner – the use of the Husband Rapes Wife offence category on the files suggested there was no consistency in the use of this term whatsoever. Current husbands were not necessarily charged under this category, while ex de facto partners sometimes were.

detracting from complainants' credibility. It should be noted that my examination of these cases is not intended to imply that I believe the police necessarily to be mistaken in their conclusion that the complaint was false; my focus is not on the 'truth' or otherwise of particular cases, but on understanding the processes used by police in **their** assessments of a complainant's veracity.

Concealment of particular aspects associated with the incident often produced sceptical police reactions. Women under 20 sometimes lied about having been in a bar², minimised the amount they had drunk, or denied cannabis use. The women's motives for doing so are understandable, in that they feared they would be blamed for what happened to them or even prosecuted themselves for law violation. From a police perspective, however, the fact of their lying about what seemed to be a small detail opened a window of doubt over their whole testimony. Case 151 illustrates this issue.

A young woman made a delayed report of rape following a drinking session she and her friends had with a male neighbour in his fifties. While she was in the toilet, he allegedly made remarks considered 'unsavoury' by her friends and they left. She claims he detained and raped her; he alleges sex was consensual. The complainant lost credibility with the police when she told her friend to say she had drunk only three beers instead of the large quantity of mixed drinks and spirits that had been consumed. In outlining on the file why the investigation was halted and the incident cleared as no offence disclosed, the detective said:

The offence was reported some 2 1/2 weeks after occurring, and subsequent investigations revealed inconsistencies in the complainant's version of events, and an apparent attempt on her behalf to influence the testimony of one of the witnesses.

² In 1997 the minimum age for admission to licensed premises was 20 years of age – this was reduced to 18 in 1999.

There is no medical or forensic evidence, and while it is clear that sex took place, there is only the seemingly unreliable testimony of the complainant, coupled with an equally unreliable recent complaint witness, to support the allegations...

I therefore recommend that the complaint be taken no further, and that some action be taken against [complainant] and her flatmate in relation to wasting Police time.

This detective comments that when the police informed the complainant that her complaint was not going to be taken further,

The complainant was less than happy when told, and denied any wrong-doing when confronted with the inconsistencies.

In this case, the police uncovered that the alleged offender had question-marks over his credibility also, in that he had previous convictions for assault and possessing indecent documents for sale; the complainant's efforts to conceal how much she had drunk, however, caused greater concern. Similar factors provoked doubts over this woman's testimony as caused police detectives to be sceptical of complainants in the previous category of offences.

What influenced the police to regard Case 151 as a definite false complaint, rather than a possible false complaint, appeared to derive from the fact that they believed the complainant had deliberately lied to them. The fact of her lying, added to other doubt-generating factors, pushed this case into the realm of non-believability.

At other times, complainants lied possibly not so much because they wanted to appear credible to the police but because they feared other consequences from their

behaviour. In Case 155, for example, a woman went to a police station to report having been raped the night before. The detective notes on the report form:

A story unfolded about how she was separated from her friend after having been at the movies in __ and how she was whisked away by a car load of men, taken to a place under a bridge and raped by one of the men. A DSAC doctor was called out and [complainant] underwent a full medical examination. She was very vague about all of the details and couldn't really even recall fundamental things like colour or shape of the vehicle, descriptions of the males etc. Eventually this all made me very suspicious about how genuine the complaint actually was.

Further enquiries revealed that she had lied about where she had been. Her friend __ confirmed that they had been together that evening, met some males and took them back to an address The truth of what actually occurred there is not known however I believe [complainant] had sexual intercourse with [alleged offender] and lied about everything else because she had breached the 11pm curfew in place at the Refuge, her only place to stay in __. I have advised the DSAC doctor of this false complaint and I have warned [complainant] for wasting everyone's time.

The appropriate noting re [complainant] has been prepared to enter into the NIS system.³

The complainant said that she had not wanted to have sex with the guy she was with, had tried to make him stop, and been distressed afterwards. Seeing this, her friend had suggested the abduction story to provide them both with an alibi

³ NIS refers to a police national database, known as the National Intelligence System. These records are separate from the main Wanganui computer, and are used to store information on persons who have been in police contact for various reasons deemed noteworthy, whether or not these resulted in their arrest. Should, for example, this complainant have subsequent police contact, information will be available to police showing that she has a previous record for making a false complaint.

for the Refuge. The detective noted on a file that he/she had spoken with the complainant concerning

... the inherent problems with proceeding with a rape charge against — in light of the previous made up account of what had happened and how her credibility would be very questionable, to say the least.

The file notes elsewhere that the 18-year-old Maori complainant is

... quite unstable due to having a recent stillborn child and ongoing domestic problems with her ex partner.

He had breached a protection order and assaulted her earlier that month, and she was living in a Refuge in another city when the alleged rape occurred.

Over half of the cases in the 'Police believed complaint to be false' category involved persons perceived as intellectually disabled or psychiatrically disturbed (55%). Examples of police thinking and decision-making in such cases are provided in the following case examples.

Cases 4 and 179 involve two separate rape allegations made by the same woman against her de facto, with whom police said on the file she had been in *a rocky relationship for two years*. During this time she is said to have made repeated complaints against her partner for assault and sexual violation. Police noted on file:

The suspect for these complaints is allways (sic) her boyfriend.... [She] is extremely erratic and suffers from severe mood swings. When police investigate her complaints [complainant's] statements are repetitive of former complaints and do not stand up to cross examination. Complaints stem from domestic disputes between

[complainant] and [partner]. When prosecution is considered [she] withdraws initial complaint. [Her partner] is a well known drug user and suffers from a mental disorder of soughts (sic).

Comments were also made regarding how the complainant appeared to the police attending the rape complaints:

[She] presents as mentally disturbed, intoxicated and irrational. The interior of [her house] can only be described as a mess. Property is piled up in all rooms leaving only a minimal amount of space for living in. [She] is abusive toward us and obstructive.

The complainant later criticised the police for their failure to act on the information she provided them, to which the police replied:

This woman can only be described as a habitual complainant who suffers from delusions and paranoia.... On every occasion she has complained about alleged offences committed mainly by her ex-partner ____ . The offences have ranged from very minor to very serious. To my knowledge none of these has been proved. [Local police] do not give any credence to her complaints.

Her living conditions resemble that of a rubbish dump. By her own admission she has a psychiatric history.

Police officers also appeared to find it difficult to view complainants with intellectual disabilities as credible. Case 172 involved a young woman assessed as having the mental age of a 10-12 year old child.

A male police constable was visiting the educational facility she attended when she approached him and said, *quite boldly*, he remarked, that she had been

raped. He sent a female officer to talk with her, and the complainant alleged that she had been visiting a girlfriend when two teenage boys came to visit. All four young people went for a walk into a disused factory site, where she found herself alone with one of the boys. She says he asked her if she had ever slept with a boy, to which she said *no* but that she had been raped by an older man the previous year. The boy asked if she became pregnant then, to which she said 'no', then he asked if she wanted to get pregnant, to which she also replied in the negative. He asked her to lie down and began touching her breasts and genital area; when she tried to pull away, he said he would never speak to her again if she did not do what he wanted. He touched her some more and asked if it felt good; she said she did not want to do it any more; then, she says, he penetrated her. The officer wrote:

[Complainant] stated that [offender] had raped her. She said it was the same as the 45yr old man. I said to [her] that married people make love or have sexual intercourse and she was happy with this. I then asked her what it was called when unmarried people do this and she had no answer. I asked her to tell me what rape meant and she said it was like being murdered by another person.

The complainant's teacher said that, a week before the police visit, the complainant had spoken to her and was distressed that the boy in question kept ringing and pestering her. She spoke about having been with her girlfriend and these boys, and how she had been left with [offender] and felt uncomfortable, *like it had been 'arranged'*. Significance was attached, both by the teacher and the police, to the fact that this conversation had included no mention of the rape incident. Additional comments made by the teacher in relation to the complainant described her as *attention seeking*, tending to *dramatise*, and having a reputation from her former school of being *promiscuous*.

The other teenagers were all interviewed and, it was noted, came across as 'credible' to the police. None of them said they had seen anything sexual involving the complainant, nor seen her distressed. The alleged offender was interviewed in the presence of his mother and a lawyer and denied the allegation; the detective commented:

I have no reason to doubt this, apart from the obvious conflict from [complainant's] allegation.

The complainant's mother was rung, and the detective says:

I told her that an investigation into an alleged rape against her daughter had taken a slight turn and that at this stage, it looked as if the original complaint made by [complainant] was false. I advised [mother] that this was a serious situation, if in fact it was a false complaint. I explained to her that in the worst case scenario for such a serious situation, [her daughter] could possibly end up being charged. We then arranged to have a meeting with [mother], myself and [daughter] to discuss the matter.

The file notes that the complainant's mother was difficult to deal with at times and questioned the need for on-going investigation by the police. Finally the mother agreed to a joint meeting in the presence of a solicitor.

Unfortunately [mother] refused to bring [daughter] to the meeting. She stated that this brutalised the situation and didn't want to subject her daughter to such a traumatic meeting. [Mother] was clearly being obstructive and had no intention of giving me an opportunity to speak to [daughter] in the presence of her mother. This was contrary to what we had arranged and the sole reason of me arranging the meeting. [Mother] stated very clearly that she believed her daughter had had a

sexual experience on the evening in question. She further stated that she believed [her daughter] would probably be subjected to several 'rapes' in her life and that unless [her daughter] suffered serious physical harm as a result of one of these attacks, then she would avoid bringing these attacks to the attention of the Police. She felt that she could handle these situations and deal with them 'in house'.

The complainant was removed to a specialist facility where the police spoke with her again.

I explained to [complainant] what the witnesses had said and that despite her claims, I couldn't find any proof that a rape or sexual violation had occurred. [She] still maintained that she was 'raped' although I have my doubts about her interpretation and understanding of the meaning of this word.

In conclusion, I believe [complainant] did not experience rape and I believe [she] has falsely stated she was raped, however, I have a small element of doubt in my mind.

Cases involving complainants with psychiatric histories or intellectual disabilities seemed to be doubly difficult for the police to assess as credible. Initial doubts regarding the possibilities of a woman lying about rape may therefore be enhanced by additional concerns they held regarding her competency as a witness.

In more than a third of the cases that the police said were false, officers tended to ascribe motives to women whom they suspected of having made a false complaint. It is virtually impossible to tell from the file evidence available whether or not such scepticism is well-founded in reality or simply emanates from a police occupational trait of general suspiciousness (Reiner, 1994). What is significant, however, is the identification of suspicious cues by police. These are sometimes triggered in

situations where it seems the complainant stands to gain personally from a rape allegation. In Case 64, for example, the complainant, a Pacific Island woman in her late twenties, reported a stranger rape ten days after its alleged occurrence. The delay was noted, along with a description of her stating that she

... suffers from some degree of mental impairment and her complaint of Rape is possibly a false one.... [She is] a IM who appears to have made a complaint with the sole purpose of making a claim through ACC.

Lump sum compensation for rape victims through the Accident Compensation Corporation (ACC) ended five years before this complaint was made, yet the suspicion that this was what motivated women to allege rape remained.

In some contexts, it appears that the complainant may have allowed another party to believe she had been raped, when the reality of the situation could prove to be embarrassing. This was possibly the case in Case 162.

A woman in her forties was found after a sports game lying in a private driveway with injuries and little recall of events. Police noted concerning the house occupants who found her:

The assumption was that she had been rendered unconscious and sexually violated.

They looked through her bag, found the phone number of a friend and phoned her. This friend reported to police that the woman had been raped and she was sent for a medical examination. She said she could recall nothing in relation to any attack. Interviews with the friends she had been at the sports game with revealed there to have been free drinks available on site; this resulted in heavy alcohol consumption, particularly by the complainant. There had also been allegedly flirtation and sexual touching between some of those present. One

man offered to see the complainant home in a taxi; according to the taxi driver, she was so drunk she fell over getting out of the cab, hit her head but stood up and appeared to be fine. The police found it hard to obtain any information from either the complainant or the man who saw her home, and ruled out options such as the possibility of her having disturbed a burglar.

This left the possibility that the complainant had made a false complaint to her friend to cover her embarrassment at being found so drunk and having possibly engaged in sexual activity with one or more of the people at the league game. The second friend became involved [the woman who rang the doctor] and the complainant possibly found herself trapped in the lie. Both the complainant and the witness [the man who took her home in the taxi] are hiding some information from the Police and both are disproportionately fearful of further investigation. The true reason for this may never be known...

It seems most likely that a sexual violation did not occur at all and the stats have accordingly been cleared K3.

In some cases, the motives attributed to complainants reflect stereotypical beliefs and assumptions concerning the nature of women. The presence of these does not nullify the possibility that the complaint may still be a false one; police reliance on such descriptors, however, may be indicative of underlying attitudes that have the potential to result in biased actions against genuine victims of rape. The image of the scorned and vengeful woman is one such belief and is reflected in the following example.

Case 34 involved a rape complaint made by a woman in her thirties against a man of similar age. She lived overseas and had corresponded with him as a penpal for two years, after answering an advertisement he placed in a foreign newspaper. He offered to pay her airfare over to see him, inviting her to stay at his island home. She arrived and made her own way by boat to his place,

where he was joined also by a male friend and beers were consumed. When the visitor left, the alleged offender asked her to sleep in his bed. She was reluctant to do so but was tired and jet-lagged, so kept a tee-shirt and underwear on, and climbed into the bed, there being no other. He talked about having sex with her, she said he kept pressuring her to agree until finally she said there could be no sex without a condom. According to the file:

[Offender] then attempted to have intercourse with the victim but was told that she now did not want to. Intercourse then took place.

The complainant said she went to the bathroom and cleaned herself, had a drink of water, and felt exhausted. The detective notes:

She then returned to the offender's bed where she went to sleep for the night. Slightly unusual behaviour for a female if she has just been violated.

The next morning her host informed her

... that she was not what he expected and that it was not going to work out.

She went out for a walk and when she returned, found her bags packed on the doorstep. The offender's friend, whom she had met the night before, turned up; she told him the offender had forced himself on her and thrown her out; he told her she could stay at his place. Several days later she went to the doctor, and a week after the alleged rape she went to the local police. There she was informed she would need to go to the mainland to report the incident. More than a month had lapsed since the alleged rape by the time she made a statement, during which time she had become romantically involved with the

man who took her in. The constable she spoke with identified key issues that he was concerned about in her account, including the fact that she had:

- visited a male penpal in another country en route to New Zealand;
- slept in the same bed as the alleged offender;
- stated she did not want sex but demanded he was to wear a condom if he wanted sex with her;
- did not resist when he took her panties down;
- moved in next day with a man she'd known 3 hours; and
- took 4 days to see a doctor and a further 4 days to report to Police.

The constable concluded:

[Complainant] appears to have got a raw deal from [alleged offender] in fact that she has been invited over to New Zealand to stay with him and then told that she was not what he had expected and has been kicked out the next morning.

It appears that [she] has been a woman scorned. She feels that [he] has used her and she wants him punished for this. When I told her that there was no offence in New Zealand for being treated badly she came back to the fact that she had said no before sex and therefore she had been raped.

A detective took over the case at this point, and notes that it became hard to get hold of the complainant, who now had employment on the island, and to arrange for her to speak with him:

It was at this stage that my difficulties began with my very unco-operative victim.

From what is recorded on file, it appears that she and this detective were not communicating well, and continued to have trouble liasing over a time suitable for them both to meet. The following month the complainant rang the constable she had given her statement to, inquiring as to case progress. When the constable advised her that the detective she had been speaking with was the Investigating officer, she pretended that she had not yet been contacted by the police. The constable informed the detective of this exchange, who in turn rang and asked her why she had said that, to which she replied that she had forgotten he had rung her a fortnight ago.

The detective says he tried to make a time with her; she said she was leaving the country but agreed to a meeting, which she did not turn up for. He managed to track her down after she had left the country to inform her that there was to be no further police investigation. He notes on the file that, when he spoke with her, it was clear she was in the same bed as the man who answered the phone.

I then advised [complainant] that due to her dodging my enquiries whilst she was in New Zealand, her allegation of Sexual Violation will be filed at my recommendation.

[She] advised me that she was not happy with my course of action and that she would be complaining to the Police Complaints Authority about my total lack of enthusiasm. I advised her that she was most welcome to make a complaint over the issue but I would still be recommending that this matter be filed.

The detective summarised his decision to terminate the investigation and file the complaint on the following grounds:

- 1. The complainant simply is not a credible witness. She refused to meet with me and has basically obstructed my enquiries when I have attempted to find suitable dates and times to meet and discuss a plan of action.*
- 2. Due to the current workload in the Combined Investigative Unit Office, I am simply too busy with other serious matters to waste time and resources into this matter.*
- 3. As the complainant has left the country, she obviously does not deem this matter important, hence my recommendation to file.*

The comments recorded on this case file suggest high levels of annoyance and frustration in the detective involved, which the complainant would undoubtedly have perceived also. Some of the factors that were assumed to demonstrate her lack of credibility reflect sexist judgements and highly stereotypical beliefs regarding victim demeanour. From what is recorded on the file, it seems that the complainant was desperately trying to find a way of following up the case while minimising contact with a detective who, from his written comments, was probably abrasive and confrontational in his approach. Whatever happened, he did not believe her, and she lost faith in him.

Rape complainants are also regarded with considerable suspicion if they are on record for having made previous rape complaints that did not result in prosecution. This was the case in Case 27, involving an intellectually impaired Maori woman in her twenties who made a complaint against a man, also Maori, in his twenties, and a sickness beneficiary.

She alleged that this male friend of hers had come to visit when her parents were out, kissed her and made her touch him sexually before inserting his hand into her vagina. When spoken to by police, the alleged offender said it was she who had approached him sexually, and he had inserted only one finger. A

man working nearby told police he had seen this man visit before, and police noted that he

... states that from his observations that there appeared to be no animosity (sic) between the two, [she] even coming to the front door to wave [offender] good-bye when he left, hardly the actions of a woman who has just been violated.

The detective investigating the case concluded:

It is my belief that there was contact between [complainant] and [offender] of a sexual nature, but that it was consensual. [She] appears to live in a fantasy world and tells all and sundry about her sexual experiences, some of these people then inform the Police and she then thrives on all the attention she receives from the resulting investigation.

The detective spoke with the complainant's parents and told them the Police were not going to take the allegation further. He says they accepted this and

... if they had been contacted as soon as their daughter had made the allegation, there would have been no complaint to Police as they have experienced [her] previous behaviour.

An IHC adviser commented that the complainant had a limited understanding about society's 'rules' regarding the appropriateness of public and private behaviour, and she may find it hard to make good decisions concerning what is appropriate to do or to talk about. However, her disability may also make her more vulnerable to sexual assault. The adviser recommended that this case be investigated in same manner as all such investigations, although a skilled child interviewer may be useful. It appears this advice was not followed.

The previous two cases also raise issues concerning the ways in which perceptions of promiscuity or immorality on the part of the victim may detrimentally affect her credibility as a rape complainant. Case 121 further reinforces this point.

A young Caucasian woman alleged she had been abducted and raped by a friend of her boyfriend's. Her boyfriend did not think she was telling the truth, since he was aware she had previously had consensual sex with his friend. The police said their investigation showed the victim to be 'of a street kid type background' and that she had been described by others as a 'nympho'. The report form states:

... enquiries revealed that the victim was in general regarded as a liar, a slut, and also described by one witness as a prostitute.

It also became evident that the victim suffered from the condition known as 'attention deficit disorder', making her prone to sudden mood changes which covered a wide range of behaviours.

The complainant was taken to the station to be interviewed; the police file notes:

On return to the station the victim was introduced to [woman detective] who was to sit in on the interview. However, the victim took an instant dislike to [detective], telling her to 'fuck off you bitch'. As it transpired, the victim was 'anti' woman, because of the way she was treated by her adopted mother. She openly admitted that she had no problems relating to men but could not talk to women.

During the interview the victim constantly lied about her knowledge and previous relationship with the suspect, and changed the version of events to please herself. When the indiscrepancies were pointed out to the victim, she instantly feigned an illness then requested to use the

toilet. While in the toilet the victim lay on the floor, curled up in the foetal position, and began to shake. This behaviour was again exhibited later in the car-park area when her boyfriend informed her that he also did not believe her story...

Even if the victim was telling the truth, which it is obvious she is not, there is no way that she would ever be a credible witness in court.

The report concludes by stating a full noting outlining these events and the background of the victim will be submitted to the Intelligence Section for entry into NIS⁴.

What is evident from analysis of police files is that it is often the combination of particular variables that underlies doubts about complainants' credibility. For the complainants whose cases fell into this category, that combination was sufficient for police to believe their complaint to be false. At times that conclusion seems, on the basis of the evidence presented, to be justified, especially when there is evidence corroborating the suspect's testimony and refuting that of the complainant. However, there is also the possibility that some of the cases dismissed as false are genuine, and that the reasons for their dismissal are associated more with police beliefs and attitudes than with evidential realities. The case which follows may fall into this category.

In Case 75 a young Maori woman was drinking at a bar with her sisters; when they accepted a lift home with the alleged offender, a Samoan in his late thirties, the complainant, who was already heavily intoxicated, rode on in the car with him to continue drinking at his place. The police report form notes:

It is from here that the victims and suspects stories differ, but essentially they had sex he saying she was a willing participant and she

⁴ The National Intelligence System (refer FN 3).

saying that he beat and raped her. At approximately 0400hrs the victim ran to the neighbour for help.

The complainant said the offender forced her to take her clothes off and have sex with him and that she was too scared to leave until he fell asleep, when she went to the toilet and escaped. It is clear that something happened that provoked this woman to run completely naked from his house at 4am, leaving all her clothes and belongings behind, and bang on a neighbour's door for assistance.

The detective acknowledges on the file that, as in most rapes,

... this complaint comes down to an issue of consent. In assessing this consent, the credibility of the parties becomes an issue. Her credibility is limited as she has a history of making false complaints to Police, and of serious drug abuse.

Although she believes she was raped on this night, I do not believe that the evidence obtained during the investigation supports this claim.

The detective goes on to list discrepancies that he interprets as evidence of her lying. One example given refers to her claim that she was beaten by her attacker; the detective says there is insufficient evidence to support this.

Victim's assertion that she was thrown against a wall and then punched in the face and stomach numerous times throughout, by [suspect] is not supported by any physical evidence consistent with being punched a number of times by a large premier grade second row rugby league player.

Further on in the file, however, a medical report records that she had cuts and bruises, a swollen lip, blood crusted round her mouth, facial bruising and bruising on her breast, arms, and legs. The doctor also noted that the complainant suffered depression and was on Valium. The file also notes that the suspect, who denied hitting her, had bruised knuckles.

The police noted that:

The victim appears to have been very drunk on the night in question which severely limits her recollection of events. Unfortunately her recollection of what occurred does not correspond in a number of instances to those of other witnesses.

Examples given include the fact that she could not remember where she sat in the car, nor whether the suspect's friend was present. The detective comments also:

Victim's account of doing drugs at [suspect's] address is not supported by any other evidence, that no cannabis, spotting knives or burner were found during scene examination.

A job sheet in the file, however, notes that all the belongings the complainant said she left in the house, including her knickers, were found at the scene, along with a cannabis cigarette in the bed.

The police said it was the discrepancies and inconsistencies in her account that damaged her credibility; however, other file information appears to support significant parts of her account. Moreover, the suspect's version of events appears to be riddled with discrepancies, yet little significance is attached to these. For instance, the suspect also told the police that the complainant took off her clothes on the bed; when asked how they ended up on the couch on the other side of the room, he said she threw them there. The officer said he

would not expect them all to land there and the suspect then said some were on the ground but he had picked them up before the police came. The officer reminded him that he was sound asleep when they arrived, so then the suspect said he had moved the clothes earlier when he got up to look for her. The alleged offender also said, on the one hand, that she was so 'pissed' she could hardly walk, yet maintained she was not too drunk to be giving her consent to sex.

The detective said, though, that this case came down to the issue of credibility and that the complainant had less than the suspect did. The fact that the suspect was a known violent offender who had served a prison term for a double murder seemed of less consequence than the fact that the complainant had been recorded previously as making a false complaint. This detail, combined with a perception of the complainant as promiscuous, seems to have nailed the credibility coffin in the head. The detective notes on the file that when discussing the complainant with a relative, he

... obtained the impression from her that [complainant] is probably a very promiscuous female and [she] raised her eyebrows for a second there as if to say, 'Oh yeah, she is complaining of rape, but all she's probably done is jumped into the sack for the night with this guy.'

The police told the complainant that they would be taking this case no further, and the investigation was terminated.

Some cases perceived by the police as arising from false complaints did in fact appear very likely to be fabrications. What is also important to acknowledge, however, are the reasons and emotional states which can prompt such allegations. Case 112, for instance, illustrates well, and sadly, how previous abuse may sometimes underlie subsequent false allegations:

The complainant, a woman in her late forties, reported that her teenage son had raped her. She was highly intoxicated at the time, and in pain, and the boy had phoned for a doctor. The police were immediately sceptical, stating:

The Police are not willing to accept that a seemingly well adjusted 15 year old son would rape his drunken mother immediately after having phoned for a doctor to attend his mother's plight of severe abdominal pain. Equally the police do not believe the mother who claims to have been in control of herself, would allow her son to undertake such a task with no resistance.

The file goes on to note that she was given a thorough interview by three detectives,

... the outcome of which has added weight to Police assessment that the offence did not occur.

An interview with her ex-husband revealed that in the past his wife had suffered bad dreams after drinking, during which she would call out, 'No, don't do that'. One detective was also able to establish that

... as a 16 year old the complainant was allegedly raped at a beach in Christchurch. The Police declined to investigate the matter and on being taken home she was subsequently placed in the bath by her father and scrubbed raw.

It has been suggested to [complainant] that she has been reliving this distress for some years and that her consumption of alcohol contributes to these memories coming to the fore. Her reply whilst pensive, was also in agreement. She accepts the police version of events but cannot bring herself to withdraw her complaint.

The police referred her for counselling and the case was resulted K3, no offence disclosed.

Nearly half of the cases that were perceived by the police as false involved sexual assault allegations which the complainant did later decide to withdraw (N = 26; 47%). It is probable that, in some of these cases, the complainant's decision was influenced by police actions and behaviour towards her.

The complainant in Case 95 was a nineteen year old psychiatric patient who alleged that a stranger offered her a lift in the rain, drove her to a deserted area, and sexually assaulted her. The driver dropped her off at a garage, from where the police were notified. A woman who knew the complainant happened to drive into the petrol station and saw her, pacing up and down in a distressed state, saying repeatedly: *I hate men, I hate men. I'm going to kill them.* Garage attendants had already phoned the police, who noted on the file:

The victim in this matter is not very stable, but was very clear on what had happened and how. It was put to her several times that it was extremely serious if she was lying about what had happened, but she was adamant that she was telling the truth.

It appears from the file that little else was done at this stage; more than four months later, it was the complainant who made contact again with the police about the incident. At this stage she informed them that she was moving to Australia and wanted to withdraw the complaint.

The cues assumed by the police to signify credibility are the same in these cases as in those which the police described as false. These included perceptions of the complainant as immoral, the existence of previous complaints that were regarded as false, and the ascription of motives to the complainant by the police.

Case 17 is a case in point. The initial report states that a local resident rang the police at about 1am to say he could hear a woman screaming on the street at someone to leave her alone. He said he heard a thumping noise against the side of his shop and the sounds of a struggle; he looked out the window but could see nothing, it was raining, and he phoned the police and went back to bed. He could hear a woman crying but thought the police would arrive soon and went back to sleep.

At 2.16am a woman complained, using the emergency 111 number, that she had been raped approximately two hours previously. The file notes that she called from her home, which turned out to be a boarding house of approximately 20 rooms *all of which house societies miscrients* (sic). The attending police said they had to be let in by the duty manager, and found the victim comatose, lying in a foetal position on the bed, very intoxicated and hard to wake. Her blouse had both sleeves ripped, and she had mud over her back. The constable states:

When speaking about the incident she became very upset about it and was crying openly. It appears at this stage that the complaint is genuine.

She was, however, too intoxicated to say much, and a support agency was contacted and medical examination arranged. The victim said she had met a guy in a bar just before she decided to leave. He had walked with her, chatting, then hit her, held her down and raped her. She could not remember much detail, nor where exactly the rape had occurred.

The police report form for the next day states that a Caucasian woman in her mid-thirties

... came into _____ Central to make a complaint of Rape from the previous night. She smelt of alcohol.

Upon speaking with the Watchhouse keeper in the first instance, I was advised that [complainant] was recorded in their 'IM' book. Apparently she is a regular for making false complaints.

[Complainant] was taken to an interview room, advised that we take rape complaints very seriously and that we also take seriously false complaints.

The detective says he began taking a statement from her but was soon called away; he returned approximately 20 minutes later to find her standing by the elevator; she said she was not feeling well and wanted to go home. The detective spoke with her again and she agreed to sign a statement saying she would consider whether or not to continue tomorrow. She was told to contact another detective by name.

This second detective notes on his job sheet that the victim did not contact the police the next day, as she was asked, and could not be contacted. The day after, however, she came to the station and asked for the detective, who gave her the partial statement to read. After doing so, she said she wanted to continue with the complaint, but had to go to work shortly. The detective said she arranged to speak with police again at a later date. The detective notes:

Review file and determine that it appears some sort of assault/Sexual violation has probably occurred to [complainant].

A brief report form completed several days later simply notes:

... the complainant came to the [local] Police Station and by written statement, dropped the complaint.

In the above case, the police response to her allegation appears to have been partially influenced by the victim's drunkenness and questionable place of residence, but mostly by the belief that she had made previous false complaints. Whether or not those complaints were false or genuine is, on one level, immaterial. It is possible that this complainant was always perceived as questionable, to the extent that even if her initial complaint was genuine, her credibility was too tainted for this to be readily accepted. It is also possible that earlier complaints in fact also arose from false allegations. For whatever reason, the police records for this current complaint suggest that question marks over the complainant's credibility effectively cancelled out evidence that might otherwise have been considered supportive of her allegation – for example, the fact that there was no delay in her contacting police, the torn and muddy state of her clothing, and the phone call and testimony of the local resident. While the constable who took the initial complaint thought it likely to be genuine, the detective who took over the investigation was clearly dubious from the outset. From the cryptic remarks included in the file records, it seems likely that she was questioned quite aggressively about the veracity of her complaint and given a clear impression that she was going to need to convince police that she had in fact been raped. Her withdrawal of the complaint can thus be interpreted in two quite opposite ways. It could confirm to the police that the allegation was false – the proof of that is the fact of her withdrawal. Alternatively, however, it seems equally possible that the complainant was given clear indications of how she was perceived, felt judged and condemned, and decided to withdraw any faith she had left in the police that they might believe and support her following a rape attack.

Complainant withdrawal, then, may signify many different things. It could signal, as the police often assume, a false complaint; equally, however, it could denote a withdrawal of the complainant's confidence in the police. What is withdrawn in such

cases is not simply a complaint, but a sense of trust. This can be evident in various ways. If the complainant feels the police have no trust in her, she is likely to withdraw her trust in them and remove her case from them. If the police feel they have trusted her in the past, and been let down, then they may appraise any fresh complaint with mistrust and disbelief. Who believes who is vital.

What can complicate this in many rape cases are the effects of sexual violation itself. The experience of being raped undermines a sense of self-trust and self-belief (Kelly, 1988). Women often describe themselves as 'feeling all over the place' as they struggle to understand and move on from the attack. The effects of rape are, in fact, likely to produce unconvincing complainants. Delays in reporting are common – many victims cannot bring themselves to tell anybody what has happened to them, let alone go to the police (Bronitt, 1998; van de Zandt, 1998). Poor or confused recall can also be common – the victim does not always want to remember and have to name all that happened (Burgess and Hazelwood, 1999; Kelly, 1988). The fact that many victims may be heavily intoxicated or drugged at the time serves both to make them easy targets and poor complainants – hazy and unreliable as witnesses, and easy prey for defence lawyers.

In other cases, the reasons underlying a complainant's decisions may be more difficult to determine from an outsider's perspective, though no doubt valid and understandable for her.

In Case 150, for example, a 17-year-old woman reported having been raped in a city street in the early hours of one morning. She said two males approached her from behind; one held her down while the other raped her. She felt pressured by her friends, who suspected the rapist may have been a gang prospect, to report the attack. Police file notes remark that the complainant had spent most of her life in social welfare care after having been sexually abused by her mother. No link is made on the file, but it seems interesting that on the night in question she had been out with her mother, before she went

walking on her own around the city streets. Prior victimisation can often be associated with subsequent risk-taking behaviour, and may be so in this case. The complainant decided, however, not to pursue the matter, although a comment on the file that she 'maintains that she is telling the truth' implies that the police considered the prospect of this being a false complaint.

In some cases ending in the withdrawal of the complaint, the complainant may always have been a reluctant complainant. This situation can arise when a third party either pressures the victim to contact the police or decides independently to notify police about the incident. The complainant may or may not concur with such action, a factor with significant effects for subsequent co-operation with the police.

In Case 133 a woman in her twenties rang her girlfriend requesting a routine piece of information. The girlfriend thought she sounded unusually quiet and phoned back to ask what was the matter. Eventually the woman disclosed that she had been raped by an intruder. The girlfriend immediately came round with her boyfriend, and the boyfriend phoned the police against the complainant's wishes. The girlfriend told the detective that the complainant said she had been attacked by a man with a knife while she was in the shower, received some cuts in the attack, then lay there without resisting while he raped her. The attending police raised doubts concerning the complaint's validity. Although the victim had cuts to her face and chest, there was no blood in the bathroom. A constable commented that while the detective was speaking with the girlfriend, her boyfriend and the complainant were talking and joking:

[Complainant] was laughing, and they talked about movies with heads being 'blown off'.

This occurrence also had significance attributed to it by the detective, who wrote in the report:

[Complainant] claimed she had been raped 10 years ago and had had a bad experience with the Police on that occasion and this is why she refused to make a complaint on this occasion (sic), yet she appeared to be suffering very little 'trauma' and was openly joking and laughing with [girlfriend's boyfriend] while I was speaking with [girlfriend].

The detective noted that the matter could proceed no further because she would not continue with the complaint; stated that its validity *may be in question*, but submitted the file in case the complainant changed her mind or other rapes were reported in the area with a similar MO (modus operandi).

Doubts about the complainant's veracity in this case seemed to rest largely on police interpretations of the complainant's behaviour. Her reluctance to involve the police, combined with her lack of conformity to stereotypes of how rape victims 'should' behave, raised considerable doubts in the minds of the police. Clear expectations seemed to be held as to how trauma victims should present, and there appeared to be no police option for interpreting this complainant's responses as indicative of a different, yet equally valid, way of responding to trauma. From the information recorded on file, it is possible that the victim was managing the rape by dissociating, going into a state of denial, and even becoming quite hysterical and over-the-top in her responses (Herman, 1992). Insufficient information is recorded here to be certain one way or the other; what is disturbing is the lack of allowance by police for alternative interpretations of her behaviour to be possible. Moreover, even if the police interpretation was the right one, this case raises further questions about necessary and appropriate responses. For instance, if the complaint was false, and the cuts were self-inflicted, then this would suggest this complainant to be in need of professional support and counselling, possibly to help her to come to terms with the previous unresolved rape experience. No such suggestion or referral appears to have been made.

In summary, then, it is possible that this complaint was genuine but was not interpreted as such because of police beliefs concerning how rape victims should behave, in which case this victim received a harsh, insensitive response; or it is possible that the complaint was false, in which case the complainant was signalling that she was having significant personal difficulties and needed positive assistance. However, a third scenario is also possible; it could be that something abusive and violating happened to the complainant that night but, for whatever reason, she did not want the police involved. From a police perspective, cases such as this are fraught with difficulty and frustration. It is understandable that some officers resort to 'pigeon-holing' complainants and making quick assessments based on stereotypes and police folklore. From a complainant's perspective, however, this is not acceptable behaviour. Police are in danger of taking a couple of pieces of a puzzle and, because these pieces seem familiar, assume they know what picture they form. Puzzles can have trick pieces in them; most puzzle compilers need the picture on the box to guide them; puzzles, by definition, puzzle. Because of the nature of their job and professional training, however, the police are in danger of thinking they can see the picture on the box when all they have is a couple of pieces which could fit one of several diverse, and even contradictory, images.

COMPLAINANT SAID ALLEGATION WAS FALSE OR NOT RAPE

There were 13 cases which involved complainants who stated either that their rape allegation had been completely fictitious, or that intercourse had occurred but was not rape. Nearly 70% of these (N = 9) involved complainants aged 25 years and under, and most were Caucasian (54%, N = 7). The majority arose from incidents involving acquaintances (62%, N = 8), though three complaints arose from alleged attacks by strangers.

In over half of the cases in this category (N = 8; 62%), it was not the complainant's decision to contact the police. Someone else decided to call the police or, in two cases, pressured the complainant to do so.

When one young woman, for instance (Case 78), came home late from a date with 'hickies' on her neck, her mother asked her repeatedly if she had been raped. The daughter kept saying no, but her mother said she did not believe her. Finally, the daughter decided to go along with the rape allegation, since her mother seemed so convinced, and the police were called. After questioning, she later admitted that sex had been consensual. Background details recorded on the file note that this teenager's sister was, at 15, already a solo mother, and that there was a real fear of being physically beaten by her father – factors which could help to explain both the mother's insistence on the incident being rape and the daughter's decision to accept this explanation of events.

Two cases involved young women who, after heavy drinking binges, found themselves in frightening situations.

One woman (Case 13) was found, injured, lying in a planter box on the street, and taken to hospital. Police feared she had been raped, since

... she was wearing a long muslin style type dress, which was above her waist, and she was devoid of any knickers.

When police spoke with her, she had little recall of events but did say she had gone out without knickers because she had run out of clean ones. The complainant did not want a medical examination or for the police to be involved because she was afraid of her mother finding out about and being upset at the state she was in. The file also states that she had recently taken an

overdose, and was believed to be a lesbian. The case was filed as no offence disclosed.

Some of the cases involved situations where the person reporting the incident presumed a rape to have happened when it had not.

Case 65, for instance, was recorded on the police files as 'Two false complaints of rape by above subjects' and involved two Pacific Island teenage sisters who returned home late from a church dance. Their mother found out that they had spent time with two young men, and decided to take them to the doctor for the morning after pill. When the doctor discovered that the younger sister was a few days short of 16, he phoned the police. Never at any stage did either of the young women say that the sex was anything other than consensual, and nor did their mother think this was the case – she was focusing on damage control given the lack of contraceptives used at the time. However, the police records categorised this incident as a false report of rape, which was cleared as no offence disclosed.

Another case (Case 124) involved two male sex offenders, both under 20 years of age. One was offered sex for cigarettes by the other, and reported by a caregiver for Unlawful Sexual Connection because it was feared that the victim in this case was intellectually impaired to such an extent that he could not give informed consent. Police inquiries subsequently concluded that the young man in question was in fact able to consent, and the complaint was withdrawn.

In four of the cases reported by complainants themselves which were subsequently withdrawn, the police speculated on the file as to the possible motives that underlay these allegations.

In Case 86, the complainant, who was both married and mentally ill (not that the two inevitably go together!), had sex with an older man, and arrived home

late to her husband. Her account of events states that this man proceeded sexually after she had asked him to stop; the police believe she invented the rape excuse to cover her lateness, which was completely out of character, as was her having sex with anyone other than her husband. The complainant certainly agreed to withdraw the rape allegation, but it is hard to ascertain from the file whether sex had or had not been fully consensual.

Two cases involved the classic false rape scenario of an alleged rape in the street by a stranger. Both involved young women, aged 16 and 17 respectively, who were emotionally distraught at the time. In one case (Case 98), the complainant feared the end of her lesbian relationship and invented the rape allegation in the hopes of gaining sympathy from, and reconciliation with, her girlfriend. Although not charged herself with making a false report, the police said they had recorded her details on NIS for future reference. In the other case (Case 99), the complainant admitted that she had falsified a rape account in a desperate attempt to get some attention from her father. He was dying of cancer, and had stopped speaking to her, and she was trying to find a way to get some sympathy from him and her mother for her distress. The file notes on this case are interesting and suggest a police response that was understanding and compassionate. This may possibly be related to the case being dealt with by members of a Child Abuse Team, who typically receive fuller training in trauma effects and victim interviewing than most detectives. The complainant in fact wrote expressing her gratitude:

To all the members of the team,

I wish to take this time to thank you all so very much for the way in which you dealt with me on the 28th.

I also wish to take this time to apologise for wasting your time with my childish way of getting attention so that I could hurt my parents and they would take notice of me.

I cannot tell you how sorry I am and now I have to face the truth that someone could of been attacked and seriously hurt while you were dealing with me and your time could have being spent on a case where you were truly needed.

Many thanks for your understanding.

Good luck for the future.

Yours sincerely

[Complainant's name].

Another case in this category also appeared to be handled relatively well by the police officers and detectives involved. This is worth examining, since it is easy to imagine this complainant be given very different treatment by some criminal investigators, because of the negative stereotypes it could evoke.

The complainant in Case 165 was a Caucasian woman, a solo mother in her thirties with a list of convictions from age 16, mostly for drug-related offences. Witnesses walking on a beach notified the police after this woman, bleeding from cuts to her legs, told them she had been raped by a group of Russian seamen and now her handbag was missing. She was taken to the hospital and kept overnight for observation, because she had fallen on the rocks and was in a highly intoxicated state, due to either drugs or alcohol. She told the police that she had been working as a prostitute on the street in the early hours of one morning when three Russian sailors picked her up, whereupon she went with them to a house where each of them had sex with her. The complainant says they refused to wear condoms, despite her telling them that she had Hepatitis B and C. She continues in her statement:

So the sex was a business thing and they said they would have to go back to their boat at [port] to get some money. They took me in the car down past the British [a ship] and out on the wharf there. The ship they are on is rafted up third from the quayside.

I didn't go on board the boat because I am not that sort of girl. I stayed in the car.

She wanted cash to buy her own drugs, but one said he could give her morphine and she went with a carload of them to a beach where, she said:

There seemed to be Russians everywhere. There were 3 or 4 in the car with me and about another 10 turned up. Peter was doing all the talking and said that he had more clients for me. I told him No. I don't know how I ended up in the rocks and the salt water, I can't remember.

The detective questioned her about having told the people who came across her that she had been raped, then notes:

She denies suggesting to the witnesses that she had been raped. I believe she told the people at [place] that she had been raped so that she would get some urgent attention.

In her circumstances and the state she was in she would otherwise have been ignored.

When being interviewed at the time by [detective] and again the following day, there was no mention to Police of rape.

With the view of charging her with 'False Allegation' under the Summary Offences Act 1981, 3 months, \$1000 penalty, I note that the offender must know that her statement will be passed on to Police.

In the circumstances I believe there would be difficulty with that as she quickly dispelled the notion of rape when she spoke to us. I have cleared the Sexual Violation K3 and False Statement K4.

What the complainant herself said was:

I didn't tell the people I had been raped, I said I had been thrown on the rocks. I had earlier told the Russians that this is New Zealand and if they didn't pay a prostitute and didn't treat her properly, it was rape...

I don't want to make a statement about it because I don't feel up to it. I want you to get my bag back and to give those Russians a fright.

In relation to the last point, the detective observed on the file:

There was no point using Police and interpreters at \$50 an hour to try and locate unknown Russians that may or may not know about [complainant] falling or being pushed into the tide.

It could be suggested that if the Russians haven't already had a fright, then bearing in mind her health, they may get one in the future.

Also noted was the fact that advice was given to the complainant regarding what to do in situations of non-payment, and her clothing returned. The detective concluded that

... she seemed vindicated with what sympathy and attention I have given her.

In the above case, it is clear that the complainant's credibility was greatly diminished by her status as a street prostitute and drug user. It is difficult to ascertain from the file whether she did or did not say to the passers-by that she had been raped, and whether in fact she had been. However, some of the police who dealt with her seemed to be prepared to acknowledge that she had been the victim of an unfortunate incident, even if it was not a rape. Although threats were made regarding charging her, in response to what was described as the 'fiasco' that news of a reported rape gave rise to in terms of police cars and officers attending the scene, at the end of the day what is recorded on file suggests that she was dealt with reasonably respectfully. The police officers involved were still able to view her as a possible crime victim despite the existence of factors which diminished her credibility. This demonstrates greater understanding of some of the issues surrounding the context and effects of victimisation than was evident in some of the previous cases examined.

Overall, analysis of this category indicates a complexity of reasons often underlying reports of rape which the complainant later states to be false. Over half of the cases studied here involved situations where the alleged victim had been pressured to tell the police about an incident, sometimes in circumstances where a third party presumed a sexual violation had occurred when in fact none had. Teenage girls, scared of the wrath and possible physical chastisement of their parents, may go along with such assumptions initially, only to find themselves trapped in a lie. Alternatively, the confusion and ambiguity surrounding sexual negotiation and forceful seduction may mean that, in some situations, the complainant feels as if she has been victimised and is genuinely unsure as to whether she was raped. From the cases involved in this sample, there were no cases of malicious or vengeful accusation. A few tried to conceal their sexual conduct from others by making a rape allegation, or allowing one to be inferred, but the principal motive in these cases was clearly one of self-protection. There was also minor evidence suggesting that emotionally distressed or disturbed women may, at rare times, create a fictionalised account of rape to try and attract sympathy or assistance. Most of the cases studied here, however, turned out not to be completely fictitious acts but were more likely to arise from wrongful

interpretations by third parties, which were mostly speedily resolved by police investigative efforts.

Conclusion to the file analysis

Much of value has been learned from the analysis of police sexual assault investigation files. They provide a window into the minds of detectives as they seek to assess and process sexual assault complaints. The factors that emerge as significant influences on police responses have mostly already been identified in the overseas rape literature. These include delayed reporting; serious, visible physical injuries; previous consensual sex with the alleged offender, and so forth. What is significant here, however, is that these factors still appear to be strongly influential at the end of the 1990s after years of reform and attempts at increasing the extent to which the police deliver a victim-oriented service. These files involved cases being processed ten years after the Victims of Offences Act 1987, for instance, an Act which specified that victims of crime had the right to be treated with respect and compassion. The cases examined here also occurred after police training sessions were ostensibly advising officers to treat all rape complaints initially as genuine. This research raises serious questions concerning the likely effectiveness of police reform in this area, given the extent to which suspicion of rape complainants seems so entrenched within police ranks.

Of concern also in this research was the high percentage of rape complaints which were withdrawn by the complainant. From the analysis, it appears that relatively few of these were likely to have been made in situations where no sexual assault occurred. By no means, then, should withdrawal of a case by the complainant be viewed as evidence of no offence having been committed. Victims of rape and sexual abuse may retract for a variety of reasons, and greater understanding clearly needs to be fostered in the police regarding why genuine victims may choose not to continue with a complaint (Burgess and Hazelwood, 1999).

The high percentage of sexual assault complaints made by persons with intellectual disability or psychiatric instability which were viewed as false also demands further investigation. It seems that persons who are highly vulnerable and at risk of being raped are also those who, when they are raped, then become vulnerable to having their complaint dismissed as false.

These comments do not, of course, apply only to rape cases. I also examined a group of Indecent Assault files (N = 16), because I consider that sexual assault cases are best not divided between rape and non-rape but rather understood as existing along a continuum (Kelly, 1988). From the point of view of victims/complainants, there may be very little experientially to distinguish incidents of Indecent Assault from attempted rapes. Offences are both legally and subjectively defined, affected in part by the nature of the information provided to the police as well as by officers' perceptions and decisions concerning individual cases.

The Indecent Assault files were examined briefly to establish whether or not the dynamics involved appear to be similar to those found in the Sexual Violation files. Analysis of the latter shows similar processes of decision-making are evident in relation to all sexual assault files, and that the offence classification categories used by police are sometimes overlapping and/or inconsistent in application. For instance, some cases filed as Indecent Assaults seemed very similar to others classified as Unlawful Sexual Connections, or could also have been described as Attempted Rapes. This finding was confirmed by Sue Lees, who noted in the English police files she studied some cases classified as 'indecent assault' which appeared to be as serious as others classified as 'rape' (Lees, 1997, 186).

Analysis of police officers' comments on sexual assault investigation files strongly suggests that the meanings they read into various cues may be very different from that which victims attach to them. The police are inevitably caught up in the practice of stereotyping, and invoke their own classificatory system when confronted by variables outside their immediate experience. Thus behaviour which seems like a logical

outcome of trauma to victims and the therapist who deal with them may appear bizarre and irrational to the untrained officer.

It may be useful to consider some examples here of cues that denote very different meanings depending on whether they are interpreted from a police or a victims' perspective.

- **Delayed reporting** - The police see a delay in reporting sexual assault offences as abnormal and as a factor which reduces the victim's credibility (Brownmiller, 1975; Bronitt, 1998; Freckelton, 1998; Torrey, 1991). It is likely that less physical and forensic evidence is available, and it is believed that victims will have more time to construct a fabricated account of events. Conversely, a rape victim will typically tend to hesitate before involving the police, and may feel scared, shamed, and self-blaming in the aftermath of rape. Often the victim has to reach a stage where she feels as if she has the right to report the offender, and feels relatively safe and secure in doing so, before she can approach the police. Besides, the majority of reports that are reported promptly result from a third party contacting the police, not the victim herself (Burgess and Holmstrom, 1974; Burgess and Hazelwood, 1999; Jordan, 1998a).
- **Injuries** – Serious, physical, visible injuries are often taken by the police as proof that a rape occurred and are viewed as a corroborative factor (Edwards and Heenan, 1994; Harris and Grace, 1999; Kennedy, 1992). In fact, many rape victims do not feel able to physically resist an attacker, and may go into a state of immobility (Burgess and Hazelwood, 1999; Galliano et. al., 1993; Smart, 1976). Active, physical resistance may be even more difficult for women who know the person attacking them, because they fear hurting this person or find it difficult to accept that this man, whom they thought loved them, is intent on violating them and will not stop (Wiehe and Richards, 1995). For most victims, the most serious injuries they sustain are the invisible ones, imperceptible to police scrutiny.

- **Demeanour** – Remarks made by some police officers indicated that they had clear views as to how a victim of rape would look and act. Such beliefs, if fixed, have the potential to seriously impact on police judgements of complainants (Aiken et. al., 1999; Freckelton, 1998). The danger is that the police expectation is much narrower and limited than the diverse kinds of ways in which women respond to, and manage, traumatic events such as rape. Victims' reactions may not always seem consistent with how others expect they should be; some women try to deal with rape by being angry, others may withdraw and close down, some will cry and look vulnerable, others may laugh and try to shrug it off. In terms of behaviour, some women manage the effects of rape by taking time out from their work and life while they come to terms with what has happened; others may throw themselves into activities in an attempt to ward off the pain (Burgess and Hazelwood, 1999; Freckelton, 1998). Thus, demeanour alone can be a highly misleading factor in determining a complainant's credibility. It tells us more about the preconceptions of the officers concerned than it does about the complainant's veracity.
- **Previous consensual sex with the alleged offender** – This factor is a hang-over from the days when men claimed virtual ownership of women through sexual conquest (Brownmiller, 1975; Gordon and Riger, 1991). From a police perspective, the fact of a previous sexual relationship can raise suspicions that the complainant is acting out of scorn or revenge. For the victim, however, the person whom she may be most at risk of being sexually assaulted by could be her partner or ex-partner, or someone whom she had sex with once who considers that consent one day means 'yes' for all-time. Given many men's expectations that a woman who has had sex with them once will have sex with them repeatedly, it seems highly likely that women face considerable risks of being forced to have sex if, on subsequent occasions, they appear less willing.
- **Perceived immorality of the complainant** – Perceptions of dubious morality can diminish a victim's credibility in the eyes of the police and affect their assessments

of the likely responsiveness of a jury to her complaint (Lees, 1997). What is generally not questioned are the ways in which the same cues the police see as indicating the complainant is a slut may be the very factors that make her vulnerable to rape. For example, the fact that a young woman had consensual sex with a guy she met at a party may mean that his mate assumes she will 'come across' for him. It is even possible that, rather than lose face, the first guy may have said he and she had sex when they did not. Either way, the expectation is created that she is 'easy' and may contribute to a social context in which any protestation from her will be ignored and negated. A slut is someone who is perceived by others as **wanting** sex; by definition, rape is **unwanted** sex.

- **Diminished competency in victims** – The police tend to view persons with intellectual disabilities or psychiatric histories as being automatically less credible, rather than considering the ways in which these factors may render the latter more vulnerable. Statements from convicted rapists have revealed some perpetrators to be adept at selecting victims whom they know will be perceived as less believable, and who are viewed as 'easy pickings' (Luckasson, 1992; McCarthy, 1996). In England, the sexual assault and murder of a woman with Down's syndrome prompted the Dorset Police Superintendent in charge of the case to state:

During this enquiry my officers have been surprised and sickened by the number of men who are prepared to prey on mentally disabled females. We have identified people who have committed very serious offences against these vulnerable people. Police have taken steps to remind persons responsible for the mentally handicapped of their vulnerability in this type of crime. (quoted in McCarthy, 1996, 126)

Increasing recognition of the ways in which abuses of power are perpetrated against vulnerable sectors in our communities will hopefully contribute to an environment within which intellectually impaired rape complainants will be appraised more sensitively. Otherwise, the police may unwittingly be playing

right into the offender's lap by dismissing the complainant's testimony in such cases.

- **Previous complaint of rape** – A complainant whom police discovered, or believed, had made a previous complaint of rape which had not been proven seemed likely to be perceived as highly dubious. The inference was that a woman is unlikely to be raped more than once, and that a woman who has already had a rape complaint which was not proven is particularly suspicious if she subsequently alleges having experienced another incident of sexual violation. Such deductions fly in the face of an accumulating body of research evidence which documents high incidences of repeat victimisation (Deerner and Lab, 1998; Morris, 1997).

knows that her behaviour may be viewed as having compromised her credibility and is trying to find ways of bolstering it. Paradoxically, her efforts to do so may diminish her credibility more than if she had told the police the truth, no matter how possibly damning, from the outset.

What the above suggests, therefore, is that currently the police and victims of rape are often caught in a situation where they are talking past each other. This does not, as I see it, translate into a situation where equal responsibility in correcting any impasse should be assumed. After all, rape victims are typically in shock and experiencing the effects of trauma. Moreover, the police are, ideally, present as specially trained professionals, equipped to empathise and communicate with persons affected by such trauma. However, the tendency of many police to view rape complainants through narrow and sometimes judgmental lenses may make officers blind to the range of possible interpretations of a complainant's behaviour. In some ways, victims may in practice have a greater idea of where the police are coming from than the police have of them. The analogy has been made in other contexts that slaves knew more about their masters than vice versa, because those with less power need to understand those with more power in order to survive. In the process, however, the slave may internalise the master's hatred of blacks and become self-condemnatory (Dworkin, 1982). As women raised in a patriarchal society, rape complainants are in a similar structural position. Consequently, victims may condemn themselves and attempt to enhance their credibility in the eyes of the police, unwittingly reducing it irrevocably. This chapter, in combination with Chapter 4, has considered the police position from comments made on rape investigation files. The next chapter presents material obtained directly from interviews with detectives themselves.

* * *

CHAPTER 6: INTERVIEWS WITH DETECTIVES

I prefer five clean murders to one rape case. The more you investigate and get into it, the stickier it gets... Murder I can understand, but I can't really understand rape. (Detective, quoted in Burgess, 1999, 3)

Introduction

There are comparatively few studies that have involved interviewing detectives specifically about their involvement in sexual assault investigations. Those studies have yielded interesting results, although have typically involved small sample sizes (eg Gregory and Lees, 1999; Temkin, 1997; 1999). In the first rape research I conducted (Jordan 1998a), I had initially been keen to interview the detectives who had taken each woman's statement. At first, somewhat naively, I had thought it might be illuminating to obtain and compare the two different sides of the 'story', in an effort to ascertain what had either assisted the process to go smoothly, or otherwise. On reflection, this approach seemed potentially hazardous in that the women might feel that I was checking up on them and that I was placing myself in a position to adjudicate between accounts that were opposing. The detectives may have felt likewise. Moreover, my principal concern in the earlier study had been to obtain accounts from women of **their** experiences and how they felt about police processes, which is a more subjective endeavour.

The data on the police files presented in the previous two chapters, however, prompted other concerns. Again, to begin with, I wondered whether I should interview detectives about specific files I had studied. I rejected this idea once it became clear how defensive some detectives felt about an outsider even looking at their files.¹ Moreover, my principal interest lay not so much with individual case

¹ This was confirmed for me very early in the study when a detective wrote to the Office of the Commissioner (then Police National Headquarters) demanding an explanation of why a civilian should be able to look at 'his' files.

processing as with the overall perception of sexual assault cases held within the police, and especially issues related to women's credibility.

As a result of my earlier involvement in research with rape complainants, I had been involved with the New Zealand Police in contributing to the development of a nationwide police policy on sexual assault investigations. The first version of this policy, known as the New Zealand Police Sexual Assault Investigation Policy, began a two-year lead-in period in February, 1998.² The policy stipulated that a sexual assault co-ordinator should be appointed in each police district, and I decided to interview some of these persons. My intention with this research was to obtain the views of police detectives who had devoted considerable thought to the issues involved, and who had worked on a broad range of cases and with a variety of staff.

Method

In my original proposal, I indicated that I would interview four detectives only. This part of the study was never intended to be a central focus, but simply a means of obtaining some contextual information on the police to assist in interpretation of the file data. Four sexual assault co-ordinators in various parts of the country were approached, selected to provide some coverage of both urban and rural areas³. Most of these, however, also nominated staff members whom they felt it would be useful for me to interview, because of their experience and insights in this area.

Each detective was given an information sheet (Appendix A) and provided with the opportunity to ask questions regarding the research. When they were ready to proceed, they were asked if they would agree to the interview being taped, which all did. Each detective completed a consent form (Appendix B) giving their permission for the material they provided to be used, subject to their confidentiality being protected. I tried to give each detective as much freedom as possible to talk about

² See Appendix I for a copy of the New Zealand Police Sexual Assault Investigation Policy.

issues of concern and relevance to them, as well as using a checklist of open-ended questions (Appendix C) to achieve some consistency in topic coverage.

As time progressed, and I began the interviews with the women attacked by Rewa, it also became both possible, and useful, to undertake interviews with some of the detectives involved in this particular investigation. Four of the Operation Harvey detectives were interviewed using two interview schedules – the first specifically addressed police developments and learning obtained from involvement with this investigation (Appendix D), and the second was the same as that used with the other eight detectives. Thus the final sample comprised twelve detectives in total.

The detectives were mostly interviewed in the station where they worked, with the exception of one who came in off-duty and was interviewed in my hotel room. The interviews ranged in length from one and a half to three hours and, with the detective's permission, all were tape-recorded. These interviews were later transcribed and analysed.

Characteristics of the sample

It must be stated from the outset that the twelve detectives interviewed cannot necessarily be viewed as representative of detectives in the New Zealand Police overall. This sample was intentionally selected because of the expertise of its members in the area of rape and sexual assault investigations, and comprises staff with extensive experience within policing generally.

Of the twelve detectives interviewed, ten were male and two were female. In terms of age, one was in his fifties, eight were in their forties, two were in their thirties, and one was in his/her late twenties. One was Maori; the remainder all identified as New Zealand European. Most had served the majority of their time within the police

³ The specific areas are not identified, to provide some anonymity for the participants.

within urban areas ($N = 7$); four had experience within both urban and rural areas; and one had worked only in rural and provincial areas.

In terms of length of service within the police, five detectives had between 10 and 20 years; and seven had between 20 and 30 years. As regards their level of rank within the New Zealand Police, two were Detective Inspectors, four were Detective Senior sergeants, three were Detective Sergeants, and three were Detectives.

All those interviewed had been involved in numerous sexual assault investigations, with several listing these as in the hundreds. Four had also been involved in Operations Park and Harvey, the large-scale investigations established to apprehend serial attackers Joseph Thompson and Malcolm Rewa.

All of the above factors mean that the views presented here are not likely to be indicative of the views of detectives generally. Those interviewed were, in fact, asked to comment on the attitudes of staff with whom they worked, since differences often became apparent. The detectives in this sample, then, have generally had greater training and experience in sexual assault investigations than the majority of their colleagues, and most have a stated commitment to providing the victims of such offences with optimal police service, wherever possible. These factors undoubtedly affected their responses during the interview; thus the views represented here are likely to display greater awareness and sympathy towards rape victims than those of detectives generally.

Issues addressed

In the interviews with detectives, I used an interview schedule to guide the question-line and to ensure some uniformity in the issues covered. However, I also wanted to allow those being interviewed the freedom to address the issues which **they** deemed to be significant. In practice, therefore, I tended to use the schedule very flexibly and

allow the detectives considerable scope in determining the order of when topics were discussed, as well as having some input into content.

My principal aim in conducting interviews with detectives was to deepen my understanding of police beliefs surrounding rape and sexual assault, and how those beliefs influence police procedures. The main issues canvassed included:

- beliefs concerning the frequency of false complaints – both their personal beliefs as well as their perceptions of those held by staff with whom they worked;
- examples of cases they believed to have been false complaints and their understandings of the motivations underlying false complaints;
- police procedures and recording practices in their district; and
- their thoughts concerning the implications for police training and staff supervision.

The major themes emerging from their responses are presented here, illustrated by quotes from comments made during the interviews.

‘Real’ rape

Major definitional issues often emerge within the area of rape and sexual assault, and the police have been criticised at times for having a working definition of ‘real’ rape which they apply to cases brought before them (Chambers and Millar, 1983; Estrich, 1987; Gregory and Lees, 1999). Such a view was reflected in the comments of some of those interviewed in this study. PC 1, for example, referred to sexual assaults always being treated seriously, then qualified this comment to specify stranger rapes in particular:

I can say that it's always seen as a serious investigation without any doubt. As far as intruder rape goes, it's... at the moment the position in [city] is that it's assessed almost on a par with a homicide as far as how it should be investigated... I guess there are different types of rape. I mean, the rape of a child or the rape of someone who has been dragged into the bushes is probably going to get a more strenuous and a greater input, perhaps, than someone who, look she has been with a guy all night drinking, and I mean, they are still investigated with a view to prosecution. But at the end of the day I think intruder rape is seen at a higher level just because of the nature of the attack and the potential for the repeat of the crimes.

Stranger/intruder rapes clearly fit into the category of 'real rapes', reprehensible acts committed by the kinds of 'evil villains' whom many police have joined the force to catch. PC 5 expressed this distinction well when asked how he felt generally about being assigned a rape case to investigate:

I guess it depended on what type of rape it was and if it was a stranger rape, of course it's right up there with the homicides, but when it's a domestic rape it doesn't become such an investigative challenge. It's usually, well, the offender is kind of there. It's a matter of getting the case together and working out whether you've got enough to go to court on. It's not rape. An investigator, I guess, has challenges identifying the offender, that's the big challenge.

So the driving force in you is that – I mean what do you join the job for at the end of the day is what you've got to ask yourself? I was a young kid straight from school when I joined. So I was just under 18 when I joined and I was very moralistic and I'd change the world and what was and what wasn't going to happen and I guess it's always remained... I mean, the job hasn't changed. I mean, we all talk how the job has changed and how hard it is and we've lost our place really. But if you bring it back to the core job, our job is

still the same and it's to keep the Queen's peace and keep people safe and look after the decent folk.

Another detective (PC 6) revealed, in his answers to my questions, the extent to which he assumed 'rape' meant stranger-intruder rapes:

D: You know, people say that we only get, scratch the surface of the sexual complaints, sexual violation that goes on there. I don't think we do, I think that most genuine rapes are reported to the police.

J: When you say that do you think, is that only in regard to stranger rapes or....

D: Yeah, yeah, oh yeah. I'm not talking about family rapes or boyfriends.

J: Oh no. I don't mean so much child abuse, but say, you know, rapes between partners, spouses?

D: Oh no, no, I'm not talking about that at all.

J: I mean, are they reported more often do you think now than they used to be, acquaintance rapes, marital rape?

D: I've only ever had one woman, one married woman complain of marital rape... It's the only one I can recall in my whole career, of a woman complaining of rape in the marriage. But I sat down and had a talk with her one morning at her place, you know, the husband was away. He got locked up for assault, I think or something, because it was a domestic situation. He'd been locked up for an assault and was at court and I got the job, you know, because he was in custody. So I shot round the next morning to talk with her. So I had a talk with her in the morning and she was telling me about it, but then told me that she'd alleged that she'd been raped by him for years, you

know. Just non consensual sex I would call it.

This detective went on to comment:

D: I suspect that there's probably a lot of that sort of non consensual sex happening in relationships.

J: It doesn't tend to get reported still?

D: Well, I don't know, Jan, I would imagine it probably doesn't. I'd imagine, oh, I don't know – I mean, it's going to sound awful but I call that a non consensual sexual encounter as opposed to rape. You know what I mean and I know it's probably semantics, isn't it, and it's only playing with words. I mean, rape to me is what the Rewa victims went through and what Thompson's victims go through. Whereas some woman who's living in a relationship, if she's living with a guy who's violent towards her, I mean, she has options. You know, she can get out. I know the, we have 'battered wife syndrome' and on and on it goes, but they still have options. But Malcolm Rewa's bloody victims didn't have an option and Joe Thompson's victims didn't have an option and that's, so that's why I, in my own mind, make this distinction.

Later in the interview, this same detective commented on the difficulties involved in investigating non-stranger rapes and began to speculate on why he had dealt with so few:

D: I think if it's not a stranger there's more, it's not as easy as – you're talking now like a date rape or something like that. It gets a bit more difficult you know. But to be honest, we don't really, we never seem to deal with many of those down here. Most of the ones – oh, I suppose we still get a few of those where, you know, they go to the pub and get pissed and go home and have sex

with someone and then wake up next to them the next morning.

J: And that doesn't happen a lot?

D: No. No not really. Most of them are, like, ones where they, most of them round here are either intruder ones or they've been abducted by some guys driving past in the car who've grabbed them or they've been hitchhiking..... So the genuine ones just seem, they, they're not that difficult, you know. But probably because we, maybe because we don't deal with many of those acquaintance type rapes and relationship rapes. That could say something about the police, couldn't it? Because if we're not dealing with them it's perhaps, you know, people obviously people aren't reporting them so there could be something wrong with the way, there could be something said about the way the police look at it and that's why the women aren't reporting those type of crimes, perhaps. It's just a thought. But getting back, so the ones – you know the genuine ones jump out and hit you and the others, the other ones, well, whether you prosecute or not is going to depend how or probably a lot on how keen the cop is. I mean, if you've got a lazy bloody cop he's going to make any excuse he can find to not bother doing any work on it. But the majority of the guys in the CIB aren't like that now. Well, they aren't, no one in the CIB's like that. You don't go to the CIB unless you're the sort of person that's motivated and, you know, pretty keen to lock up baddies. You know, that's why you go to the CIB, that's why you want to be a detective. So most, you know all detectives are like that.

I have chosen to quote the above detective at length because he expressed so clearly what many others hinted at in the interview. The concept of 'real rape' continues to live on in the minds of many police, and hooks up with their perceptions of who the real 'bad guys' are. The kinds of men who may commit date or partner rapes do not usually conform to the image of the stereotypical rapist, and may even bear a close

resemblance to the men they know, even to themselves. It is difficult in such circumstances to identify the perpetrators of these offences as the villains whom they joined the police to pursue and whose conviction and imprisonment they seek. 'Real rapes' are perpetrated by 'real rapists', not by their buddy or the guy next door. One detective chose to distance himself from stranger rapists by referring to them as 'animals', a distinction which some police obviously find comforting. However, such a view minimises the pain and trauma suffered by those women raped by men they know – in other words, the majority of rape victims.

It is also important to affirm that a small number of the detectives interviewed expressed views which indicated that they also questioned the distinctions often drawn between different kinds of rape. For example, two senior detectives noted with concern the ways in which some men are emerging as serial date rapists, specialising in selecting victims whose credibility they know will appear questionable. One placed Morgan Fahey⁴ in this category, whom he saw as using his credentials and status as a doctor to protect himself for years against accusations from emotionally unstable or drug addicted patients.

This detective (PC 4) also stressed that there was a distinction between what could be termed 'moral rape' and 'legal rape'. In his experience, many victims reported having been raped in situations where it was clear that the alleged offender had in some way duped or misled them, or otherwise wronged them. Often, however, the way in which consent had been obtained or intercourse accomplished did not meet the legal definitions of sexual violation. In such cases, the complaint could not be proceeded with; nevertheless, this detective felt it was important to convey to the complainant that it was understandable that she **felt** like she had been raped, and that she could be viewed as the victim of a moral rape even though legally no action could be taken against the offender. He said he communicated this perception to some victims:

⁴ For brief background notes on Fahey, see Chapter 2, FN 2.

I don't say it unless I know it's true. I'll say, no, you've been raped. There's no doubt in my mind that this has happened but we haven't got any evidence that's going to convict this guy. He denies it. He's in fact got three mates that said no, he didn't do that, it wasn't him and two of them said that he did something else. So we haven't got a show. We believe you though, but we haven't got enough. If we thought we had enough we'd have a go, we really would. (PC 4)

Number of false complaints

All the detectives interviewed were asked to estimate the proportion of rape complaints which they believed to be false. Not all would commit themselves to a definite figure, and the responses of the six who did indicated an extremely broad range. These ranged between one detective who said 10% and another who estimated that 80% of all rapes reported were false 'in one way or another'. Others estimated 15-20%; 20% or more; between a quarter and a third; and over a half.

Comments from the detectives are provided below, where possible placing their estimates in the context within which they were made.

Oh, I would have said less than 10% in my opinion but it's really a guesstimate. Some people say 30-40% but I think that's way too high. When you say more in sexual assault compared to other offences, you do actually have to compare the offences – like, there have been more in sexual assaults than there would have been in robbery or aggravated robbery, of which there's very few. Would there be more in burglaries? I don't know. (PC 11)

I mean, you'd probably deal with rape or sexual assault allegations, you'd probably deal with at least three a week. And I've always said I would, as an estimate, as a rough guess and without any research, I would say 80% of them are false in one way or another. Some of them are absolutely a complete

fabrication. Others are – the rest of them all fit into the category really where the victim has had sexual intercourse with someone and then has to explain themselves to Mum or Dad or husband, or boyfriend. In the time that I've been in the CIB I've dealt with a number of those that are complete and utter fabrication, just a total lie. (PC 6)

Oh, I don't really know. Just if I was to say over the last ten rapes that have been reported to this office, probably three or four have been false. Three anyway, I suppose, yep. (PC 10)

One detective's initial response, when asked to provide such an estimate, was to say:

D: Are you putting the acid on me, Jan! Um, at one stage for me it was three out of every four were not valid.

JJ: OK, what do you mean by not valid?

D: The offence was not as they described it, like there might have been more to do with consent issues or they might have held things back that might have evened up the story, that it might not have been rape or there might have been custody issues involved...

A senior detective, responsible for supervising large numbers of staff in an inner city station, spoke candidly about the extent to which he believed inflated perceptions still existed of the proportion of false rape complaints occurring:

D: There still is – unfortunately – a prevailing belief that too large a number of complainants that come into the police are false and I disagree with that totally. I believe – there are false complaints, have been, will be in the future, totally false. There's no doubt about it, there are some – but not to the extent that it is commonly believed there are. I think, what I think happens is that a

person works on a false complaint and because it's such an important investigation, it has such an impact on people, when they discover it actually is false or can prove it, because I believe you've got to prove they're false you can't just have a gut feeling they are but some people think you can, but once you've proved it is, that has – it guts people. It absolutely guts people and it works on them so much in their brain that they get tunnel vision for later on and all they have to have is a little inconsistency for them to think, oh, this is another bloody false complaint which is another thing I've briefed staff on. A 100% of victims that come in here will always give an inconsistent or something wrong with their version of events the first time, without fail. But that's no different to an aggravated robbery, or other things. (PC 11)

J: So you think any victim...?

D: Always gets something wrong, always.

J: Why?

D: Well, they've just been put under the most incredible shock and stress, and trauma, you can imagine, how the hell can they be expected to get everything right? They won't be able to be expected to remember everything. I mean, I was just reading something on memory the other day and it actually says that when you're put under that stress you can remember quite a lot of detail on actually what happened but the peripheral stuff you don't remember as well. Well, simple little things about what bus they caught. I mean, they might get that wrong and he says, oh false complaint, they can't remember what bus they bloody caught, what a simple thing to remember.

J: So that would be enough for some detectives to write it off, do you think?

D: Perhaps not enough, but plant a doubt. Drunk as well, doing something silly and you add the three things together and they come up with 100 you know, when they should only add up – well, wait a second, this person's just gone through an incredibly traumatic experience, we'll reserve judgment until we've done an investigation. At the end of the day, any properly conducted investigation will discover whether a complaint is true or false in my opinion.

Discussions about numbers inevitably led to speculation concerning reasons and motives.

Motives underlying false complaints

Gregory and Lees (1999) observed in the United Kingdom context the apparent paradox of police investigators seeming to be lacking in investigative curiosity about the factors underlying false complaints. One New Zealand detective exemplified this attitude when I asked him, in relation to women who had admitted making false complaints:

J: What sorts of reasons do they give?

D: Well, none. Well, we don't ask, we don't ask why. It's not the done thing is it? You can't just say to them, well, why, you know... I mean, do you?

Another attributed the principal motivation to be the woman's need to be noticed, stating the main reason for false complaints as being:

D: Well, it's generally – it's attention seeking. Something's gone wrong with their life, their boyfriend's been ignoring them or they can't get a bloody

boyfriend or there's a whole raft of reasons. I don't know what they all are but there seems to me to be – that attention seeking thing seems to be the key.

J: Right, yeah. But in terms of the attention that you get, I mean, you're liable to end up with quite a few pissed off police officers aren't you?

D: But they don't think about that when they make the complaint. All they think about is, I'm going to have them all over the place and they're all going to be interested in me and they don't think of the consequences. (PC 9)

Others tended to suggest the kinds of stereotypical motives often put forward elsewhere – for example, the young girl late home, or the wife covering up her infidelity.

Thus one detective said:

I think, going back to why people would report a rape when they haven't been is the fact that they have compromised themselves with their behaviour and their partners have found out. To me, to me that's been my experience. That's probably one of the biggest reasons... But yeah, there have been a few where, you know, they've either been late home and hubby's suspected something. (PC 10)

Similar comments were made by other detectives. PC 3, for example, said:

I know heaps of people who've, young girls who've become pregnant and they have to tell their parents, they'll say to their mother or something, 'I was picked up one night but I don't know who it was' and before she's finished, the next thing's the phone's gone, 111 is started. And you're on there interviewing for rape and it sounds nice, and then we sit down and someone will talk her through it. They'll say 'no it wasn't'. You know, that's how some of these generally start, just talking to someone.

Mention was made by some detectives of false complaints that they believed to be motivated by malice, the classic 'revenge' motive. One described it this way:

Sometimes they want to cause grief to somebody else, somebody who has pissed them off. I have had a couple like this, actually. In both situations the women had a psychiatric history and were on medication and they had stopped taking it and were getting out of control anyway and the boyfriends had pissed them off and they had laid these complaints and it was just to get at the guy. (PC 2)

Another said he had encountered two such cases in his entire police career. The example he gave involved a young woman who claimed to have been detained and raped by a man when she went to visit a girlfriend, found her not home at the time, and then asked the alleged offender if she could use the toilet. This detective described the case from his perspective:

She lived not more than, literally not more than 140 or 150 yards away. She'd gone from her place on a warmish night to the friend's place, 'can I use the toilet?' So later I'm saying to her, 'well, how come you needed to use the toilet in such a short space of time?' It may be strange but I sort of think about those things before I go out, you know. I guess that was my training, perhaps I was over parented. But it occurred to me, you know, you just don't go out and then several aspects of the thing, of the investigation just came to life from talking to his girl friend, which I had a bit of trouble doing. She wasn't going to let me in, I really just conned my way into her lounge and sat down and started taking a statement and before she knew it she'd made a statement to me. And I don't enjoy deceiving people like that but it turned out that her statement was quite crucial and me establishing that was a false complaint and that girl was a very promiscuous girl who was known to people in the neighbourhood to be one who would engage in any kind of sexual activity that you wanted her to and she had gone round to this guy who was a

tattooist and had promised him sex for a tattoo. Both those events happened but for some reason she decided to say, I think, it was concern about her boyfriend finding out, that prompted her to say that she'd been raped. (PC 3)

The woman's father held a position of some influence in the local community, and was not impressed by police treatment of his daughter. The detective described this man's visit to the station:

And he came in here, thumped the desk, 'My daughter was raped, what are the bloody police doing about it? I'm happy to support you in the public arena and fight for resources, I want something done about it!' I thought, jeez, am I going to break this man's heart and tell him that his daughter's a promiscuous young woman who nothing happened to and who deliberately engaged in intercourse with this guy willingly? But that was really a malicious complaint against a particular individual. She maintained, she was adamant that the rape had happened. I probably should have charged that cow because she accused this guy of rape and actually he's since hung himself. Now whether there's a connection there is something I'll never know. But I wasn't able to charge her. He hung himself. So that's the end of him. (PC 3)

Several detectives believed that women seldom made false claims involving someone whom they knew. In their experience, it was rare for a woman to name an alleged offender in a case which turned out to be false. This somewhat belies the myth of women being inclined to do in any and every male for rape. One detective, who has a reputation for being a hard-nosed, old-school investigator, seemed almost embarrassed when he made the following comment:

In my experience – this is a terrible generalisation; I'm happy to say it in here because it's not going into the media – but if a woman comes in and complains that a guy has raped her, generally speaking he's raped her. I mean, if she knows the guy and they've had sex and she walks in and says I've

been raped by him, it's very rare that she hasn't been raped. People just don't make that up about people. Well, they do sometimes but it's not common.
(PC 9)

Some suggested that, if a woman did name a man whom she falsely accused of raping her, it was usually for a reason. In other words, it was because he had used her or wronged her in some way:

Other detectives cited possible psychiatric or psychological factors that may underlie false rape allegations; one detective, for instance, talked about those who made false complaints as often being:

Mentally disturbed women. Fantasiers. Women that come in and have been raped and they haven't been near a man for years. (PC 11)

The comments of some detectives indicated an appreciation of the social and psychological factors usually involved in false accusations. As PC 2 commented:

There are a whole lot of factors occurring in the complainant's life that are spinning them out of control and it can be financial, it can be their self esteem factors, it can be sometimes psychological factors, it can be a whole mixture of things, relationship factors or they are pissed off that things are not going their way, just lots of things like that. I don't think there would be any one thing happening to make a false complaint. Alcohol is sometimes a good reason, a good factor ... So I wouldn't say there was any one factor, I'd say it was a combination and it is centered around the complainant.

Recognition of emotional and psychological factors led many of these detectives to advocate compassion in the police response to such women. One of the more senior and experienced detectives interviewed expressed it this way:

In some false complaints of rape you have got to understand why it is people make false complaints so you can actually deal with it properly. So when a woman comes in and makes a complaint of rape, it doesn't make it false but it doesn't make it genuine either. But those that are false, you don't go in with your heavy boots on and tramp all over the victim, you have to have compassion and understanding. You might have a sick person, whether she is making a complaint out of a mental illness or an unresolved trauma that she hasn't resolved as she doesn't know how to and, not the training, but the assistance of the medical authorities, the counsellors that explained what it is she, what her problem is but it has manifested itself into a false complaint which we know is false or suspect is false. So you have to know how, you have to understand the false complaint before you can actually deal with it in a particular way. (PC 8)

Police responses to false complaints

The question of how to respond to perceived false complaints is a difficult one for the police. They must be mindful of the possibility that their perceptions may or may not be accurate, and are faced with having to determine the best way of establishing the 'truth' of the situation. For some of the detectives interviewed, this would mean simply challenging the complainant about any perceived inconsistencies or apparent flaws in her statement, hoping for an admission or retraction.

Most of those interviewed said they did not personally believe in 'grilling' complainants, with PC 6 expressing his belief that interrogation-style interviews no longer occurred:

Well, people say, well, you understand then why detectives might grill or give a victim such a hard time at the first stage of the interview. But I think we've grown out of that in the police, you know. That happened 20 years ago but I don't think it happens now because I think we're a little more professional

now and we, you know, we listen to the victim, we take that in, we do the preliminary interview, get the information and then investigate what she says.

Several detectives admitted, however, that they were aware of colleagues in the police who did still practise interrogation-style techniques:

But there is still some people out there, some police, that do give complainants a hard time because, for example, one might say to them, well you're going to get a hard time in court, no one's going to believe you because that's the way the system is. Now whether that's being negative because of the police environment they're working in and they've become negative or whether they're just trying to do something they're not trained at. That's probably more to the point. But yeah, there's some police there that say, well you know, you're going to get a hard time in court, and I know that happens. And it usually happens basically at the front counter when the woman first comes into complain to some joker on night shift who's probably a bit tired and has got to take a statement. But I don't think, it's not that often. (PC 10)

PC 9 maintained that the ability to read and interpret body language was important when testing the veracity of a complainant. He said:

You've either got a nose for it or you haven't and you know the old story of which side they're looking for the inspiration about what they're telling you? When someone's talking to me, I can tell. It's if they're looking to make something up they look up to the left – to their left, and if they're searching their memory banks, they tend to look up to their right. I think that's how it goes. Yeah, body language does really come into it quite a bit.

Some expressed strong concerns about the impact of showing complainants that they had doubts about the veracity of their statement and advocated extreme caution and sensitivity in such matters. PC 6, for instance, said he was often appalled with how

rape victims were treated in court and believed the police needed to guard against doing the same:

You know, they deserve the best we can give them. Let's not shit on them straight away, even if you know they're lying, get their story and then do your job properly, do your investigation thoroughly and then you can go back to them and be straight up and down with them and say, look, you know, this doesn't tie up with that and this is not right and there's these inconsistencies here, we need to know the real truth. But if you don't do your investigation properly then you can't do that. And there's nothing to be gained just sitting down with the victim and saying you're bloody lying. You're not telling me the whole truth, I need to know the whole truth. Well, what do you gain? You know, you get the victim off side and then they go away and tell their story to their girlfriends and then you get this, the whole thing, where women are too frightened, or not too frightened, they just don't want to come to the police with their complaints.

One strategy suggested involved the need to preserve a positive relationship between the complainant and the detective whom she had made the initial statement to, in order to safeguard at least some feeling of trust and rapport with the police. If inconsistencies had to be confronted, the suggestion was made by one detective that the confronting should be conducted by a different detective, a little like the 'good cop, bad cop' scenario. This way, hopefully, the women's confidence in the entire police force would not be undermined:

You can't have the same detective that interviewed her suggest to her that the complaint is false and the investigator that took the complaint of rape 'cause the victim has the association of that detective and ... she trusts the detective and we need to maintain that trust always. You have to have someone else who goes to her and puts the falseness of her complaint back to her. Now she might do two things, she might roll over and accept it and cry, but she might go the other way and that is aggressively and violently, not physically, but

verbally, dispute our interpretation and vent her rage out on that police officer. Now, you don't want the rage being vented to the police officer that she has put her trust in, in telling this complaint...so you put a stranger in there, you put another detective in there so she has always got an ally in the police if she wants to come in five days later and say. 'Oh, I'm really sorry that I told you about that complaint. You treated me well, not like that bastard that came in the other day - he was really rude to me'. See what I'm getting at?

So that's why you have two people, 'cause you still have to think, you can't cut off her knees and chop her head off, this is a victim we might need on our side in years to come so you don't bloody kill them. Horses for courses, that's why we need the understanding of the complaint so we know how to deal with it. (PC 8)

One detective maintained that the detectives he worked with were able to obtain a victim retraction in at least 50% of cases involving false complaints.

It depends on how you package it, how you approach it, you know. With empathy, its definitely the way to go, there is no use yelling and screaming at people, that's just... those days are gone and some days it just firmly entrenches their position that they have already lied to you. (PC 12)

Detectives differed quite markedly in their responses regarding whether or not women who made false allegations should be charged or not. A few said categorically that they should be charged:

I charge them because I think they do a lot of harm long term. I mean, they cause so many problems and not just the work, but it puts all these people – it causes a lot of these other things that in the past, we've gone through the hoops because of these people and perhaps unnecessarily. (PC 5)

Often the detectives specified that the underlying motive or state of the woman would be the main factor determining their course of action. Thus PC 4 was clear that:

I think if it's malicious and done for criminal reasons they should be dealt with in the court. That's a small percentage. If they've done it out of confusion, dysfunctionality, drink, drugs, other problems, then they should be dealt with on the basis that it's a problem rather than a crime.

Some stated, however, that in their experience most false complaints did not name a suspect. PC 9, for instance, said:

In my experience most of them – most of the false complaints that we get where we end up charging the woman, there has been no person there at all. They've scratched themselves and basically are attention seeking. Nothing has happened to them.

When I asked if such cases were rare, he replied:

They're not rare but um, but they're not common. Yeah, they're relatively rare. Yeah, it takes a lot of courage for a woman to go into a police station and say to some big burly cop that she's been raped, knowing she's going to be put through the wringer and medically examined and the works.

Two detectives cited examples of cases where they had recommended that the woman involved should be given diversion. In one of these situations, the detective stated clearly his reasons for advocating such a course of action:

I said [to Prosecutions section], I don't want her going to the open court. I don't believe that's entirely appropriate, because of the conviction and just the boy that cried wolf, isn't it? Now what happens in two years from now, or ten bloody years from now, if she gets raped and the police look at her history? It doesn't say what the false complaint was about but a good investigator is

either going to ask or get the file out. If he says to her, I'm going to get this file out, you'd better tell me about it, she will say oh yes I made up this false allegation that I was raped and that's going to blow her credibility right out of the window and I'm very concerned about the ramifications of prosecuting someone... But certainly, if she had nominated somebody and that person had been caused public embarrassment, like their work-mates knew they had been accused of a rape, I don't think that that comes into it then. That's a prosecution. (PC 3)

Several detectives queried the utility of the police taking women who made false complaints through the court system. PC 8, for instance, maintained:

We very rarely take false complaints of rape to court. What does it achieve? It's time consuming for us to pursue a prosecution where there is no crime; this victim may be a victim for her own reasons. She might have put herself in a position, she regrets it very much, what's the point of kicking it out? She has had a hell of a telling off from us, she has probably had a grilling, she has been abused by us, politely, but still abused by us, had a telling off. So what's the point in going to court?

We don't tend to take false victims to court simply because we want to get our own back. It doesn't achieve anything, it just ties us up. It means we have to, its another court case we have to prepare and takes time away from our normal duties... the court would probably let her off, she has already got a warning from us, she is getting kicked out the door and a flea in her ear in no uncertain terms and that is probably for the satisfaction of us. A detective can vent his rage through his mouth, we don't need another court case.

Some detectives noted that often it appeared that those making false allegations suffered from some intellectual or mental disability, and queried the wisdom of putting such persons through the court system. One said that they often considered laying charges but usually refrained from actually doing so:

The decision to charge is not often made and I'd say this is because of the victim being unstable. Like, we had an IHC victim who complained to her mother or teacher that she was raped. You wouldn't charge an IHC person. It's just a waste of time. Then you'll get the mentally unstable ones who have, for some reason they've been suffering from a lot of mental stress, or psychological stress, who will claim they've been raped and what's the point of putting them through it? You're probably going to push them over the edge. (PC 10)

Others spoke of the need to try and address the underlying problems:

Well, I mean there are many ways you could respond to it. I respond to them by talking a bit to them about their problems and why are they like that, 'cause if it's financial – look, here is the number and let's ring these people and go and see them for budgetary advice; because if you are having problems with relationships, let's go and see these people here; and give them numbers and give them the opportunity to remedy it themselves so they don't get caught in that situation again... It's important that you follow it up if they are making false statements you have got to look at why. (PC 9)

From comments made, it appears that more women might be charged if the police considered that sufficient evidence was available. A central factor underlying the few prosecutions each year for false complaints involved difficulties in corroborating such cases. One detective (PC 9) said his station seldom charged the women:

... because it's so hard to prove and it's so easy for a woman to come in and say – a big tattooed bum bloody leapt out of the bushes in the park and raped me and ran off into the darkness and I've never seen him since, and it's so hard to refute that. I mean especially if they go into the park and lie down on the ground and roll round a bit and put a scratch on their face and put a bit of

mud in their hair and then come down to the police station. It's very hard to knock that over.

Another detective commented in a similar vein that a deterrent to prosecution would be the time required to prepare a case for court:

It depends on how much work is going to be involved in blowing their story out of the water, to be honest, because I mean, if you are going to have to spend another 100 man hours proving them to be not telling the truth, a liar in this case and then charging them with the Summary Offences Act which is, I think, 3 months and a thousand or 6 months and two thousand, so very low on the scale cause there is no crime as such and um is it worth it? Or do you just clear it as a warning or just no offence disclosed, and just move on because we are just so busy? (PC 12)

One potentially problematic area for police relates to the transition in status from a woman being interviewed as a complainant to being treated as an alleged offender. At some point in the proceedings, her status changes in the eyes of the police. This tension was acknowledged by at least one of the detectives interviewed:

That's another area which is a bit difficult to sort out because you do get some complainants come in, you know their complaint is a bit suspect for whatever reason. Whether they've got a husband and they've been caught out playing around or who knows what the reasons are really. And then you re-interview them as a suspect, I suppose, not a complainant, but you know you put the hard word on that their complaint is not true and get an admission and an apology. Then there's the decision well you've mucked us around for a couple of weeks, do we charge her with making a false complaint or not. And then you've got to take into consideration what the effect of charging them would have on them. And they've already either been through some psychological trauma or problem which has brought them to the station to complain in the first place. So it's not going to benefit anybody. (PC 10)

Another senior detective also expressed strong views when questioned concerning his stance on this issue:

D: I'm not a fan of charging people with false complaints... I mean, there are some that you should do, but my personal view is that you err on the side of caution charging them rather than not, because I would hate to ever deter a legitimate one coming on because especially when they're in a situation where they're thinking, 'Jesus, no one's going to believe me! Wow, that woman got charged last week for a false complaint, maybe I won't bother', sort of thing. I'd rather not run that risk.

J: Right, because you're worried about, that it will deter others from reporting?

D: Deter others. I can equally agree with a lot of people of my rank around the country who would say the opposite. No, we want to deter all those ones that are false and save ourselves hundreds of thousands of investigative hours. I mean, there's arguments both sides, it just depends where you sit with it. I certainly don't say they're wrong with their view and I don't think I'm wrong with my view.

J: It's a balancing act, isn't it?

D: Yes, absolutely, and there's some of them I'd have no hesitation in charging.

J: So have you been involved in cases where the complainant's been charged?

D: No.

J: Never?

D: No.

J: Right.

D: But that doesn't mean I wouldn't. It just depends on the circumstances.

J: So what would motivate you to?

D: First of all, you'd have to have a very strong case. You'd have to have a lot of good evidence. And I haven't seen one yet where we had enough evidence to prove it, so I probably stand back a bit more than we normally do because it's such a huge one to get wrong. Huge. And I think you're better to sort of, let it go, than to get it wrong. (PC 11)

The overall impression gained from the detectives interviewed was of significant variation in their views concerning what responses were appropriate. While some felt justified in 'throwing the book' at certain women who made false allegations, others questioned what gains would be made by such actions and expressed concern about possible consequences further down the track. These could involve, for example, someone labelled as a 'false complainer' later actually being raped but being disbelieved because of her previous false allegation, through to other victims being deterred generally from reporting sexual assaults.

The possibility also exists, and was acknowledged by some, of the police being wrong in their assessment that a woman was lying. In many cases of date and acquaintance rape, especially, there are two parties presenting different versions of events and little other evidence. Numerous examples of this kind of scenario were presented in Chapter 5, showing the difficulties faced by complainants in convincing the police of their victimisation. Men accused of rape rarely agree with the

accusation; thus, in the face of her assertion and his denial, whose account prevails? In practice, the woman making the allegation is challenged the most rigorously concerning her account of the events.

Testing the veracity of a complaint is often a delicate and complex task and, as was evident in cases examined in the previous chapter, the possibility exists of cues being misinterpreted or having overly much significance attached to them. One detective (PC 11) commented that expectations held by the police regarding complainants' testimony were sometimes unrealistic:

D: Just the fact that anyone who comes in here will not, cannot, possibly be expected to remember everything, get everything in some sort of logical sense, or chronological sense, because of what's happened to them. I was never told that, or didn't understand it. We go into policeman mode when dealing with the victim.

J: What's that? How would you describe that?

D: It's that we want the facts now, here, in logical order, we want to know what happened after that, this one first, and we want to get the whole thing now. And with a lot of victims we can get that, but of course, with rape victims you don't get it as easily because of the stress.

A senior detective with the Offender Profiling Squad provided a good example of the ways in which strange behaviour by the complainant can erroneously be interpreted as suspect by the police. The example is included in full because of the insights it provides into the police psyche and the way in which information can easily be misinterpreted, sometimes simply for the police to be able to close a case.

We tell the story of one of the Park victims whose mother was 71 and she was IH and the girl as a result was also intellectually challenged and she lived in Otara, she was a Pakeha girl and she'd been attacked for the second time.

Hadn't been raped, but there was assault with intent to rape. And of course, that immediately gives you the problem of forensic. Immediately you've got no forensic as far as he's concerned and you've got no proof that a rape was going to occur. Where you've got semen, at least you've got, you can say well, okay, intercourse has taken place and then you've got that. So attempt is always arguable, no matter what the charge is and this particular girl – the mother, it was a shocking house. Went in there and the detective sat down and the girl sat down there and he was sitting there and the first thing she did was, she got up and she went to the fridge and took out a handful of raw mince and started eating it in front of him. The detective, in fairness to him, took a statement from her and took the details and he treated it as attempted murder because she was pretty badly smacked around in the head, and he went back to her later on and thought well Mum's mad, she's half crazy, what did happen, and it was suggested perhaps that Mum had attacked her. And you've got to try, because you're trying to rationalise the irrational sometimes and when you're dealing with people like that you try and figure out: has there actually been someone in here or not?

Because it was an unsolved attempted murder, they sent a senior detective around there to speak to Mum, put it on Mum, because somehow they'd come to the conclusion that Mum – because there'd been domestic problems and we thought it might have been just – because she was so badly beaten and ended up in going to hospital that perhaps they'd just covered up and said there was an intruder in the house, to cover up the violence of an unsatisfactory relationship between this mother, and that's how it was written off, I think.

Now I actually stumbled on that file because I was pulling out all the intruder attacks in Otara when I was doing Park and that file was one of them. So I pulled the file out, and I pulled the open report and it just gives a quick summary that they believed the mother was responsible and there wasn't an intruder there and I of course took that as read and I threw it on, I think I had

all the files at home in those days and I was kind of reading them in bed, you know, and I threw it on the ground and it fell open with a photograph of a table underneath this window, with the old window that pulled out, and Thompson pulled out and went in under the window which was his MO, always put something under the window. I picked it up again and had a look at it and there was actually a job sheet in there from a neighbour who had allegedly seen someone running away. I thought, well, I don't know, it seems a bit of an easy result here for the police just to get rid of this file and then further on into the file there was a job sheet by a dog handler who had tracked and the witness, the neighbour's view of this offender into a school at the back, which Thompson went to, all schools. I thought this is ridiculous. I had a look at it and I included it in as one of Joe Thompson's attacks and it was one which he admitted to. He did it both times; he attacked that girl twice. (PC 5)

The above scenario shows how the factors of intellectual disability and somewhat strange and off-putting behaviour on the part of the complainant created sufficient doubt for the initial account to be rejected and for the family to come under suspicion instead. It was virtually a chance discovery by a detective on another investigation that led to this case being re-examined and to the complainant's version of events finally being upheld. As this detective said, it's important for the police not to read too much into how the complainant behaves when still in shock:

The point of the whole thing was: it doesn't matter how the victim reacts to you, because, as you know, every woman acts differently to stress, and some of them are going to be a blubbery mess, some of them are going to over compensate with confidence, and some of them are going to be antagonistic towards the first police, like whoever comes in – 'piss off'. One of them did that, in Park. Another one's going to throw their arms around you as their saviour. So I mean, it's going to be all that and everything inbetween. (PC 5)

This same detective also cited a case in the Malcolm Rewa⁵ investigation, where a woman reported and actually named Rewa for a rape in 1987. He produced an alibi, and the local police, despite knowing he had a previous conviction for attempted rape, wrote off her complaint. Michelle⁶ said in an interview for the New Zealand Woman's Weekly, that she was devastated when the police said they would not be pursuing their investigation of her case, and added:

They [police] weren't treating me seriously. As far as they were concerned, I was just some bimbo. I wasn't important enough for them to go to any trouble. But I was a decent young girl who'd got in with the wrong crowd. And it wasn't as if I was out at a party with him when I was raped. I was home in bed. (quoted in Fleming, 1998, 22)

Michelle's boyfriend was a member of the same gang as Rewa, and was in fact a 'mate' of Rewa's. The 'alibi' on which the police depended was nothing more than her boyfriend's testimony that *If Hammer⁷ says I was with him, then I was*, combined with his refusal to sign a statement to this effect (Fleming, 1998, 23). Nine years and 24 women later, Malcolm Rewa was arrested. Michelle rang the police team working on Operation Harvey:

I told the policeman my name and said, 'This man raped me in 1987 and got away with it.' The detective said, 'Yes, Michelle, we know.' They had my file there, and finally someone believed me. They really believed me. (Ibid.)

⁵ Three major serial rape investigations were conducted in Auckland, New Zealand's largest city, in the 1990's, referred to by the police as Operation Park, Operation Harvey, and Operation Atlas. Operation Park resulted in the arrest of Joseph Thompson, who pleaded guilty in 1995 to 46 counts of sexual violation by rape and 15 counts of sexual violation by unlawful sexual connection, as well as multiple counts of burglary related offences (Williams, 1998, 237). Operations Harvey and Atlas were merged when it became clear that these investigations involved the same offender, the person later identified as Malcolm Rewa.

⁶ 'Michelle' was the name used to refer to this woman in an article published in the New Zealand Woman's Weekly, 15 June, 1998.

⁷ 'Hammer' was Malcolm Rewa's nickname, given to him by Highway 61 members after he became known for strapping a hammer to his motorcycle *to sort out any trouble* (Williams, 1998, 219).

Michelle's case demonstrates well how police assessments of a victim's character and credibility can, at times, impede their ability to see her as a legitimate victim. Fortunately, at least amongst some of the more experienced detectives interviewed, this perception appears to be changing. Some acknowledged, for instance, that they had come to realise the ways in which certain women may be more vulnerable to rape or may engage in riskier behaviours than others, and how this should in no way detract from their entitlement to police service and protection. A female detective described a case that was nearly dismissed as a false complaint:

I didn't attend the initial scene; it was dealt with by the night shift crime car, a detective and a constable, and it was a prostitute and she was really drunk when they saw her and her clothes had been tattered and that sort of thing and they couldn't get a straight story from her because she was really drunk and they had her in for an evidential medical examination and the doctor had done the Woods test which is shining a light on her. This guy hadn't actually had sex with her; he had ejaculated all over the back of her legs and pantyhose and the Woods test didn't show any semen. I came to work the next morning and got the file and the reports of other police officers, what they were saying, you know this absolutely wrecks of no, you know, this just didn't happen and all that sort of thing, and so I spoke to this women later in the day when she had woken up and she was a bit more sober and I was still really iffy, going on what the cops had said who were first at the scene, that sort of thing.

I actually spoke to her about this being a false rape complaint and that sort of thing and she was quite adamant that it wasn't and did get upset with me. I can honestly say it was the first time I have actually said the Woods test where there was no semen so I was 'what are you doing?' and all that sort of thing, and she just stuck with it. So I re-interviewed her and got another statement from her that provided a bit more detail and I thought, I am going to send everything to the ESR because I just want to be truly sure and it came back from the ESR and there was lots of semen there and I just felt awful because I

had just relied on this Woods test that the DSAC doctor had used so yeah, it was a learning curve for me, that I will still go with how I feel with the complainant and go from there. I went back to her and sort of apologised to her and explained to her why I was concerned about it and the Woods test and the ESR examination and all of that and she was really good about it. And she could see where I was coming from and we still keep in touch. (PC 2)

This detective also said that ten days after this woman had been attacked, a man fitting the same description attacked another prostitute working in the same area. At the time of the interview, a suspect had been identified and the detective said she was fairly certain the case would proceed to court.

Complainants' credibility

Often the central issue at stake is the complainant's credibility. To what extent does she present as an authentic and credible victim? In practice, this often translates to mean: to what extent does this complainant present as an authentic and credible **person**? What is her social status? Has she been in trouble with the police before? Does she have drug and alcohol problems? Underlying these kinds of questions may be an assumption that only certain, socially 'approved' kinds of women can be genuine victims of rape. The rest are at best, dubious; at worst, sluts and liars.

Police officers inevitably engage in assessments of complainants and how they present, especially in comparison to the characteristics of the alleged offender. The use of stereotypes to inform the exercise of police discretion generally has been well-documented and is in many ways understandable (Reiner, 1994; White and Perrone, 1997). Where it becomes problematic, however, is when adherence to judgmental stereotypes may blind some officers to the 'truth'. This is what men like Morgan Fahey will often rely on when they select victims whom they expect the police will appraise as somewhat dubious.

Some of those interviewed spoke about certain kinds of behaviours which were perceived as risky and 'inviting trouble'.

One situation like that would be those girls or women that let their hair down, so to speak, and put themselves in a situation like a gang environment. You know, like there's been a lot of cases I've been involved with where you've just got to ask yourself: why the hell did you go there? Because the writing's on the wall. (PC 10)

Alcohol-related issues often prove to be particularly problematic. As was evident in Chapters 4 and 5 and substantiated by research conducted elsewhere (Amir, 1971; Crowell and Burgess, 1996; Russell, 1984; Warshaw, 1988), many sexual assaults occur in contexts where both the complainant and the alleged perpetrator have been drinking and, in situations of high alcohol consumption, it is initially hard to obtain good interview data from the parties involved. While some detectives acknowledged that it was not appropriate for men to have sex with women who were too drunk to consent, and that this amounted to rape, nevertheless a woman's drunkenness could count against perceptions of her as a credible victim.

In discussing the issue of consent for drunken victims, one detective (PC 3) compared this to the age of consent generally:

The big grey area that comes in is this consent thing and whether intoxicated people can consent. They can't in law, whether people under 16 can consent, they can't in law. But in practice they do, you know there's not many 16 year old virgins out there now, are there? Really, when you see young kids and their sexual behaviour. I know from what my daughter says about some of her friends and the activities they get up to with boys and that. It's actually pretty frightening.

The above comment suggests that, for this detective at least, although the law states one has to be 16, and sober, to consent, in practice, he feels this did not accord with

his experience. Given the views expressed here, it is interesting to speculate how detectives with views such as his might respond to a drunken teenager complaining of rape.

Concern was expressed by some over the extent of risk-taking behaviour engaged in by some young people, particularly after heavy alcohol consumption

Let's face it, when you're in your teens and your young twenties, whether you're men or women, you're taking risk taking behaviour, and when you're doing that you often put yourself in situations where you increase the odds of something happening to you. It's as simple as that really. So, alcohol is usually the reason why they take risks they normally wouldn't have. (PC 11)

Furthermore, the extent of alcohol involvement could also complicate police investigative procedures. As this detective went on to comment:

It does add to the challenge to it, because memory comes into it. Most of – well, a large proportion of the victims come in somewhere between the hours of 11pm and about 3 or 4am. They've usually been up since about six or seven o'clock the previous day, so they're tired as, as well as that they're normally drunk and sometimes incoherent, obviously in shock, traumatised and so all in all that's a great recipe for not actually being able to get things that accurate. (PC 11)

Many of the detectives noted the frequency of alcohol involvement in rape complaints, particularly between persons known to each other where the difficulties often revolved around consent issues. One senior detective strongly believed alcohol to be a contributing factor in sexual assaults generally, arguing that those most at risk were:

Drunk women under the age of 25 basically, for both actually, for consensual – or for stranger and non-stranger. Definitely. I mean, I tell my staff when I induct them, 95% of women that come in here complaining of sexual attacks will be under the age of 25 and they'll be drunk. 95% of the men that come in here and complain of getting beaten up will be under the age of 25 and they'll be drunk, too. It's just that men get their heads kicked in and the women get sexually violated. Because they're the people that are out there on the street and available as targets. (PC 11)

Another detective gave an example of the kind of case which he considered to have arisen completely from the victim's intoxication, and which would be impossible for the police to proceed with. In this particular situation, two sisters were drinking together at the pub, a guy gave them a lift home, one sister went inside and the other chose to stay in the car. As the detective described it:

She just got so drunk at a pub and she went off, went home with this guy and woke up at four in the morning alongside some guy she'd never seen before in her life. Screamed rape, you know, ran out of the house naked to the next door neighbour's. But you know, we didn't deal with that as a rape. We investigated it: you've got to do the work, you know, and you've got to do it properly. You can't just, what I'm trying to say is, you've got to do your investigation properly and then when you've done it properly, if you've done your job properly, you will establish the truth, whether it's genuine, whether it's completely false, or what – what little fabrications there are in there on the way, you know. And that girl in [suburb], we didn't proceed with a prosecution in the end and she wasn't happy with that but we would have got nowhere with that.

At the end of the day, you know what I mean, we didn't write that off as no offence disclosed, we just write that off as – how did we write that one off? Off the top of my head I can't remember how we wrote it off but simply that, I

mean there's just no point in proceeding with the investigation. It was just that she woke up at four in the morning or five in the morning and saw this big black man next to her that she'd never seen before in her life, because she was so pissed the night before she couldn't remember, and she was terrified and jumped out of bed and took off.

I mean hell, you know, imagine trying to take that to trial. I know that you know if she's drunk she can't give informed consent, but it's fine in court but it's fine when they talk about it in the clear light of day. But hell, you stand up at trial and you get this victim up there who says, 'Well, I can't remember much and I was at the pub and I got pissed with my sister'. Then the sister gives evidence and says, 'Well, look, we were at our place at the front gate and I said come with me, and she says no, I'm going with this guy'. It doesn't look good and I think, you know, you'd find it very, very hard.

For complainants, as we saw earlier in the discussion of police files, fears concerning how the police will respond to knowledge of their drunkenness can impact heavily on their disclosure. For example, a complainant who is worried that the police may judge her negatively may try to minimise her estimation of how much alcohol she had consumed. From a police perspective, however, her actions in this regard could further count against her. Now, as well as being a drunk, she is seen as a liar as well.

Some detectives spoke about the demeanour of the victim, but mostly in ways which suggested that they knew this was a complicated variable to assess in rape victims. One detective (PC 12) emphasised the ways in which his understanding had changed over the years, so that he was now less likely to be influenced by some of the traditional police indicators of credibility and authenticity. Instead, he prefers to look for evidence and corroboration of the victim's story, rather than attach too much significance to factors such as demeanour. As he expressed it:

So the key issue for me is corroboration, to a lesser, a much lesser extent, is credibility. Because professional women get attacked, prostitutes get attacked, people who have been abused previously get attacked, people with criminal convictions get sexually attacked, so it would be very unfair to say that you have to be white, you have to be between 20 and 40, you've gotta have no criminal convictions and that sort of stereotyping. You can't do it. And that's what you have to keep reminding our staff at times, they are junior staff they do get impressions placed upon them by staff who are more experienced and cynical and it's amazing how the sort of effect that can have on people and that is what you try to encourage at the end of the day, that they have their own mind and can make up their own opinion rather than just going with the flow, 'cause it's just wrong to go with the flow. So yes, corroboration is the key thing for me. (PC 12)

A senior detective provided an example of a case which the complainant had pursued through to the Police Complaints Authority in her efforts to have her account of rape believed.

The guy that was the offender is an icon down there. He played provincial rugby, he was a big rough character, everyone loved him but deep down he was an arse hole and there were job sheets there from other [guys'] wives who said when their husbands went away he always seemed to turn up at the doorstep seeing if they wanted anything and occasionally he would put the hard word on them and in fact one woman said he said, 'oh, if you let me in the sack things will go better at the College for your husband' and all this sort of shit so he was a – his attitudes were there to be seen but the cops down there didn't want to see them because they liked him.

Well, she was a bit older – she was – a lot of these people they'll say oh she's a bloody psycho and often they are. But because she's a psycho doesn't mean that she's a bloody viable target for some arse hole to go and rape. He

probably sized her up – she was a bit of a police groupie, this lass, and this guy obviously thought ‘oh she hangs around with the cops I’ll give her one and she’ll never complain’. And that wasn’t the case at all. It turned out she was a virgin; although she was in her early 30s, she’d never had sex. And two [cops] went to bed and left him up with her. And it’s clear to me from reading it that they were uncomfortable with his behaviour and they buggered off to bed to get away. And they both lied about what had happened.

When this complaint was made [the detective], who’s an old rugby man, just said ‘no way’. And then all the guys said, ‘oh she’s a bloody psycho, that tart, she hangs round all the football teams and hangs round the cops’ and so they had this animosity if you like towards this woman from the outset and they let it colour their thinking and their judgement....

They’ll never get him convicted – never, because it’s been so long ago and she did all the wrong things afterwards. Afterwards she never complained to the other two cops the next day.... She went to Australia on holiday and then told a friend in Australia, ‘this policeman raped me and I didn’t feel I could do anything because all the police like him and they wouldn’t believe me’, and it was a sort of self-fulfilling prophecy she had set up really. (PC 9)

Another detective spoke of the way in which inconsistencies could alert the police to a possible false complaint, although the possibility of misinterpretation also existed. What was more important was the existence of corroborative evidence:

You’ve got to be so careful because sometimes you’d get discrepancies from genuine complainants too. It’s only going through all the evidence, really, and what supports it and what doesn’t and there’s usually some signal event in the course of the inquiry and you go aaaah this is a bloody false complaint. And it’s like a big alarm clock going off. A classic example is someone who

says she's been raped in a bloody park by somebody that walked up behind her and then you go and find she's been at a night-club and then you find that at the night-club she was dancing and kissing this guy and getting really bloody hot with him and then it suddenly starts to gel, well, hang on a minute – yeah. (PC 9)

Police procedures

From the descriptions provided of police procedures, it is clear that currently there is very little consistency between different areas of the country with regard to the processing of sexual assault complaints. The specific aspects focussed on here relate to police dealings with the complainant, since these are the central concern of this thesis. The general requirements remain the same; for example, obtaining a statement from the victim, probably arranging for her to have a forensic medical examination, explaining to her the reasons for proceeding or not proceeding with the case, and so forth. However, considerable variation appears to exist in relation to how such requirements are managed.

One controversial area within the police relates to the optimal time at which to obtain the complainant's statement (Epstein and Langenbahn, 1994). Traditionally, police practice worked on the assumption that the statement should be obtained immediately upon reporting, and gradually this changed in New Zealand to a procedure whereby the medical examination was prioritised, for evidential reasons, and the statement was obtained directly following this examination. Feedback from complainants, however, such as that documented in the research presented in Chapter 3, indicated that taking their statement following the medical examination invariably meant that it was obtained at a time when they often felt exhausted, traumatised, possibly affected by alcohol or drugs, and generally not particularly coherent. Since the statement forms such a critical part of any ensuing court trial, some police have begun to question the 'hand-me-down' wisdom of their predecessors. This was evident in the interviews when some detectives discussed the traditional approach while others

spoke of the advantages of delayed statement-taking. Some admitted that determining the order of these procedures could be difficult:

The biggest problem I have – and I think we have – investigating rape complainants is the period of taking the statement and the medical being done okay. It's a confusing area because a statement can take hours to take from a distraught victim and usually you've got a doctor called in and on standby and as time ticks on with that statement going on, they're getting impatient about where's this person I'm supposed to be examining. And it usually happens with inexperienced staff that the doctor will get the victim to her surgery as quick as possible, and that leaves the police in a situation with not really knowing what's going on, because it hasn't been committed to paper and nothing to work on and that area is a little bit untidy, if you know what I mean. You've got the investigators screaming out for a statement so they can go and do a scene examination, pick up exhibits. Just a preliminary, a one pager would do. Yeah, one page.

But it's hard even to get one page off women who are really emotionally, you know. You've got to console them and then bring them around and then give them a cup of coffee which is all part of the process and they mightn't even talk for any hour. They might just sit there sobbing and you know they've been raped but they can't relate the experience right there and then because of post trauma stress and all that, I suppose. You've got a doctor screaming for them to come down to the surgery. Where is she, you know, I've been called out. And there's always the difficulty of what do you do first, do you take a statement off her first or do you get her to the medical first? And then you go to the medical and the doctor says: what happened? And then you say, well, we haven't got a statement or anything yet. But you've just got to work through each of those cases as you can. (PC 10)

Several stressed that the complainant was often not in the best state of mind to be interviewed at the time of the initial complaint. Thus one experienced detective maintained:

As far as the medical examination goes, obviously the earlier the better, it has to be done. But as for a statement being done immediately, if she's not up to it, what's the point? Because what you've got is a tired person who doesn't really want to be there. And I mean, that's the key to getting a statement from somebody. There's no point in getting a statement from someone who you haven't got a rapport with and you're not, she's not relaxed. Because apart from anything else all she wants to do is get out of there and she'll cut it short, she'll miss things out and she'll perhaps not be concentrating - I mean, getting things out of the old noggin at any time can be hard for some people, and if you're not focused on it you're not going to get the stuff out. So I haven't got a problem with her being interviewed later on. (PC 5)

Another detective had even prepared a briefing paper for his station on the merits of delayed statement-taking, such was his conviction that this approach was preferable to requiring an exhausted complainant to spend hours trying to provide police with a clear, consistent account of every detail about what had happened to her. He maintained that police insistence on taking a statement when the woman was exhausted was abusive and counter-productive:

At the end of the day, all those things are what the army do when they torture people, don't they? Sleep deprivation and blimmen all that sort of thing, and we do that to our rape victims! And so I think - there's been a number of reasons for that [immediate statement-taking]. I mean, there's been certainly a culture within the CIB where you wouldn't want to be seen as duck shoving so the nightshift crime car who deal with those people wouldn't want to leave it to the early shift because they don't want to be seen as doing a duck shove. Whereas now I'm trying to get through to them, well it's not a duck shove,

what you should do is actually take the details of what happened, what they can remember at that time, but don't sit there for hours typing on a blimmen typewriter with detective's skills at typing at two words a minute because that just prolongs the agony for the victim. Get the details down in a note book, pass it on to the early shift. Bring the victim back in 18 hours later when they've sobered up and have got a big clearer memory of what actually happened. (PC 11)

Discussion of the possible merits associated with delayed statement-taking prompted one detective to provide a clear, recent example of where he believed the police seriously erred in not providing a complainant with that option. In this particular case, a young woman alleged having been raped late one night by two men, and the police insisted on obtaining a statement from her as soon as possible.

The statement taken by the police officer was appalling, absolutely appalling. He was a detective constable and a very, very good one but he tried to interview her after she had been up 16 hours or something like that. And after she'd been drinking. And he got the medical off her and then he tried to interview her, so it was always going to be a bad interview as she was at the end of her tether.... That was a classic where we should have sent her home and she would have come back much clearer. She didn't even read the statement, she told us, she didn't even read it, he walked out of the room while she was there, she just signed it, was too tired, couldn't be bothered and there was some particularly concerning points in that statement that made us wonder if it was valid or not. Words like penetration and things like victims don't use those words for a start and I mean to such a point where you look at the statement and you say: this isn't true. But the whole point is: it isn't her statement, it's his statement, his words. We sent it to Auckland to the criminal profiling unit and they come back and said we have put the scan process over it and it's not correct, the statement is not valid, it's not true. They are absolutely right, but it's not her statement, it's the police officer's

statement. So sometimes we have to get around it and she went through a pretty hard time over the first couple of three days, to be quite honest in respect to that, and it was all because of the initial officer's statement off her, which wasn't fair on her.

Investigation of the case cited above could easily have been terminated because of the way in which the complainant's statement was obtained by the police. Fortunately, in this particular example, good supervisory practice meant that the circumstances surrounding the taking of the complainant's statement were queried and she was re-questioned. Two offenders were eventually convicted and imprisoned for this offence.

Overall, then, comments from the detectives suggested that currently this is a time of change within the police. While some felt it was important to obtain a statement quickly, many were questioning this practice. This is consistent with the guidelines included in the New Zealand Police Sexual Assault Investigation Policy 1998, although, interestingly enough, although all these interviews were conducted in late 1999 and 2000, not all of the detectives interviewed knew even of this policy's existence.

The policy also included guidelines pertaining to the conducting of the medical examination; again, this was an area where some disagreement existed over the preferred procedures.

Medical examination

Being medically examined for forensic evidence after being raped is one of the most arduous processes any crime victim has to face (Green, 1988). In England, there has been extensive criticism of the way in which such examinations are conducted (Gregory and Lees, 1999) and police have endeavoured to manage these better through making rape examination suites available. The standard of these suites, and

the utilisation, appears to have been haphazard (ibid.). In New Zealand, considerable effort by concerned medical practitioners led to the formation of Doctors for Sexual Abuse Care (DSAC). This organisation provides specialist training for doctors willing to be called out to conduct examinations of rape victims, and DSAC doctors are part of an inter-disciplinary team with police and support agency representatives. The efforts made to improve complainants' experiences of the forensic medical examination have been reflected in markedly higher satisfaction levels of New Zealand rape complainants with this process than has been evident for their English counterparts (Jordan, 1996, 1998a; Gregory and Lees, 1999).

From the interviews conducted with the detectives, it appeared that one issue which still causes some dissension in New Zealand relates to whether or not all women reporting a rape should be immediately and routinely referred for examination, or after some initial sifting out of complaints that were perceived to be false. Some detectives insisted that arranging the medical examination had to be the first imperative, saying it needed to be organised:

Straightaway. Medical examination is the first thing and the most important thing. You can't really delay that. (PC 4).

Another said:

Because you take every victim, every complaint, at face value, you would go to a medical, you'd go to a medical examination fairly early or as early as you can. Normally, anyway, you would so I guess, yeah, I mean, I think medical examinations are always on course... As far as the medical examination obviously the earlier the better, it has to be done. (PC 5)

One detective, for example, maintained that it was too early in the proceedings for the police to have adequate information on which to refute the complainant's account,

and suggested that the medical examination itself could assist police in their decision-making:

D: Yeah, the thing is no, you've got to go ahead. You've got to. We tend to go ahead because the decision that it's false isn't actually made until a lot further down the track. I mean, you wouldn't just, you wouldn't want to make that decision that quickly.

J: Even if it looks dicey?

D: The medical examination will help you. That comes first, the medical examination and a medical examination can indicate that it is false. It doesn't always. But conversely, it can indicate that there's definitely trauma here, there's physical evidence there that suggest that. (PC 4)

Another was equally adamant that the medical examinations were too expensive to be conducted unnecessarily, and believed it was his duty to insist that there be some initial screening of complainants before these were arranged. He made this point in the context of discussing a recent complaint which he had quickly determined to be false:

The woman was intoxicated, she was actually quite objectionable as well, particularly to me, and I knew that, we were short staffed, we were going to have to do a scene examination and a whole lot of enquiries and tie everybody up for many hours and up I decided at that stage that I would confront her early on and when I think about it that is how I have always done it. It's the way you do it. And you have to do it in a way where they don't feel, you know, in case you are wrong, they are not going to feel put off by the police in your approach and as I say, I sort of have a sort of a sense in a way that I do it so I am not accusing or making anything up. You don't need to do any of that, you don't end up turning them into an offender, but you are interviewing them as

an offender for a false complaint. You do have to draw a line: look. police resources are really scarce at the moment and I think the thing of going right through the medical if there are clear signs that the thing is dodgy, I don't think its a good idea. Calling a doctor out, it's five to seven hundred dollars for a medical examination and the actual resource cost is really high. I think as long as it's said in the right way, if you can ease them into it and just explain, say: sometimes people react strangely or unusually, or maybe it happens in another way, and sometimes say, well there are a couple of things here that just aren't or seem a bit anomalous or whatever you are going to do... (PC 1)

Not all detectives, therefore, agreed that the medical examination should be undertaken in every case. Moreover, some detectives still expressed a preference for the statement to take priority over the medical examination, advocating:

Take the statement before the medical generally. It depends on your victim and how traumatised she is and that sort of thing, but I would generally take the statement first... Generally I prefer to do the statement first, that is my preference. I like to think that it gets it all out of the way initially and you can do it all in 24 to 48 hours. Sometimes I'll leave taking a statement until the next day, just so she can get a chance to get herself together and do the medical but you just have to weigh up if the physical examination is going to be worse for her than actually sitting down talking about what happened sometimes and generally I will assess it for the female. I would talk to her about it and see how she feels. (PC 2)

In many cases, however, it should be pointed out that this question becomes irrelevant because of delayed reporting. A forensic medical examination is of most utility if conducted within 72 hours of the incident, although is generally advised for up to seven days after wards (Fancourt et al, 1994). Many rape victims, however, report incidents outside this time-frame, with historic complaints being not uncommon occurrences. In the research reported in Chapter 3 of this thesis, for

instance, 40% of the complainants had reported the incident after more than seven days had passed (Jordan, 1998a).

No offence disclosed

Given my interest in the reasons underlying the police decision to proceed or not with a rape investigation, I was particularly interested to hear what these detectives had to say about when they would file a case as no offence disclosed (K3). Their responses indicated considerable confusion surrounding what should be filed in this category, and what it meant.

Several were emphatic that this category should apply only to fabricated incidents. PC 3 exemplified this perspective:

I'd have to really certain that it was a proper K3 situation and a no offence disclosed situation, that the complainant was lying, before I'd put a K3 on it. Because that's what it means. No offence disclosed yeah. And so if someone has come to you and says that an offence has happened and you're in a position at the end of the investigation to K3 it, then he/she must be lying because the two things are mutually exclusive of each other.

If you've got an offence that you can't clear because you can't identify the offender, that is not a K3. That offence still happened and it's an uncleared crime because you've got no offender stats because you don't know who he was. If you've got a situation where you decide that your victim is lying, that's when you've got a K3, a genuine K3, and it's the only situation that one should apply it to. It's not for files which you can't, which you decide for whatever reason that you can't take to trial. That's not a K3.

PC 12 basically agreed but suggested that the 'no offence disclosed' category may

also include cases where the complainant subsequently withdrew the complaint. He also implied that the major purpose of this category was to provide a way for the police to increase their clearance figures:

Somebody comes in and reports being sexually violated, we investigate it, and they either withdraw their statement for various reasons, or they get charged in relation to making a false statement or there is overwhelming evidence to support that it is not a valid complaint. Even though they don't get charged, we would K3 it, no offence disclosed. Its a stats thing; if a district had 50 unsolved sexual violations that wouldn't be very good, would it, so to get around it you K3 it - it clears the stats.

This view was confirmed by another detective, who observed in relation to the K3 category:

There's no clear guidance as to what you're actually supposed to put in it. I mean, statistics is not something that people get tied up in knots about as to what to put on there. 'Say, what's this one go under?' Unless you've got a very finicky boss and I would suspect that there isn't a great deal of thought goes into what one goes in there as long as there's a clearance of some sort. I wouldn't put any emphasis on it. I would have suspected that "no offence disclosed" grouped together a whole lot of things - false complaints, no offence, 'it happened - no evidence' and 'I don't know what happened'. That would have gone in there as well. (PC 11)

One detective also stressed that he felt this category was overused within the police, with potentially dangerous consequences further down the track:

Because what happens - I'm thinking defence now. What happens if I clear that no offence disclosed - where's a file - the file cover sheet says so and so victim. Alias offender so and so. Text: sexual violation. All right. And you come across to the statistics and it's cleared, 'sexual violation - no offence'.

Now if I was a switched on lawyer and five years down the track the offender gets locked up, I'd be asking for a copy of every page of that file and I'd be producing that statistic page to the court, to say the police have cleared this as no offence and now they're going to have a second bite of the cherry and put him out. (PC 10)

A related concern, raised in Chapter 5, is how the police may be influenced if complainants whose cases were cleared 'no offence disclosed' subsequently make a rape allegation against anyone else. From comments identified in the analysis of police files, any hint of a complainant having been involved with a previous suspected false complaint puts a question mark over any complaints she later makes. Given that many detectives clearly equate the 'no offence disclosed' category with false complaints, despite clear indicators that it is used in many other situations, this could clearly have detrimental consequences.

What is apparent is that the police often clear complaints as 'no offence disclosed' which were withdrawn by the complainant. As some detectives themselves noted, a victim's withdrawal or retraction of a complaint does not necessarily mean she was not the victim of a sexual offence. As one noted about rape complaints made to the police:

Certainly there's lots that come our way that just go nowhere, you know, where the victims withdraw. But then again, they may not be false, you know, don't get me wrong there. A lot of women – not a lot, but there a few that after making the initial complaint, you know, they will get hold of you a couple of days later and they don't want to go through with it and you can understand that. The trauma, the trauma of the rape, they've probably talked to other people that they know who have heard stories about women getting grillings in the trial, and it still bloody happens despite all this bullshit about protection from the law, about the grilling of the victims. Their sexuality still gets put on trial there and it pisses me off but that's the way it is. (PC 6)

This detective spoke also of the need to be cautious in trying to ascertain how legitimate some of these cases were, then noted:

Mind you, the danger in that is that genuine rape complainants often would be happy to walk away. Having had a taste of what's involved, I'm sure a lot of them would be quite happy to just pack their bag, walk off into the bloody sunset and never mention it again. (PC 6)

One point made by several of those interviewed was that the lack of consistency and the complexities involved in dealing with sexual assault victims raised training and supervision issues for the police.

Training and supervision issues

A supervisory issue identified by some detectives involved the need to assist staff in managing the impact of false complaints. While some said there was no problem in doing this, others expressed concern that experience with false allegations could leave some officers feeling 'burned' and cynical. One detective said he felt it was important to encourage staff to go and see someone, such as a counsellor, and debrief:

I think it's a staff issue. You should be looking after your staff and we are not always going to be able to see, especially those early signs when guys are under it. I mean, I have done it, and I have encouraged my staff, you know its no big deal, you don't have to be a big brave detective any longer, it's good to go and talk about these things... But that's what I think. I think they should all be getting debriefed once a year minimum and if they need it more they should be able to come to me and we just sign it off... (PC 12)

The issue was raised by some that not all detectives were suitable to interview rape complainants. This could be hard to identify, one said, given that no detective is

likely to admit to having difficulties in this area. The possibility of specialist units was dismissed by all those interviewed, however. Even though some felt such units would be desirable, the practicalities and resourcing issues involved meant these were not considered viable.

Instead, some argued for better training of those involved in interviewing victims. One senior detective, who has been involved in CIB training, lamented the paucity of good training given to detectives concerning the effects of rape trauma on victims and the various ways this may affect how they present. He felt it was particularly important for supervisors, at a minimum, to have this information so that they could monitor the processing of rape files by more junior detectives.

If we don't have understanding of the victims of crime or of human behaviour as crimes occur, then you don't have the ability to test whether the investigative practices are right or wrong. A cop comes along, does the investigation, queries it and says it's likely this woman has laid a false complaint. Now, you might get a supervisor that is none the wiser and says ok this is a false complaint, or you might get a supervisor who says, hang on a minute, listen to this victim, how was she treated? Her behaviour is brought about by the trauma and stress she was under at the time, not because she has laid a false complaint. She is behaving that way because she has no ability to do anything else but try to survive the crime; this is how she deals with it. So if you have an enlightened supervisor who thinks that way, when he gets this report that says it's a false crime for the wrong reasons, he can say na na na this is not a false crime, it's a true crime, carry on, and the reason why we carry on is because this victim is genuine. We have got too many supervisors, too many, that don't have the knowledge they should have, therefore they make the wrong decision. (PC 8)

Other issues were raised pertaining more generally to detectives' involvement in rape investigations which also indicated a need for greater training and staff supervision.

One potential danger highlighted drew attention to the emotionally intense relationship that can sometimes develop between detectives and rape complainants. In discussing this, one detective remarked:

It can be a terrible strain on us because sometimes they [rape complainants] get very attached to us, some get fixated... So you put little plans in process, plans that can hopefully deal with it if it gets too out of control. Like, you make sure you are never alone with the victim or you are always in a very public area once they reach a certain stage in the investigation. You have to become a little bit more distant because otherwise they can get the wrong vibes and, I mean, there are occasions where policemen have got involved in relationships [example given]. You do get very close, well some of us on some occasions do get very close to our victims and it's very hard not to but that's why we do so well. 'Cause we have such an interest in it and you are dealing with people and I would suggest that very few officers who just turn off can get the same sort of result...

It can be a real danger especially if the woman, or man, but generally woman, has come from an environment where for years and years they have been in a position where they have tried to please. So it can muddy the waters a little and is something I don't think we receive enough training on. And personally I think that that is why you have to have close supervision of your staff... Remember, you are dealing with detectives who are human. As well, some of them may be going through relationship trouble or they may be single or they may get such an empathy with the victim that they feel they are the only person who can resolve this person's trauma, so it's a two way street. And there's a real concern in there that we have to address. (PC 12)

It is easy to see the potential complexities in such scenarios, where typically young, vulnerable, female rape victims can become emotionally dependent on the contact and support provided by strong-looking, caring, male detectives. Training specifically aimed at fostering awareness of the dynamics involved would be advantageous, combined with wise staff deployment and careful supervision.

Conclusion

The interviews with the detectives were very useful in providing information from the perspective of those involved in every day decision-making concerning rape and sexual assault allegations. Their comments indicated that a diversity of views exist, even within this small group of detectives who were specially selected because of their expertise in this area. It was clear, for example, that some of those interviewed adhered to strong notions of what constituted 'real rape', while others emphasised growing concerns about the rapes perpetrated by some men against dates and acquaintances. Estimates regarding the proportion of false complaints also varied immensely, and some detectives expressed anxiety regarding how quickly some of their colleagues might conclude a rape complaint to be false. Further evidence of continuing adherence to negative stereotypes of women was apparent in comments made by some regarding possible motives for false complaints. Little serious thought appeared to have been given to this issue, lending support to the view that beliefs in the frequency of false complaints have been over-stated for so long now that few detectives seem prepared to question the basis for this particular tenet of police folklore.

It seems reasonable to extrapolate from the fact that some of the detectives interviewed held stereotypical attitudes about rape victims to suggest that such views are likely to be evident in other officers also. Moreover, this view was confirmed both in observations made by the detectives about staff they worked with, as well as in comments made on the police files examined in Chapters 4 and 5. Strong

suggestions were made by some that extensive, specialist training was currently lacking in New Zealand, and that there was an urgent need to equip detectives with greater understanding of the effects of trauma on rape victims.

It was clear from what the detectives said that, despite the existence of the New Zealand Police Sexual Assault Investigation Policy, little agreement exists nationwide concerning police practice and procedures. Much of what occurs at a local level appears to be shaped by individual officers and supervisors, suggesting that such persons may be key figures in achieving future consistent policy implementation.

Comments made by the detectives who had been involved with the Malcolm Rewa investigation indicated that they felt the police had learned a lot from their interactions with the women he attacked. In particular, they felt they gained much greater understanding of how to manage and support rape complainants through investigation and trial processes. In turn, they felt that these women benefitted from the police's increased awareness and their provision of dedicated personnel. The victims of a serial rapist are, in fact, likely to receive optimal police treatment because they conform so well to the 'real rape' scenario, and are essential tools for the police to apprehend the offender, in cases which attract high public and media attention. The next chapter presents the views of the women themselves as they reflect on their experiences with the police.

* * *

CHAPTER 7: POLICE RESPONSES TO WOMEN ATTACKED BY SERIAL RAPIST MALCOLM REWA

To a man, rape may possibly be considered a myth, or else an insidious lie, dreamt up to entrap him, or both of these; to a woman it is neither myth nor lie, it is a frightening reality. (Muriel Schulz, quoted in Mills, 1991, 207)

Introduction

In March 1996, I presented the results of my earlier research on rape to the DSAC Rape Conference in Wellington, New Zealand (Jordan, 1996). During a tea-break, I spoke with one of the leading detectives involved in both the Joseph Thompson and Malcolm Rewa investigations¹. Amongst other topics, we discussed issues relating to complainants' credibility and he referred to instances in both enquiries where the police had initially considered the victim's report of her rape to lack veracity: cases which later turned out to be attacks by one of these serial rapists. Given my previous research with rape complainants, the detective thought I might be interested in speaking with some of these victims. He noted, however, that Thompson's victims were generally much younger than Rewa's, often under 16, and how this factor, combined with cross-cultural and socio-economic issues (most were Pacific Island or Maori, living in lower socio-economic areas of South Auckland) might pose difficulties for me as a researcher. Rewa's victims, he said, were *a different kettle of fish altogether*. He described them as mostly older, professional, highly articulate women whom he thought would be ideal interviewees – the only difficulty was that the trial was still a long way off so they would not be free to speak until after that, even if they wanted to. We moved on to other subjects, the conference ended, and I suspected that that would be the end of the matter.

¹ For background notes on Thompson and Rewa, see Chapter 6, FN 5.

Two years later I was just heading out the door to deliver a lecture on, ironically enough, rape, when the phone rang. It was the detective. His message was brief and to the point – the trial's over, the women are moving on with their lives, and some are keen to see something positive come out of this experience. Would I like to meet with them?

The outcome was that, despite thinking my research agenda was already full, I decided this was too unique an opportunity to miss. He gave me one woman's phone number to contact, having already obtained her permission, and then said he'd *butt out and leave me to it*. I phoned Patricia² and she offered to invite women who were interested to a meeting at her place. I flew to Auckland and, somewhat nervously, found my way to her apartment. There were five of the women present at what I thought would be little more than an hour-long initial meeting – it took more than four hours. One outcome to emerge from this meeting was a willingness on the women's part to be interviewed by me on their experiences following the assault/rape. Somewhat more significantly, the women's interactions with each other that afternoon provided an opportunity for them to exchange thoughts and feelings, compare processes, and validate each other. As the afternoon progressed, my role and purpose faded to some extent, so that at times I almost felt surplus to requirements. This was, however, important, I believe, for my willingness to allow the women to talk with each other about what was important to them signalled more powerfully than any verbal promise on my part that it was **their** stories and accounts that were of central importance.

It was a moving and rich occasion, in which I was struck by both the strength and vulnerability of these women and all that they had been through. Sadness, anger, and humour were all evident, and a sense of the commonalities in these women's experiences and reactions as well as the differences. Several women expressed their wish that a book had been available that presented firsthand accounts from survivors

² All names used are pseudonyms either self-selected by the women, if they chose, or assigned with their consent.

of rape about its likely effects, possible impacts on friends and family, and the recovery process generally. They felt they would like the opportunity to have their experiences made into such a book, to help subsequent survivors and those close to them. I said I would be interested in working on such a project but could give no firm undertaking that such a book would be published until the opinion of publishers was sought. As well as material on the effects and recovery aspects, I said I would be interested in their views of police treatment and their contact with the criminal justice system, since this would provide useful, comparative material to complement my earlier research. I described ways in which I had been able to meet with the police following the study to present the complainant's perspective and contribute to the formulation of a police policy on sexual assault investigations. The women agreed to assist in furthering this venture by allowing me to interview them using an interview schedule adapted from the earlier study. The adaptations were made with their input, based both on a group discussion about issues to be covered as well as by subsequently sending draft outlines to the women for comment and feedback. Further adaptations were made in response to their suggestions.

Also discussed at the meeting were practical issues concerning, for example, whether and how to contact women not at the meeting, and where and when to hold the interviews. The woman who was hosting the meeting that afternoon offered her place as an interview venue and the others agreed it would be very suitable. This was for a variety of reasons, including the fact that for many there might be considerable inconvenience or compromise caused by my meeting them in their own homes, with partners and/or children present. Patricia's apartment, with its central location, comfort and spaciousness, also seemed to be a safe and attractive option compared with the prospects of meeting in a police station or university office. Moreover, most of the women had already been there for a post-trial lunch so it was familiar to them.

In terms of contacting other women, Patricia offered to send a brief report of the meeting to others whom she knew how to contact, since those who attended the post-

trial lunch had left contact details. These women were asked if they were interested in hearing more about the research and, if so, their permission was sought for me to be given their contact details. A policewoman who had been extensively involved in supporting the women through the trial attempted to contact women who had not been to the lunch, to see if they were interested in hearing about the research. This was to ensure that, if possible, every woman was given the opportunity to participate if she wished.

From these contacts I had 18 names to follow up. The remainder had, in most cases, left the country, apart from one woman who wanted no further contact about the case and another whom the policewoman decided not to contact because of her disturbed mental state. Most of the women spoken to initially agreed to participate, apart from three women who changed their decision between the time of the initial contact and the time of the proposed interview.

In most cases I was located geographically a considerable distance from the women and tried to schedule blocks of interviews during non-university teaching periods wherever possible. This arrangement seemed to suit most women but for some the delay in time coincided with a shift in their own stance. One woman, for instance, decided once the Burdett³ murder retrial was over that she wanted to leave it all behind and changed her mind about being interviewed the following month. Another woman made a time to be interviewed, did not show up, and when I rang raged down the phone at me. All I could do was validate that this had to be her choice, that there was no compulsion and that it was important that she decide what was best for her. While I felt that I managed to respond clearly and positively to her, I found her verbal abuse of me profoundly distressing and disturbing, as a journal entry from that day reflects:

³ The 1998 trial included also charges against Rewa relating to the rape and murder of Susan Burdett in 1992. Rewa was initially acquitted on both counts but at a retrial in December 1998 he was convicted of the rape of Susan Burdett, but not of her murder.

I feel so sad tonight, like the whole size of this project and all the pain Rewa has inflicted has just bowled me over. How can one man cause so much suffering, so much anguish? It's been really hard today and I've wondered if I should be doing this at all. When one woman screamed down the phone at me and said Rewa had taken over enough of her life and she didn't want to talk to me or have any more to do with it, I just felt shattered. I cried and felt guilty and felt like she was so angry with me, but then she can yell at me and make me disappear but she could never yell at Rewa and make him vanish, or yell at the police and get them to leave her alone. But that is how I make sense of it tonight.

Fifteen women were interviewed in total; this number included 14 of the 27 women whose cases were heard in the 1998 trial of Malcolm Rewa, plus a woman whom Rewa had been convicted of raping in 1975 who was called to appear as a witness in the later trial.

Interview process

Each of the women who agreed to being contacted about the study was phoned by me and discussions were held concerning content, confidentiality, process, and any other issues raised by the women. If the woman agreed to go ahead, then we arranged a time when I could meet with her to discuss it further and, with her consent, commence the interview process. This process was often complicated both by their family and work commitments as well as by my limited availability to travel to their cities of residence.

The women were offered the option of being interviewed at Patricia's apartment or at their own home or workplace. Nine of the Auckland women opted to use the apartment; one chose her place of employment since it was more convenient, and I visited the remainder, most of whom were outside Auckland, in their homes.

Wherever possible, interviews were conducted in private in order to facilitate as much as possible the woman's capacity for openness and honesty. Before the interview began, an information sheet was provided which outlined the research (Appendix E) and the woman was invited to read this through and to ask any questions it might generate. Once these were responded to, she was asked to carefully read and sign a consent form (Appendix F). This form included asking her to nominate whether, at the end of the research, she would prefer to either have the tapes of her interview returned to her or electronically wiped by myself. She was also given the option of nominating a pseudonym by which she would be called, an option chosen by six of the women. The remainder indicated that they were happy to be assigned a name by me for the purposes of the research. In addition, the women were told that they would not be asked questions about the actual rape/assault but were asked if they were agreeable to my obtaining relevant details from their police file. Access to their victim impact statements was also requested. All of the women gave their signed permission to this request and, once the interviews were complete, I negotiated with the police to make a separate trip to Auckland to access this material.

An interview schedule was used to guide the interview process, and this was divided into two main parts – the first (Appendix G) was modelled on the earlier rape study (Jordan, 1998a) and involved questions concerning police reporting, interviewing, and trial experiences, while the second part (Appendix H) concentrated on the effects of the attack on the woman and those around her, and her recovery and healing process.

It became evident, from the very first interview, that many of these women had reflected considerably on their experiences and had a lot which they wished to convey. In nine cases, the women opted to complete the second part of the schedule on a separate occasion. This made the data-gathering exercise more expensive and complicated for me logistically, but was definitely worthwhile in terms of the depth and quality of the information obtained. However, even those interviews which were conducted in one session became lengthy occasions and yielded rich material. The

shortest interview lasted two and a half-hours, the average was about four; and, in several cases where the woman was interviewed on two separate occasions, the total time spent on the interview was approximately eight hours.

I soon realised that it would be important to have a range of beverages and some food available for those of the lengthier sessions that occurred in Patricia's apartment. Wherever possible I tried to ensure that short breaks could be taken when needed by the women, but most seemed keen to continue talking. It also became clear that my schedule needed to be loosely adhered to – while some women welcomed a more structured approach, many preferred to talk in their own time about their experiences and opinions and the schedule was used as a checklist rather than as a questionnaire. I felt it was extremely important to be flexible in this regard, since what I most wanted to know was what concerns **the women** had, not simply get answers to those I thought they might have. Having the questionnaire prepared gave us a starting-point, and a clear structure for those who needed it, but otherwise my questions had to be developed spontaneously within the interview context, as responses to issues and observations made by the women themselves.

The interviews tended to be emotionally intense and, despite the subject matter, were also quite uplifting, for both interviewee and interviewer. In order to minimise potential stress for the women, I was careful not to ask questions about the sexual assaults themselves; however, in some cases the woman herself chose to disclose aspects of this in the course of the interview. I was also keenly aware of the importance of maintaining a clear definition of my role as a researcher/interviewer so as not to be perceived by the women as a counsellor, nor to take on that role myself. At the close of each interview, I checked out with the woman how she was feeling, whether she had someone she could ring if it later became apparent that the interview had stirred up issues for her, and ensured I had contact numbers available to pass on if required. As it turned out, all of the women had their own supports - partners, friends, or counsellors - in place. One woman, for instance, had felt shaky before the interview and rescheduled it to allow time for her to meet with her counsellor first.

Another arrived in a slightly distressed state, insisted that she wanted to go ahead, then sobbed on and off throughout the interview. After the interview we spent some time discussing the possible need for her to return to counselling and I ensured that she was able to check that her partner had arrived home before she left. Many of the women commented afterwards that they experienced the interview positively and it helped them both in terms of gaining a sense of closure as well as appreciating the extent of the progress and recovery they had made.

After the interviews, each woman was sent a thank you note and a copy of the consent form. In June 2000 I also sent out a 'bulletin' to all the women interviewed to give them an update concerning where I was up to in terms of the research and as regards trying to find a publisher for their survival stories.

The taped interviews were all transcribed to facilitate analysis. A separate file was created for each of the women containing my interview notes, the transcript, and notes from her police file. This material I then analysed by identifying themes and issues in the women's accounts and experiences.

The remainder of this chapter presents an overview of the women's feelings concerning the ways in which the police responded to their victimisation.

Profile of the women

Malcolm Rewa stood trial in 1998 for a total of 45 counts (as identified in Table 7.2), involving 27 women whom he had attacked between 1987 and 1996. All but two of these attacks had occurred within suburbs of Auckland city, and involved women ranging in age from 15 to 43 years of age.

Table 7.1 shows the ages of the total number of women whose cases went to trial, compared with the ages of the women who were interviewed for this research.

Table 7.1: Ages of the Women at Time of Attack

Ages of the Women	Number in Each Age Group	Ages of the Women Interviewed
15 and under 20 years	5	1
20-29 years	7	4
30-39 years	10	5
40-45 years	5	4
Total	27	14*

*Number excludes the woman attacked in 1975 for whom Rewa had already been convicted.

Table 7.1 shows that although women in each age group were interviewed, proportionately more of Rewa's older victims were included in the interview sample than those aged under 20. This is probably a result of the fact that the younger women had fewer attachments or dependants and were more transient, and therefore harder to locate following the trial. Police said some women had in fact moved overseas, and one young woman returned to her homeland. Twelve of those interviewed identified themselves as New Zealand European, and two as Maori or part-Maori. Two of the women were full-time mothers; three were full or part-time students, and the remainder were employed, many in professional or managerial positions.

In terms of when the incident occurred, seven of the women interviewed were attacked between 1989 and 1992 and seven were attacked between 1993 and 1996. Rewa stood trial on 20 different counts relating to these 14 women – 10 of Sexual Violation by Rape (in addition to which, he was charged with raping three of the women twice and one three times); two of Attempted Sexual Violation by Rape; two

of Assault with Intent to Commit Sexual Violation; and one of Abduction. Table 7.2 lists these in comparison with the total counts for which Rewa was indicted.

Table 7.2: Counts of Indictment Against Rewa

Offence	Number of Counts in Total	Counts Involving the Women Interviewed
Sexual violation by rape	32	15
Attempted sexual violation by rape	2	2
Assault with intent to commit sexual violation	5	2
Aggravated wounding	3	0
Abduction	2	1
Murder	1	0
Total	45	20

Police responses to women victims of a serial attacker

When I first discussed with police personnel the prospect of interviewing some of the Rewa victims, I was impressed by the police's description of the ways in which they sought to support these women, especially through the trial process. Rewa was not the talkative, co-operative offender that Joseph Thompson had been⁴ and it was clear that a difficult court case lay ahead. The police assigned several dedicated complainant officers whose prime responsibility was to liaise with and support the women in the lead-up to the trial and during its process. Considerable effort was spent in preparing the women for their appearance in court. This included such measures as arranging an individual meeting for each woman with the prosecution team and taking care to 'match' the women with whichever one of the three Crown

⁴ A detective who interviewed both rapists commented that Thompson began confessing as soon as he was arrested, even to rapes that the police did not know about, whereas Rewa remained mute and hostile.

Prosecutors it was felt she would have the greater rapport. A room was set aside for the women at court to provide them with private space, and steps taken to try to familiarise them with court layout and procedures.

The additional care being taken began earlier in the process for some of the women. Once it was established that a serial rapist appeared to be involved, measures were adopted to maximise the opportunity for the collection of evidence and to provide good support for the victims from the point of their initial contact with the police. Part of this process involved the police being open to hearing what the women needed and being responsive to their concerns. One detective commented afterwards that he and his colleagues were on a 'learning curve' throughout this process as they struggled to provide the women with optimal levels of support. He commented also that:

The kind of treatment these women got was the kind every woman who's been raped should get.

This remark prompted me to consider whether or not it might be useful to ask these women to describe police processes from their perspective. If these were the women whom the police had tried their hardest to 'get it right' with, what was the outcome? What worked, from the women's point of view, and were there any gaps or omissions which still needed attention? These women largely fitted the stereotype of the 'perfect' victim in that the majority were attacked in their homes, whilst sleeping, by an unknown assailant who forced entry to their house.⁵ Added to this was their status as victims of a serial attacker, which provided the police with an additional impetus to achieve excellent service delivery. What, then, could be learned from the study of these modified police processes? In other words, did the 'perfect' victims feel they had received 'perfect' policing? If so, how could this inform future police

⁵ Only one of the women I interviewed was attacked away from her home, when Rewa abducted her as she returned to her car late at night.

planning and service delivery to victims of rape and sexual assault. If not, what would, from a victim's perspective, have made it 'perfect'?

THE WOMEN'S PERSPECTIVES OF THE POLICE RESPONSE

Overall, the women rated the police highly: their views were divided equally between those who stated they were 'very satisfied' and those who said they were 'satisfied' with the police response.⁶ Their overall assessment, however, was in nine cases somewhat better than how they rated the police in relation to their initial experiences of reporting and statement taking. While only one woman declared herself 'dissatisfied', eight others said they felt that the treatment they received from the police improved over time. As the police themselves indicated, the measures they implemented leading up to and during the trial were favourably received and appear generally to have increased the satisfaction ratings they received. Analysis of the women's experiences of the specific measures and procedures adopted is, therefore, instructive in providing feedback for police personnel in the planning and implementation of victims' policies, particularly with regard to sexual assault victims. What is also significant, however, is that the experiences of the women were not uniform. The obvious dimension on which this is apparent relates to women who were attacked earlier in Rewa's 'career': they tended to be treated more routinely than his later victims. In addition, the same policy or procedural guideline is not necessarily implemented in a uniform manner, nor does it impact identically on different victims, or on victims at different stages of the recovery process. These dimensions add a complexity and richness to the analysis of the interview material which follows.

The transcripts of the interviews were read and appraised to elicit the women's responses and identify key themes arising from their experiences of police

procedures. These themes are presented below, illustrated with quotes and examples provided by the women.

Positive aspects of the women's treatment

I. General police attitude

Belief

The majority of the women whom I interviewed confirmed that, as one might expect from the features associated with these attacks, the police never appeared to doubt or disbelieve the woman's account of what happened. Jennifer's response was typical:

I was reasonably happy with the way I was treated, with respect, there was never any doubt that what I was reporting wasn't true or anything. I never felt threatened or anything.

As noted in previous chapters, police belief in a victim's credibility has frequently been related to such variables as the perpetrator being a stranger; lack of victim provocation (for example, the victim being asleep at the time of the attack); victim resistance and the extent of visible physical injuries sustained; and victim credibility as assessed by factors such as occupation and socio-economic status (Harris and Grace, 1999; Lees and Gregory, 1993; Stace, 1983). From a police perspective, most of Rewa's victims scored positively on all these traits. Even one woman, Karen, who had known Rewa previously, through a mutual friend, felt that this did not intrude on the police's response to her:

⁶ Figures presented here refer primarily to the 14 women interviewed whose cases were tried for the first time in the 1998 court case and exclude the experiences of the woman attacked in 1975 unless otherwise stated.

There was never any doubt, to me it appeared there was never any doubt in anyone's mind that I'd been raped by someone who'd broken into the house, it was cut and dry which was good from my point of view...

I don't know whether it is the circumstances of mine that made it obvious that there was nothing to disbelieve, the fact that I went to a policeman's house afterwards probably helped. I never at any stage felt that there was any doubt about what had happened, I never at any stage felt that the fact that I knew Malcolm Rewa influenced the way that the police dealt with me, as far as integrity goes, I only have the highest praise for them really. I don't think that's necessarily true for everybody. I think I'm aware of those feminist issues, I was aware of those things.

There were, however, some exceptions to this overall trend, which are examined later in this chapter when outlining negative aspects of the women's treatment.

Support

Many of the women commented on the importance for them of feeling supported by the police, and of feeling that the police were on their side. Such support could be evidenced in practical ways at times: for example, by the police providing the women with lifts to and from the police station or court; and in one case by their lending Isabel, who was a student, a mobile phone so that she could continue her studies and be called when she was required at court, rather than spend time waiting down at the courtroom. Isabel commented that, given the high emotional costs involved in testifying, such a facility was 'one of the perks':

The side effect of this was that I used the mobile phone quite a lot to have lengthy conversations with my cousin and I might have rung up my husband and my mother as well. So, I was a bit naughty really, I was talking on the

phone so much they might not have been able to get through! Some of the other students have mobile phones, why shouldn't I? Walking around on campus talking to a hidden friend, it's really good! (laughs)

Practical gestures such as this were appreciated by the women and helped them to feel as if they mattered and their evidence was important. Feeling **emotionally** supported by the police was also mentioned by some of the women. One way in which the women said this was evident lay simply in police reliability – that the police returned phone calls promptly, and did what they said they would do. Ann related how she felt about this:

I think the police did really well. They were always on call if you wanted to find out what's happening and you'd ring up and you'd either get Chook⁷ or one of the other guys, and they'd say oh, Ann, no, she's off doing something but I'll get her to call you as soon as she gets back and they'd always do that, you know, when they're wrapped up in such a big case like that... I think they treated us well.

Ann felt that it may have been easy for individual complainants to become lost in a court case as large as this one; on the other hand, the very fact that this was such a big, high-profile case may have prompted the police to be especially attentive to the needs of their principal witnesses.

Being validated by the police was specifically mentioned as important by several of the women. Shelley, for example, recounted how when she phoned the police she was afraid that Rewa was still hiding somewhere in the house. She feared that he was waiting for her in the wardrobe and wondered how the young, male attending officer would respond when she asked him to go and check for her. Shelley said she

⁷ Detective Sergeant Dave Henwood, commonly known as Chook, a senior member of both the Malcolm Rewa and Joseph Thompson investigation teams.

was very appreciative of the fact that he appeared sensitive to her feelings and went to check without looking at her as if she was crazy:

I believe that he thought I was being totally appropriate in asking him to do that and he did it without any raising of eyebrows or anything.

Other women mentioned the importance of gestures from the police, such as having their presence acknowledged whenever they walked into the court. Patricia observed of the lead investigator:

Every single time you walked in, whoever walked in, he stood up in there and he greeted them. Yeah, that was part of it, it was all good stuff, the treatment that we got, it was all really good.

Patricia went on to speculate regarding the police:

What were they trying to achieve by treating all of the victims so well? Positiveness (sic) and confidence, wasn't it, so they could get up on the stand and be confident and trust in who they are, and that's what happened.

And that is what needs to happen from the minute of the attack... It happens from day one, it doesn't happen from when they realise that they are trying to hang this dork at the other end... Afterwards it needs to happen to get that trust, that positiveness in every little thing, and you do that by getting it right with the little things and all of a sudden you've got it in the big things as well.

For Karen, it was important to have the police acknowledge the feelings she had towards Rewa and help her put these in perspective. She spoke appreciatively of the way in which she felt supported when she went to court to see Rewa take the stand:

I got there, it must have been just before a break. The courtroom had sort of a barrier, so I'd walked in the door and down the side I could just kind of see him[Rewa] from the side and I felt really aggravated, really nervous about it. It was like I'm going to see him, I can't believe it, I didn't know what it was going to be like. There were a lot of police there, hanging off his every word. Since it was very early in the piece he was probably telling the sad story about how his mother had died when he was a child and getting quite upset and all the rest. It must have been just before the morning tea break I think, anyway, then the judge said it's morning tea time. I'd sat down and I went to get up and I can remember standing quite close to him but I wasn't in his line of vision and I just wanted to kill him, I felt so overcome with emotion and being so close to him, I just wanted to kill him, I just wanted to scream, I really wanted to just abuse the hell out of him.

As I was standing there, feeling all this anger come up and threatening to overtake me, Steve Rutherford⁸ appeared, grabbed me, walked me out and said to me 'It's not worth it', he said, 'if you yell out, it would be you that gets removed from the courtroom, not him. The bastard's not worth it.' It was like, it kind of dissipated, it was like, thank you Steve. So, then I went out and had a cuppa tea.

They're all so matey, the police. It's a real boys' thing. They're all joking and carrying on - we had Steve Rutherford making us cups of tea, he's probably never made a cup of tea for a woman in his life, I'd say! They looked after us, I didn't feel like I was up there by myself or that I shouldn't have been there or that I was in the way or anything like that. I felt that if I wanted to be there, they were happy for me to be there sort of thing.

⁸ Detective Inspector Steve Rutherford, who headed the Rewa investigation.

Other women also echoed Karen's sentiments, expressing their amazement at times that they received such supportive treatment from some of the big, burly, 'bear-like' (as one woman said) male officers involved in the investigation.

Place of interview

Several women also referred to their appreciation of the police being sensitive regarding the most appropriate place to conduct interviews with them. Not all the women had identical feelings regarding this, placing the responsibility on the police to determine the most appropriate venue, in consultation with the individual woman concerned. For some, it was important that the police travel to them and interview them in their home, while others preferred the option of discussing details of the incident in, what was for them, the more anonymous setting of a police station. Gabriel, for instance, noted that:

I especially appreciated the personal visits in my own home. I felt good about the detective coming to see me and me not having to go to the police station, you know, that it was done in my own home. That the time was arranged before hand, when she would come over. I felt really comfortable about that.

Jennifer felt that, from an evidential point of view, it was useful to make her statement to the police at the crime scene, although acknowledged that this could be hard:

J: I think it's a lot more vivid for you when you're standing in the house, you remember more things than sitting in a police room or an office or something and just trying to remember it all the way through.

JJ⁹: So how was it for you to go back and do that?

⁹ My questions are included where I consider these a useful preface to the women's responses.

J: People have a real expectation of how some people... I suppose to a certain degree, you're probably still a bit shocked, still in a bit of shell shock, it was okay, it didn't worry me. To me it didn't feel any worse than sitting in her office and telling her, but I could certainly see that for some people that might be quite different.

Sensitivity to children's vulnerabilities emerged as a potential source of concern, with some of the women who were mothers expressing their appreciation when the police were careful in the comments made and questions asked while children were present.

Being seen as a person by the police

The earlier rape research I conducted had identified the vital importance attached by complainants to feeling that they were viewed by the police as persons, not case numbers (Jordan, 1998a). This sentiment was reiterated by the women interviewed in relation to Rewa's attacks, and may have been heightened in significance for some because they shared a common offender and feared they could be reduced to a number. Helen acknowledged this when she praised the police team involved with the investigation and the efforts they went to:

H: I felt sorry for the police in terms of they were so understaffed, they were bloody tired, they were. They were good, they were really good, I couldn't fault them for the amount of staffing they had and the amount of time they put in. You weren't just a witness, you were actually a person to them, which was nice, so they were good, I can't fault them.

JJ: That's really good.

H: Yeah, it is good, I was pleasantly surprised really!

JJ: Had you thought that you might be just a witness?

H: Yeah. Number 202, or whatever I am (laughter).

Helen noted also how, in the lead-up to the trial, it was important for the prosecutors also to see the women as individuals. Following meetings arranged by the police for the women to meet the prosecution team, she related:

... even the crown prosecutor said, 'From seeing you people', which the police initiated, 'from seeing you, we've realised that we're actually dealing with real people here', rather than we've got a mass of 27 bloody women we've got to try to get through court, y'know, sort of thing.

Continuity

An aspect often mentioned by victims concerning their interactions with police relates to officer continuity being viewed as desirable (Gilmore and Pittman, 1993; Gregory and Lees, 1999; Jordan, 1998a). Complainants whose case is passed on to other investigators without explanation report feeling aggrieved – unless, of course, they feel better served by the officer to whom they were reassigned! Generally, however, victims express a desire for continuity and the opportunity to establish an on-going relationship of trust with individual police. This issue was recognised and specifically addressed by detectives involved with the Rewa investigation. While some of Rewa's earlier victims did experience a lack of continuity in their dealings with police, efforts were made to correct this with the later victims. Some were assigned one primary officer to deal with from the time of reporting, and in the long (almost two-year) lead-up to the trial, all the women were dealt with by dedicated complainant officers, as outlined below.

II. Specific measures introduced as part of the Rewa investigation and trial

At least one of the women victims involved in the Rewa case challenged the police regarding what she perceived as their tardy communication at times. Trial dates were being set and deferred and changes were occurring which were not always being communicated to the women, and she pointed this out to the investigation team. She said she felt gratified by their response, which indicated a willingness to try to see the situation from the victim's perspectives.

Specific measures were introduced by the investigation team aimed at ensuring high levels of victim support and preparation for court. These included the police providing the women with the following:

- Dedicated complainant officers;
- Bulletin letters and updates;
- Pre-trial meetings with the prosecution team.

Each of these measures is addressed below.

Dedicated complainant officers

Dedicated complainant officers comprised, at any one time¹⁰, two women detectives whose prime responsibility was to liaise with and support the women. These detectives were assigned full-time to the investigation team, and given primary responsibility for maintaining regular contact with the complainants, supporting them practically and emotionally, and being an information channel between the victims and the rest of the police and prosecution team.

¹⁰ One of the first women detectives assigned as a dedicated complainant officer left the police and was replaced during the trial preparation period.

In Jennifer's case, which was one of Rewa's last attacks before his arrest, she was introduced to one of the dedicated officers, Sandy, the day following the incident.

And at that stage, she made it very clear that that was the plan was that she would be the only person, as such, that I dealt with in any going back and forward, that it would all come through her generally.

She commented that, whereas:

... at the time you just go along with the flow... Looking back now, I'm pleased that it was only ever one person, except that Sandy left.

All of the women, however, said that although initially they may have been dealt with by numerous officers, often manifesting a range of abilities and temperaments, it was useful to have greater continuity as the trial date approached. For many, these women detectives played a vital role, and in some cases were chosen by the women to be their support person when they gave evidence in court.

Letters and updates

In response to concerns expressed earlier in the trial lead-up period by some of the women, the police began to issue occasional, bulletin-type letters. These were posted to all the women in an attempt to keep them informed of developments, explain delays in trial dates, and provide revised time frames and other information. Many of the women commented favourably concerning this practice, and felt that these letters were useful for the information they contained as well as in signifying recognition of the importance of the women to the case overall.

S: The letters were very good at staying in contact with you. There was one not long after... once you've been through all that stage of identifying things,

there was a letter that came and said this is what we think is going to happen blah, blah, blah... Leading up to the trial, before they actually got in contact with you, there were another two letters. I think, it was good, it told you what was happening and when they expected it to happen etc, etc, and always a 'please feel free to contact us', with their numbers, if you need anything.

JJ: So would you say from that, that you feel like you were kept informed of the progress of events by the police?

S: Yeah, yeah, I would, it was pretty good.

JJ: That sounds...

S: quite professional really, isn't it! (laughter) That's not like a government department at all really!

Pre-trial meetings

Criticism has often been expressed by victims involved in court cases of how, in their capacity as witnesses, they typically meet the prosecutor on the day of the trial, and usually in a very rushed manner (McDonald, 1997; Young, 1983).

The size and complexity of the Rewa investigation, coupled with the expectations and demands often voiced by the women themselves, prompted the police to invest greater energy in pre-trial preparation. Several months before the eventual court case, arrangements were made for each woman to meet, on her own, the major police and prosecution team. This meeting enabled her to meet the three different prosecutors involved and establish who she would be most comfortable with in court, as well as providing an opportunity to have any questions she might have about the forthcoming trial answered by some of the key players. One of the police dedicated

women detectives accompanied the women for this meeting, and the visit was combined with, where possible, a tour of the courtroom; alternatively, the courtroom visit occurred nearer to the trial date for some women, depending on courtroom availability.

Many of the women welcomed this commitment of time and energy by the police and prosecution team. As well as enabling practical issues to be resolved, the gesture was interpreted by some as signifying recognition of the victims' centrality in the forthcoming trial. Gabriel, for example, said she appreciated the opportunity for pre-trial dialogue with the prosecutors:

thing, so that was actually useful, rather than walking into a room I'd never been in before and that sort of thing.

Whilst valued as a procedure overall, some aspects associated with these meetings were criticised in terms of process, a point elaborated on further in the next section.

After trial function

The constraints of law made it impossible for the women to have much contact with each other, at least until after they had testified in court. Some of those who attended other court sessions, such as Rewa's evidence on the stand or the judge's summing-up, began to chat with each other, and on the night of the jury verdict several of the women sat with and supported each other. What many felt, however, was that the other women were their present but unseen companions. Once the trial was over, and Rewa had been sentenced, a luncheon was organised at Patricia's apartment for all those who had been closely involved in the trial. As well as any of the women who wanted to attend, invitations were extended to the police and prosecution team, along with their spouses and partners. This occasion provided the opportunity for a collective debrief, as well as being an occasion to celebrate and congratulate each other for surviving the court ordeal. Not all of the women were able to, or necessarily wanted to, attend this function, with about 15 of the total being present. Those who did go spoke favourably of the occasion and the contribution it made to their own sense of closure to all that preceded it. Shelley, for example, in acknowledging the role played by the police in her post-rape recovery process, spoke of the importance of this occasion:

No, the police certainly had a role to play in that and they were very... like certainly, when I was in court, they were very positive and said I did a really good job, all that jazz. It was really good to see at the end, at this after match function, that they were all here. That was really important to me, to see

them, you know, with their wives and they were all there. It was a kind of nice round off really.

Negative aspects of the women's treatment

While the women I interviewed all rated the police positively overall, nevertheless most rated at least one or more aspects of their treatment negatively. Identification of the negative features experienced provides the opportunity to develop a more textured picture of police-complainant interactions and the factors important in shaping these dynamics.

Not being believed

Whilst the majority of the women I interviewed were relieved that the police appeared to have no difficulty believing that they were legitimate victims, not all of Rewa's victims were responded to in this way. Kathleen, for instance, related how she felt judged and disbelieved by the police detectives who interviewed her shortly after she was raped.

K: Well, about three days after it happened I was up at the station and they [detectives] turned around and said, 'Come on, Kathleen, we know you were making all this up, we know you were having an affair and you were having sex that morning and it got a bit rough and you just made all this up, just so your husband doesn't find out...' My God! What I said to them I probably can't repeat, but I told them what to do with themselves. So I walked home with them literally following me in the police car saying 'we're sorry, we're sorry, blah blah blah', and when I got home they would be hanging off the phone saying, 'We know that's not what happened' and 'We just had to see

what your reaction was and if you hadn't reacted like that then we would have been a bit suspicious...'

JJ: So how did you feel?

K: Oh, I felt like punching them! I really felt like: My God! You know...

JJ: So that just came completely out of the blue for you, so until then you felt like...

K: Yep I've giving them all the information, they are getting on with it, they are keen, they are on to it and then this sort of drops out of the sky! In my wildest imagination I couldn't have come up with anything stupider... I felt so insecure, they don't believe me, my God. I said to them, 'Look', I said, 'that's it. I've had enough of you guys. If you won't help me, I'll catch him and then you'll be arresting me' sort of thing. I was so annoyed, I was so absolutely frustrated, but that was only like for that day...

Kathleen was the victim of one of the earlier rapes for which Rewa stood trial in 1998, and it was evident from talking with her that she and her partner (later her husband) were initially viewed as having questionable credibility by the police. She believes this arose principally from negative police perceptions of her partner's involvement in drugs and the music scene. The police thought that, at minimum, her partner knew the identity of the man who raped her and suggested that he had been directly implicated in her attack. Not surprisingly, such insinuations impacted harshly on the pair's relationship, with Kathleen admitting that it took a long time before she was convinced that her partner had, in fact, had nothing to do with the attack. In her case, DNA evidence was obtained and linked to Rewa when he was finally arrested in 1996.

Similar issues associated with belief and credibility were evident in the case of another of Rewa's victims. Several of the police detectives involved in the investigation themselves told me about the police response to a woman raped by Rewa in 1987¹¹. She was a young Maori woman, with gang affiliations to Highway 61 (the gang to which Rewa was affiliated), and with some previous criminal convictions herself. She actually named Rewa as the rapist but he had arranged an alibi to try to cover himself. Police at the time viewed his version of events as having greater credibility than hers and the case was not proceeded with.¹² Despite having a named offender in 1987, a further known 26 women were raped or sexually assaulted by Rewa before this woman's case was eventually heard in the 1998 trial, at which Malcolm Rewa was finally convicted of the crimes committed against her (Fleming, 1998).

Attitude of police

How the women felt the police perceived them and behaved towards them was of vital significance. Some of the women commented that they did not always feel that the police they dealt with were comfortable interviewing rape victims. At times they felt that police discomfort and embarrassment prevented officers from being able to ask the right questions, particularly in the case of a few, but not all, male officers. As Karen commented:

He knew that there were ways to treat rape victims and things to ask and things not to ask and he was aware of that, but perhaps he didn't have it quite integrated into his interviewing skills.

¹¹ Although I spoke with this woman several times by phone, during which she shared details of her experience, she decided not to be formally interviewed because of her current life circumstances and desire to move on emotionally after the trial.

Others spoke also of feeling like they were being treated a certain way:

... because on the police investigator's manual, on page 16, it said...

Several women also expressed concern that at times they felt the police viewed them judgementally. For example, Kathleen was asked what she had worn to bed the night Rewa raped her. She told the police she had worn a camisole top and underwear to bed and recalled:

I remember one of them saying to me, oh, is that all you wore to bed? That sort of male attitude - maybe if you had worn a winceyette nightie it might not have happened.

Interview environment

The environment in which police interviews are conducted can often be extremely important for victims. Several of the women interviewed said they were, in fact, appalled at how terrible the conditions were – as Shelley commented:

It was absolutely disgusting. The chairs were falling apart... We had to use our mobile phones. The window was broken, the air conditioning was half hanging off the wall, I mean it was a third world, something you imagine you'd see in Istanbul or South Africa. And that actually had a huge impact on my mental alertness I think.

Some complained that, when they were taken to the police station to give their statement, they were interviewed in the same dingy, cell-type rooms that police use for interviewing criminal offenders. Such rooms were often originally designed to be intimidatory and produce feelings of sensory deprivation and isolation (Kassin and

¹² The issues of complainant credibility evident here are strongly reminiscent of the factors identified

Fong, 1999), clearly rendering them of debatable merit as a comfortable environment in which to conduct the sensitive interviewing of victims of trauma.

Gabriel pointed out how she felt affected by the implicit messages of power and control conveyed in the interview setting, observing:

I don't think they [interviews] should be done behind a desk. Do you know what I mean? It's like going into an office and someone going. 'Okay, well tell us about your rape thing'. It's like the power is in that person's hands. You know, because they've got their desk and their pen and their box of tissues and you're sitting there, in this chair that you've never sat in before, in a room that you don't know, and I just, I don't know, I tend to feel that there should be some kind of space that is comfortable for complainants. And there isn't.

Karen also noted the inadequacies of the interview environment:

I think in an ideal world, it would be really good to have the interview take place, to have the medical and interview take place at some place that is a bit more comfortable. That would be the ideal scenario, rather than being taken to Central, which isn't a very attractive, user friendly place - and it's full of policemen!

Other women spoke of the lack of privacy and safety they felt whilst at the police station. Interview rooms often seemed to be semi-public areas, with interruptions being frequent. Suzanne felt particularly aggrieved by the lack of respect and understanding she experienced in this regard from the women detective who interviewed her:

S: She took me up into this room that had about a dozen desks that the police work in, and sat me in one of these and started doing my statement. She took

earlier in this thesis as being linked to police perceptions and judgements concerning victim veracity.

three personal phone calls and continued to talk, I couldn't believe it. I told Chook because I just couldn't believe that she did this, took **three personal phone calls** while I was doing the statement with her. She continued to chat on, one of them she talked to for about 15 minutes while I was sitting waiting, about what she'd been doing the previous day and some friends that they'd met, and she just continued and I was just sitting there thinking, I just don't believe this! If I had been in my normal state of mind, and not been through what I'd just been through, I would have said. 'Excuse me, what the hell do you think you're doing?' I just couldn't believe that she was doing it, especially for a female to do it. (Emphasis in original)

JJ: Did it feel somehow worse in a way that it was another woman who was being so insensitive to what you'd just gone through?

S: Yeah it did, she should have known how I felt and she obviously didn't care.

Helen recalled her discomfort at interruptions that occurred when she was being interviewed by one of the dedicated complainant officers:

There was one point, these police guys kept bursting in to the room. She [detective] didn't have her own room to do the interviews in, and she was sharing with some policemen. I just felt really stared at by them, so that wasn't nice. I could tell that Sandy was pretty angry about them, she'd say, 'Excuse me boys, but I'm conducting an interview here, do you think you could leave?', and they were like. 'Got this work to do'. They knew what I was there for, so that was not good. I felt very degraded by that, I guess. So that wasn't good...

Helen also mentioned the vulnerability she felt when going to get herself a drink at the police station:

I went to make myself a cuppa tea or something because... and the only place to make a cuppa tea was in the officers' mess, so there's a lot of people again around there. It would have been nice to have a little room that had a sofa in it, and a coffee cup, something so that you've got a bit of privacy. Because again, you've got this room full of men, big bulky men, and you're feeling pretty vulnerable at the time, and I think in terms of... they weren't offensive of anything, it was just you're feeling vulnerable, you think everyone's looking at you, you've just been attacked, raped, you know, you feel yuck, and that just makes it worse really. You want to hide, so why not let someone, just at that time, just give them the comfort they need.

Other women also expressed discomfort at the way in which they were scrutinised by other officers, feeling surveyed as Rewa's latest victim, and spoke of how degraded they often felt simply walking through the station or in the police canteen. In Marie's case, she felt acutely embarrassed walking through a busy police station:

I had to go into Auckland Central for photographs... They didn't have photographers who came to me, I had to go there. I had to go up several floors to the police photographer. That was terrible, it was awful. Walking in through the door, everybody looked. I did look pretty awful. That was really humiliating having to do that. Because I had marks around my neck where he (Rewa) tried to strangle me.

Similarly, Connie recalled how vulnerable she felt being taken into the police station dressed in her night attire:

C: They took me down to the police station in my nightie, that's exactly how I was dressed, in my nightie. I was dying to go to the toilet. I was dying to have

a wash, but I wasn't allowed. They [police] said, 'No, you can't. Look, please, if there's semen evidence that we can get...' They took me down to the police station. I can't remember how long I was there, it seemed to be ages. I was not in any particular private area, because it must have been the start to the change of a shift, because people seemed to be coming and going and sort of staring at me.

JJ: How did that feel?

C: Lonely, just lonely.

Victim seen as number/case

As has been noted, the Rewa investigation and subsequent trial was one of the biggest rape inquiries ever held in New Zealand. Mostly the women said they felt the police managed it well in terms of treating each woman as an individual, but there were occasional slip-ups. Whilst possibly inevitable in a case of this magnitude, nevertheless such errors impacted harshly on the women involved.

A good example of this occurred when Karen rang and gave her name to the detective who answered the phone. He replied,

'Oh, you're number 61, aren't you?' That was my house number. I said, 'yeah, lovely'. It was a small thing but it was like, 'Oh yes, thank you very much!'

Other women commented how remarks made, at times, by professionals involved in the case conveyed a sense of there being a stereotypical 'rape victim' whom they were being assessed and compared against. Thus Helen said:

H: It was even brought home to me, the perceptions are, even amongst these people, that women who get raped are not very intelligent, come from lower class backgrounds, are asking for it, are either prostitutes or dah, dah, dah... and that's what they're saying, which is not good in a way, but that's the perception, I guess, out there. So they were saying, actually there's a lot of intelligent women coming through here.

JJ: So they sounded a bit surprised in a way when they said that?

H: Absolutely. But that's a social perception, you know that it's there. It's not just a belief, it's a truth, as far as I can see.

Police minimised attack and effects

Once the attacker was suspected or confirmed to be Malcolm Rewa, the women usually felt that they were well looked after and responded to by the police. However, some said such concern was not so evident while the attacker's identity was still being established. In Frances's case, she was attacked while she was out running early one morning. She managed to avoid being raped, and felt that the police initially trivialised the incident. Frances felt they dismissed the attack as being no big deal, when it clearly was for her and left her feeling shocked and highly vulnerable. She was, however, determined not to be put off running and began instead to run with others. Less than a fortnight later she was running in the same area with her companions when they came across a woman who had just been attacked. Frances told the police that it sounded like the same offender, and, after further police investigation, Rewa was charged with both these attacks.¹³

¹³ Whilst the police were confident that Rewa was the offender in both these incidents, the jury acquitted him on all counts derived from these two attacks. The jury's decision appear to have been related to an absence of corroborative evidence that Rewa had intended raping these women when he attacked them (he was charged with Assault with Intent to Commit Rape).

One of the most potentially fraught issues to arise in the context of rape reporting derives from the victim's confusion, or at times denial, as to whether or not she has been raped. The likelihood of such confusion occurring is understandable, given that while legal definitions assert black and white boundaries, the realities of sexual assault range along a complex continuum of behaviours. Research evidence suggests it is therefore not uncommon for women to be hazy as to whether or not they were raped, and to tend towards minimisation of their attack (Kelly, 1988; Kelly and Radford, 1996). In such circumstances, effective law enforcement will be dependent on the skills and sensitivities of investigators cognisant of these processes.

Suzanne hoped for such a response from the detective who interviewed her, but felt she received the opposite:

I remember telling her about how he was pushing himself in, he couldn't get into me and it wasn't until later in the court that I realised that that wasn't recorded... She focussed more on the attack side rather than on the sexual side, when both of it was important. She just focussed on that one side of things, and I think she wasn't really interested in it, to be quite honest... it was trivialised. I really just don't think she was interested. To her, it was just a minor assault because that's the way the statement ended up being. I just don't think she was interested.

Suzanne felt particularly aggrieved that, had the detective been more sensitive to what she was saying, she would have immediately been sent for a medical examination:

I'm very, very disappointed and angry with the way it was handled, and also anybody in their right mind should have been sent for a medical after that, and she didn't! I told her what he'd done. I remember saying to her, in front of ____ [flatmate], I said to her, 'Look, I don't know exactly what he's done but it's really revolting, I feel damp'. I said, 'I really need to go the toilet' and she said 'Go', and so I went and she never sent me or anything and I said

to her in front of — before I left, 'Am I okay to go home and have a shower?', and she said 'Yep, off you go, we'll be in touch tomorrow'. So I went home and I lay in the bath for an hour after I'd rung — (fiancee), and [he] was arranging to catch a flight up at this stage, and I lay in the bath for an hour because I felt so disgustingly dirty, and it wasn't until that afternoon [he] came up and he said, 'Have you had a check done?' I said 'No, they told me not to worry about it'. He said he couldn't believe it, so he then spoke to the detective and I dealt with [different detective] and he was a brilliant detective, and he couldn't believe it either. They came and got me the next day, but it was a bit after the event.

What Suzanne's experience highlights also is the immense importance of the police role in assessing complainant testimony. For all sorts of reasons, a rape/sexual assault victim may minimise what has happened to her. This could be for reasons of psychological self-protection, cultural shame, fear, sexual reticence – in many ways, the reason is irrelevant. For the detective interviewing her, it is important to find ways of establishing rapport so as to obtain the fullest account possible. The detail may not emerge immediately, in which case erring on the side of caution is advisable when it comes to decisions about, for example, arranging a forensic medical examination. This decision needs to be taken by the police, not left to the victim to specify. As Suzanne said,

If I was in my normal frame of mind, I should have questioned it further, but I thought, here's the professionals dealing with this situation.

Pre-trial preparation

One of the positive features identified in the previous major section related to the efforts made by the police and prosecution to prepare these women for the rigours of

the court trial. Considerable energy was expended in trying to familiarise the women with courtroom procedures and supporting them through this time.

The pre-trial meetings that were held with the police and Crown Prosecutors were viewed as a positive initiative by the women. However, while the good aspect for them was that these meetings occurred, several expressed reservations regarding the way in which these were arranged. Criticism was specifically voiced about the lack of advance information given to each woman concerning the size and scale of these meetings.

Karen described the process leading up to this meeting:

I got this letter from Steve Rutherford saying you're coming to meet the crown prosecutors and all the rest. Veronica came and picked me up from work, and we tootle off to the High Court, where I'd never been before. She said to me before we went in, she said, 'I'll just tell you now, there's quite a few people in the room. There's so and so and so...' and rattled off all these names which meant nothing to me.

I walked into this room and there's like eight people, plus Veronica and me, so there was like 10 people in this room. Everyone was sitting not quite in a circle, they had the police here, the lawyers here and it's like... I'm used to being in meetings and I was really pleased about that, and I'm used to talking at meetings so it doesn't worry me, but I think that for someone that's not used to talking to a lot of people, it would have been a nightmare, there was way too many people there...

I had no idea who these bloody police were, sort of thing. I later found out they were all the top police from the inquiry and all probably had every right to be there, and certainly the 3 prosecution lawyers did too, but there was too many people. Apparently, I was only about the third one that they saw, and

*apparently the first person or the second person had really freaked out. She'd walked into this room full of men - **we're not good at walking into rooms full of men.** I think that's probably something that hadn't been thought of. It wasn't great... I bet they don't do that again. (Emphasis added)*

A feeling of daunt when the door to that meeting room opened was mentioned by many of the women. Gabriel referred to it as *hellishly intimidating*, while Frances said:

Well, all I would have needed to be told was 'there's this many police there and these other people' and then I would have known, rather than the door opened and it was, 'oh, look at all these people'.

As well as the measures already mentioned, a room was set aside for the exclusive use of victims and their support persons, in an effort to provide them with a safe space where they could try to relax, give vent to their feelings if need be, and gain some respite from possible intimidation by those supporting Rewa. In practice, this room (which was some distance from the courtroom) was not used as frequently, by some of the women at least, as the police's room. In part this was because of the close team-like environment which was created by the police and sought after by those women who spent longer times at court, often through choice rather than requirement.¹⁴

The feeling was also expressed by some that the process of preparing the women for court tended to happen when the police felt it needed to, rather than when the women might want this to occur. This prompted Helen to challenge the police to communicate more fully with the women during the lead-up to the trial, noting:

They probably felt that they were doing enough, but you live with something day by day, it's not enough, you need to know this guy is going to be put away

¹⁴ Several of the women interviewed indicated that they chose to spend considerable periods of time at the court after they gave evidence. Some were keen to see Rewa take the stand, and/or be present for the judge's summing up, jury verdict, and sentencing.

or whatever you're feeling and he's not going to be out there, just those little silly things: 'Are you making sure he can't get out?', 'He can't get bail, can he?', because you don't know, I don't know the court system... Do people like that get out on bail? You know, you don't know that. It would have been nice if there was someone to answer those questions and not feel silly about it.

Later in the interview she referred to her thought sequences once the letter arrived outlining the forthcoming trial:

Because as soon as I knew I was going, you got the letter, then you start dreaming. It's like, oh my God, he's going to be able to come across there and kill me. You know, again, they're not logical but you want to know that there's ten people between you and him. Because if he can do it once, he can do it again. How do you know he hasn't got a knife, how do you know? Yeah, all really stupid things and maybe that might have helped me a bit to know, there's two bodyguards on either side, there's all these people before he can get to you... which I was told two days before and that's great, but if I had been told when I was actually starting to think about it... But people can't anticipate if they're not inside your head, I suppose. They must have known from enough women, though, that you're going to have those sort of fears.

Concerns such as these raise questions about whose time-frame is being adhered to, whose needs dominate the process, and how can these issues best be resolved.

Lack of follow-up after court attendance

In contrast to the women's general appreciation of pre-trial input, strong dissatisfaction was expressed by some that as soon as they had given evidence, it felt

as though all support was withdrawn. Whilst some rationalised this as understandable, in that the police and prosecution focus had now shifted to the next witness to take the stand, nevertheless it provoked feelings of betrayal in some women. Shelley expressed this sentiment well when she noted:

There was no debrief after the court appearance which would have been really important to me. I mean, there you were, the most special person to the prosecutor and for the court and you were like queen for the day. It was very much that, you know, and there was media coverage and you stood in the box and there was all this and then it's like, 'Bye, next one'. A sort of disposable witness really. Just disposable, you know we've – you've done your dash and thanks very much that's great, goodbye, without a thought to actually, this person's leaving with you know all sorts of things happening to her.

For Shelley and some of the other women, the need to have some kind of debrief arose following their court appearance. This was true for Marie also, who had to manage the added difficulty of taking the stand as the first police witness in the 1998 case, 23 years after Rewa's conviction for attacking her. She recalls:

I was quite happy with the way things went, the only thing I would say, I wasn't prepared for afterwards. After I had given evidence, I actually had a dreadful time the next 2 or 3 days, just the let down. I don't know, whether it was all the build up to get me there, I felt there was nothing, I was just left high and dry. Because I was the first witness, I got the impression, it might have been totally incorrect, but I got the impression that they breathed a sigh of relief, 'Oh, we've started, we've had our first witness on the stand, and the trial is under way'. I think they all went off to the pub to celebrate! I got the impression that it was you've been there, done your bit, now that's it, goodbye now, thank you very much. I just felt there was no follow up. Now whether that should come from them, I don't know. I still needed the contact, I needed to know what was happening. I knew in my mind that they're really busy,

they're preparing the next person to go on the stand, I've done my bit now, so they can put me to the side. I just felt that... I just spent all the Thursday crying, which is probably just reaction. I had to have people with me, I was just a mess and yet I had coped with going in there, I had coped with the week, I had done everything, but nobody really was there for me afterwards.

In Frances's case, however, the time she most acutely felt the need for police/prosecution contact was following the delivery of the verdict. This was because, for her and one other woman, the jury returned Not Guilty verdicts against Rewa. Frances describes how she contacted one of the dedicated women officers that evening:

F: I rang her because it was late at night when the jury came back in but I was up so I rang her at the courtroom and she told me then... It was so late at night, she just said, 'Look, I'm really sorry to have to say to you that your verdict was not guilty'. It was a funny feeling, a really strange feeling. My sister in law said to me, it's almost now that you actually need to be speaking to someone about it. In those few days afterwards, it was a real feeling of... that I did put it all behind me then it all got opened up again, and now it's left really open. It's not so bad now as it was when it first happened.

JJ: In terms of that, did you get to talk to anyone, the police or the prosecutors afterwards, did they sit you down at all and give you some explanation about why they think the jury's reasoning may have been or anything like that?

F: No.

JJ: So in an ideal world, what would you have liked to have happened?

F: Perhaps just sit down with Paul Davidson [prosecutor], I guess, and maybe for him to say why he thought I got that verdict. I think I was quite surprised too, leading up to the trial there was so much... there did seem to be, they seemed to be going out of their way so much to make sure everything was going to be okay for all the witnesses, and then afterwards there wasn't any contact, that was it, it's finished, it's over.

JJ: So how did that feel, what message did you feel like that gave you in a way?

F: I guess I was quite an unimportant part of it, it was that sort of message. When we had a thing a few months later here at Patricia's, I spoke to Gina [prosecutor] about it there, she came up and she made me feel better about it, she said we have no doubt in our mind that he was the one who attacked you. I actually really needed to hear that, but I needed to hear it sooner... It would have just given me that affirmation that I needed at the time.

Other sources of dissatisfaction

Statement-taking process

One concern raised by many of the women, and which echoed that identified by women interviewed as part of my earlier rape research (Jordan, 1998a), involved their feeling that the police often persisted in taking their statement when they were exhausted. This practice was criticised by some of the women because it appeared to represent an adherence to police procedure at the expense of sensitivity to victims' needs. Persisting in continuing to interview in such circumstances could also result in the police resorting to putting things in their own words, instead of ensuring they obtained as realistic a picture as possible from victims. Such a practice not only undermined the women's sense of the validity of their experience, but could also have

potentially serious implications later in the process – for example, when the women were questioned or cross-examined regarding their statement in court.

Jennifer felt the police tried to interview her initially *when it was the wrong time and it was too late*. Shelley also described how exhausted she felt by the time the police began to obtain her full statement.

I think that – see, by the time I was giving my full statement, I'd spoken to the police on the scene, I'd spoken to the doctor and given the same statement to the doctor at the hospital and then I was doing it for the third time in a more extended way to the police and I think what really I would have liked to have seen happen was that statement could have waited. I think I really needed the time, I mean it had to be done. I probably would have performed better had I had some sleep and then come back and perhaps had it done in my own home or done it in a more comfortable situation.

Shelley also noted that the detective who was interviewing her knew she was tired and tried to speed things up for her, but this could have resulted in incorrect details or sequences of events being recorded:

I did feel as we were going through that he was trying to kind of put the words for me, but I think he was just trying to be helpful rather than being objective about writing the statement. And there were some things that he read back to me that I said, 'No, that's not actually what happened', or 'No, that's not what I mean'.

One or two women expressed dissatisfaction regarding what they perceived as limited or inappropriate techniques that the police expected them to be able to utilise. Patricia, for example, had fought with Rewa and chased him down the road, in the process obtaining a good look at him. The police were keen for her to assist them by

drawing a compusketch, which she agreed to do. This proved to be a singularly frustrating experience, she said, which lasted more than three hours:

They had an American profile programme in there, it had not one Polynesian not anything, the closest thing to an Asian was an Eskimo. They didn't have anything that was slightly conducive with a Maori or Polynesian that you see on the street.

Other women observed how difficult they found the process of police interviewing and statement-taking because of the explicit nature of the information required. In response to a question concerning whether she felt she could tell the police as full an account as she wanted to, Kathleen responded:

No, because I couldn't divulge a lot of that information 'cause I didn't feel comfortable. If I had maybe a female there, or they had gone through a list of questions, like: Did this happen or did that happen, did he do that, it probably would have been a bit easier... 'Cause there are some things like when he, the oral sex bit, I didn't know how to say what had happened. It was just sort of uncomfortable, horrible...

I couldn't say a lot of the stuff I wanted to say or that I felt I needed to say but, yeah, I don't know, I couldn't, I just couldn't. You know, I felt embarrassed, I did feel embarrassed, yeah, that's the word for it, I felt embarrassed.

Retention and return of personal property

All of the women had items of property retained by the police for forensic examination. These included mostly items of clothing and bedding, including items used by Rewa to bind and gag them. The women understood the importance of these items being examined, but several expressed concern regarding the police retention,

use, and return of their property. Some of the women said that they were not always informed of the procedures to be followed, and at times heard nothing after their property passed into police hands.

One major source of discontent arose from the lack of consultation by police as to what the women wished to have happen to these items following their examination. While many said they did not necessarily want these items back, most felt they would have liked to be offered the choice. Shelley described the property items of hers which the police retained:

They had all my bedding including pillows and duvet. My dressing gown, the clothing I was wearing at the time... I just assumed that, I mean, they may have said to me, 'We're taking it for evidence', but that was all and there was certainly no clear explanation that I wasn't going to get it back and that actually surprised me because my duvet cost me, it was a set and they actually destroyed all the evidence afterwards and then I made a claim to my insurance company and they said no. It wasn't, I wasn't going to get a claim on it and so then I contacted the police who wrote them a letter and they came up with the money after the police wrote the letter. It was incredible, I felt it was incredibly insensitive. It was those sorts of things that really, really threw me. It was those extra little things, a few layers out...

Shelley also felt aggrieved that the next time she saw her pantyhose, which Rewa had used to tie her up with, was when they were displayed on national television following the release of the trial verdict.

Women whose property was returned often complained about the way in which the police managed this process, with some feeling that greater sensitivity could have been displayed by the officers concerned. For example, the police would suddenly arrive on the doorstep with the items in question, without the woman being given a choice regarding whether or not she did in fact want to see these items again. The likelihood of it being upsetting to see the clothes one was wearing when raped did not

always seem to be appreciated by the police – it was simply time to return the property so it was returned. One woman, for example, found it distressing when her property was returned with crosses marking the spots where semen stains had been found. The condition of some items meant that, ideally, complainants would have been warned about the state of the goods in question. As Isabel said:

They took away all the clothes that I'd been wearing when I was attacked and they gave them back sometime later, but I don't know why they bothered giving them back because they all had little holes cut out of them. They came back in those sort of evidence bags.

Raquel also had the pair of jeans she had been wearing handed back to her, without any advance warning, and with a big hole cut out of the crutch area. The material had been removed for forensic analysis. Raquel had been attacked and raped in her car; when the police had finished their examination of the vehicle, she was told to come and collect it. Her boyfriend went and was upset to find the passenger seat still down in the position Rewa had placed it for the rape. Furthermore, Rewa had cut this woman badly during the attack and the inside of the car was still covered with her blood, a fact which prompted a family dispute amongst all those close to her as to who could best manage to clean it, until in desperation Raquel herself arranged for it to be valet cleaned.

That's another thing, another complaint, and I don't know whether we really have right to complain about this, but when I got it back it [her car] back, it was still... it had blood everywhere in it. I remember the seat still, the seat was still back, my seat that he put me back onto, the passenger seat was still down, they hadn't put it back upright and then when ____ [boyfriend] went to pick my car up he was really, really upset seeing the seat down because it made him think about everything, and the first thing he did was put the seat back up. He was really upset, it made me uncomfortable, I remember being uncomfortable because I saw how upset he was, that probably made me... I

was dealing with it really well, it hadn't really occurred to me how upset everyone else was at the time because I was still in my own little world, in survival mode, I wasn't really... it's hard because they can't always do the best thing for you because they're really messed up themselves. When you're a victim, you forget that there's a lot of other victims too, but you're the victim of the actual crime, but there's a lot of other victims emotionally and it's kind of hard when you're the victim survivor to relate to that, you don't actually completely understand what they're going through, they're busy trying to cope with it and understand what you're going through which is hard enough and you're not really capable of understanding what they're going through. But there's blood everywhere in my car and I had to take it back like that and get it cleaned, that was interesting.

As Raquel said, though, why could the police not have either cleaned it themselves or offered to get it done at the family's expense before they took receipt of the vehicle?

From the examples and statements described above, it is clear that while most of the women felt very positively towards the police, some police procedures and behaviours produced dissatisfaction. Even when they apparently conformed to stereotypes of the 'perfect victim', these women did not receive 'perfect policing'. For some, this sense of dissatisfaction could have been further enhanced by police personnel making serious mistakes in relation to the management of their cases and evidence. The next section documents some of these errors and the women's responses.¹⁵

¹⁵ It is also possible that other mistakes and errors were made which were not detected by the women and which the police managed to keep concealed.

Mistakes and errors made by police

The fact that mistakes were made is probably not surprising in a case of this magnitude. In the course of the lengthy investigation and trial procedures, there were at times lapses in communication, errors of judgement, and insensitive behaviours. Examples of these, as described to me by the women, follow.

Shelley, who was raped twice by Rewa in the course of the attack, expressed concern that one rape charge was apparently lost between the time of statement-taking and the trial. It seemed to her that one page of her statement must have gone missing, since Rewa was only charged with the one count of rape against her. If he had been acquitted by the jury on this charge, she said she would have been much angrier about this aspect of the police management of her case. If the police had deliberately reduced it to one charge, then the reasons for this were clearly not communicated.

Shelley also said she had originally identified an item of clothing found in Rewa's possession as belonging to her, then some months later found hers still in her house. She told the police and asked them to delete the reference to this identification of clothing in her statement. No such deletion occurred. When the case went to court, the defence lawyer, Barry Hart, pounced on this occurrence, delighting in being able to show how 'mistaken' in her identification of the item Shelley had been and goading her as to how many other details she might be mistaken about. She commented:

I felt a little bit let down by the police that there had been a communication problem and unfortunately the defence had that information and he really hassled me on that and he'd say you were wrong with the camisole are you wrong with anything else you know so and I felt that I had been allowed, that they'd exposed me unnecessarily to that sort of questioning and I found that really, really hard to kind – I felt like I had to claw my way out of it really.

In other cases there was confusion sometimes as to whether Rewa's attack on an individual woman legally constituted rape or not. Such ambiguity is not unusual in practice, given that sexual behaviours occur along a continuum in reality (Kelly, 1988), rather than neatly falling into the polarised dichotomy advanced in law and examined in earlier chapters. In Rewa's case, this confusion was exacerbated at times by the fact of his erectile dysfunction, which obviously affected the extent to which he was able to achieve penetration. How the police responded to the women's accounts of his actions had significant ramifications later, and often determined how he should be charged: Patricia's case, for instance, was filed as an aggravated robbery initially, a factor which meant that her case nearly missed being linked to Rewa as the offender, although she expressed amazement at this oversight:

P: One of those police told me that aggravated robbery leads to rape. You know, there are all these steps: there might be an aggravated robbery this year but next year they are likely to be a rapist, that they are keep on the adrenaline as such, that they keep on. So they [police] should already know that, so if this sort of arrogant policeman would tell me that, why doesn't everybody know that? Why isn't it already in the system? So it got filed under aggravated robbery and that is when I said to Chook, how come it took you so long? You would think they would have found it when he had gone through all the files in [her suburb].

JJ: Yeah, what did he say?

P: Because it was filed under aggravated robbery and not attempted rape. Big gap, big gap. It's tunnel vision.

A scarf belonging to Rewa had been left at Patricia's address. The police took the scarf away, and she was sure that, since it looked like it had been round Rewa's neck for a long time, that some forensic evidence would be obtained from it. Unfortunately, she told me, it seems that the police may not have noted that this scarf

belonged to the offender, rather than the victim. For whatever reason, the scarf appeared not to have been forensically examined at the time.

I don't know what went wrong but there was a big mess up with that scarf and that was all they had to go on and they blew it. At the time of the court it was mentioned that it wasn't there, it had been mislaid somewhere.

Suzanne feels she encountered a similar problem with the police concerning identification of a fingerprint outside her flatmate's bedroom.

The chap doing the fingerprints said, 'I've got a really good thumbprint of this one, through the point of entry'. I said, 'Oh, great'. When Rewa was arrested, the police said to me... because I said, 'What about the thumbprint, as some kind of evidence?' They said no, it was my fingerprint, and I said no it's not, and they insisted it was, and I said I have never, ever been into [flatmate's] bedroom ever and I still haven't to this day, and I certainly never had my finger on that ... I actually got really angry in the end, I said, 'It's not my fingerprint!' In the end they said it was [flatmate's] thumbprint and [she] said I have never had my finger on that outside of the window, it was right there, we knew he got in that window because the stool was there where he got in, it was right where he would have put it... because he put the screwdriver under it, we couldn't believe that they were doing this... That actually did concern me, it was like they first initially said it was mine and then they said it was hers, and I know I've never been anywhere near her bedroom inside and out, so that was a little bit of a concern.

Connie recounted to me how absolutely exhausted she felt by the end of her statement. Her husband drove her to her parents' place, and as she walked in the door news of her attack was being headlined on the television news and the phone was ringing; it was the police requesting that she return immediately to the station. She felt scared that perhaps they did not believe her:

Well, that was my thought, that they didn't believe me. Despite the fact that it was on TV, that it had made the news, it's still not enough in your head to tell you, well it's on the news, they believe you, because I know what news is like, a story's a story, doesn't matter whether it's true or not. And I thought, Oh no, they don't believe me, what now?

Connie returned to the police station, feeling agitated. On her arrival, what she discovered was that the typist had spelt a word wrongly on the statement and the police simply wanted the change authorised and signed by the complainant. This seemed a small detail to the police but by then this experience was impacting hugely on her, adding to her already heightened senses of fear and vulnerability.

Several of the women expressed concerns in particular over the arrangement, or in some cases lack of arrangement, of medical examinations. Mention has been made previously in this chapter of Suzanne's anger when the detective failed to send her for a forensic examination when this might have yielded critical evidence. In Raquel's case, she feels the police made a potentially serious error of judgement in not sending her for an immediate medical examination to have her head injury assessed. Instead they drove her to the police station, saying they would have to arrange for a clinic to be opened for her to have the forensic examination:

That is what they told me afterwards, but in actual fact that had nothing to do with my head injuries. In actual fact the fact that I had head injuries, they damn well should have taken me to A and E now that I think about it....

I guess they probably felt that I was quite lucid and quite okay to... you know. But there was nobody there to check my pupils. You know when you have, you've got a difference in concussion and brain compression I mean who knows, who knows what had happened to me? It's probably a little bit slack on their part. I mean if I had been really badly injured they would have taken me to hospital, you know, but because I was walking and talking fine they

didn't concede that there was anything wrong with me. God, I could have collapsed an hour later, you know.

Gabriel also had concerns regarding police liaison with medical personnel. In her case she was taken to the hospital to have her injuries examined, but feels that the police left her there without medical personnel being told how shocked and vulnerable she was likely to be feeling. Gabriel commented:

I was quite disgusted about the fact that, when I was at the hospital, I was left in rooms by myself and wheeled out of rooms because there was no more rooms and left in a hall way on a stretcher for a long time. I found that very disturbing, because I couldn't get up without help. I just think that's terrible being left by yourself. At that stage there was no-one available to be with me. And the fact that the X-ray person didn't know the nature of my, no-one knew the nature of why I was there. Now I don't know whether that is because of the privacy of it all, like I don't know if the Police can go up to the nurses and say, 'Look, we've had this young person who...'. No-one seemed to know why I was in there. I had to tell them and that was not something that I really felt capable of doing.

What is apparent, in the above examples, is that many of the women were aware of potentially serious mistakes and significant oversights that were made by the police. Fortunately, these mistakes did not appear to seriously impede case outcomes (in this case, Rewa's conviction), although some women believed that potentially the police's errors may have had more deleterious effects. What emerges from the women's accounts overall, however, is that if the police have a fundamentally positive relationship with the woman from the outset, then such errors will be tolerated within the context of that relationship. Just as in any marriage or partnership, errors of judgement or communication may occur, but if the underlying bonds of trust are there then these are unlikely to jeopardise the fundamentally secure basis of the relationship. In other words, if the foundation of the police-victim relationship is

strong, complainants will be understanding of the pressures on police and relatively forgiving when mistakes occur.

Some of the women noted that their experience of the police was more positive than they initially expected, although attributed some of the reason for this to it being such a significant inquiry. As Gabriel reflected:

I don't know, just because I had a good experience, I mean, I'd never know what it would be like to make an individual complaint. Bearing in mind that when I was attacked, the Police already knew that there was a serial rapist out there and had a very good idea that this was part of it. And perhaps I did get a lot of special treatment, and then definitely throughout the trial, in fact all of us did because it was so unusual and it had to look good because, shit everyone was looking at them. It had to look good. Imagine if it wasn't handled very well? I mean, God. How would the country feel to find that there was a serial rapist and the police force were all over the place and didn't give a shit! It had to be handled very well because it was in the limelight.

What emerged for the women overall was general satisfaction with the police approach, coupled with an ability to give clear, specific examples of which aspects, from their point of view, were not handled well. As Shelley expressed it:

I'm very positive, I had a very positive relationship with the police and accepted a lot of their downfalls as well. In fact I know that their processes weren't often wonderful and you know having to deal with 30 of them at different times, I kind of accepted that because each one of them as individuals were really nice to me. And that's why I could accept it... There were quite clear cock ups along the way... But the fact that there was that real sense of support and belief... I didn't really feel too bad – I was angry about it but I kind of rationalised it.

Patricia noted also that while the mishaps may appear insignificant on one level, they all detract from the ideal of perfect policing:

So, it is all minor little things that are human failings really, but in a case like that, or yeah, in cases as big as that one, if you can close the gaps on human failings then I guess you would get a more perfect system and then everything is going to flow a lot easier, isn't it?

Implications of the research

The responses of the women attacked by Malcolm Rewa to their experiences with the police provide us with valuable insights into the concept of what, from the rape victim's perspective, constitutes 'perfect policing'. A clear understanding of victims' needs emerges from the interview data. This includes validation of many of the measures employed by police during Rewa's investigation and trial, as well as criticisms of some of the ways in which these procedures were managed.

Important aspects of police practice which were applauded by the women included:

- the provision of dedicated women complainant officers;
- the ability to liaise with a police team of aware, sensitive detectives during the trial;
- the opportunity to meet the Crown Prosecution team in advance of the trial; and
- familiarisation with courtroom layout, defendant's position in the court.

Many of the women reiterated the paramount importance of issues of safety and privacy for victims of rape/sexual assault. Being believed, validated, and reassured was also stressed, because of the need to counter the negativity and degradation of sexual violation. Several of the women spoke of the ways in which they felt so

acutely dependent on the police, as professionals, to determine the proceedings. In suggesting how police might approach this issue, Helen said:

It's almost like you have to try and think what the woman needs, because she doesn't know, she's not been through it before, she's not going to be able to make decisions for herself.

Can the police learn, as Helen suggested, to put themselves inside the head of a rape victim and anticipate what she needs? The overall positive response of these women to the police suggests that at least some can, at least some of the time. This raises the question of what factors determine this ability to show empathy and sensitivity towards victims of rape – gender, training, personality, or experience? The results of this research, combined with the data obtained in my earlier study, suggest the importance in particular of training and experience. In both studies, women often suggested the desirability of a specialist police unit to respond to sexual assault victims. Access to interview rooms and facilities designed with victims' needs in mind was also strongly advocated, rather than expecting traumatised individuals to adapt to the deliberately harsh cell-type environments designed for interviewing the perpetrators of crime. What must it be like for a victim of rape to imagine that the previous person sitting in her chair was possibly a rapist or child abuser?

The most significant aspect to emerge from the interviews with these women concerns the paramount importance of the police establishing a positive relationship with the complainant. The majority of the women were regarded as credible victims and had their accounts believed by the police from the outset. An environment of trust was created which formed a strong foundation for a relationship that had to be sustained over a long period of time. The police recognised the centrality of Rewa's victims to the police goal of successfully prosecuting this repeat offender. The efforts the police went to in establishing a respectful and supportive relationship with the women proved to be invaluable. The sheer magnitude of this investigation meant that, on occasion, mistakes were made and insensitivities did occur. In a single

complainant case, mistakes such as those cited earlier involving a lost scarf or wrongly identified fingerprint could cause the entire case to collapse. Fortunately, in a multiple complainant case such as this, isolated instances of bungled evidence were unlikely to prejudice the eventual outcome. While such mistakes might strain the relationship between the police and the woman concerned, if a good, solid relationship already existed then the women were usually willing to forgive such indiscrepancies. In other words, if the complainant already felt believed and supported by the police, then a mistake or inconsiderate remark would be assessed within the context of a fundamentally positive relationship. The capacity to forgive and to understand would be apparent. For example, if the return of a complainant's property was not handled well, the complainant may be aggrieved by that act but, hopefully, not to the extent that she would decide to end her relationship with the police. If, however, the relationship was already strained, and there was little trust or rapport between the police and the complainant, then one more sign of police disrespect or insensitivity might tip the scales. The result might then be that the complainant would decide 'That's it!' and withdraw the case or refuse to co-operate as a witness. It is the strength and quality of the police-complainant relationship that carries a case through to completion and, hopefully, to successful prosecution of the offender

It is probable that a major factor underlying the fact that the women attacked and raped by Malcolm Rewa were dealt with positively derives from Rewa's status as an offender. He was a repeat, serial offender, the kind of 'monster' rapist whom the police are highly motivated to apprehend, and there was extensive public and media pressure on the police to 'catch their man'. However, from my talking with police involved in this case, it appears that they began increasingly to see, from spending so much time with these women, how lacking in victim orientation they, as investigators, actually were. Hence, from interviews I conducted with senior police personnel involved in the Rewa investigation, as well as from the women's remarks, it is clear that the police learned to become much more consistently victim-centred in their approach and management of the women as the investigation proceeded.

In part this was because Rewa's latter victims were often able to be linked to him immediately (largely because of his *modus operandi*), and thus the offender's status and notoriety influenced police treatment of the victim and crime scene. What some detectives observed, however, was that the women whom Rewa attacked were mostly highly educated and articulate women who were able to verbalise their needs and reactions clearly. Thus when, for example, one woman complained about a poor lack of communication concerning trial dates, the police responded favourably and began to issue occasional written bulletins to update the women concerning case developments.

It is debatable how much this receptivity to complainant suggestions could be attributable to the size of the case and status of the offender, or the status of the victims, or to the police recognition that the only way Rewa would be convicted would be as a result of victim co-operation. Whatever the motive(s), the effect was that the police learned the necessity of listening to and validating the victim, and developed a much fuller appreciation of victim needs and vulnerabilities. Since the end of the trial, detectives involved in this investigation have become regular contributors to detective training courses held at the national Royal New Zealand Police College, emphasising in particular the importance of an empathic police response to rape victims.

At heart, those they lecture to may always primarily define themselves as hard-nosed detectives who are motivated to try whatever is necessary to catch serious offenders. Whatever the reason, part of what at least some police learned from the Rewa and Park investigations is the centrality of the victim to police success in their mission. Part of what needs to change is the expansion of the concept of serious offender so that this category includes not just the easily defined 'animals', as one detective called Rewa, but the much more typical non stranger rapists, whose victims may often be viewed as imperfect victims and characteristically receive less than perfect policing, as the study of police files demonstrated.

In talking about perfect policing, it must of course be acknowledged that perfection as a concept is not an absolute; ideas as to what constitute perfection are diverse and situationally determined. What is perfect policing from the police point of view may be defined as that which nets the offender; whereas from the victim's perspective, perfect policing may be a broader, more complex concept. It may incorporate that which validates victims and their experience, provides them with support, and secures their safety, **as well as** involving the police doing whatever is necessary to help secure the arrest and conviction of the offender. This emphasis will vary for different women; there is no one, uniformly shared goal. For the police to reach their goal, they need to be able to ascertain, for every individual victim of rape, what she in particular needs from them, in order to secure her trust and co-operation, and their success in law enforcement. As Isabel observed in relation to the symbiotic relationship between her, as a rape victim, and the police:

Okay, so they run the system, the police and the lawyers run the justice system, but they needed my help to do what they needed to do and they let me do it my way - a little bit.

* * *

CHAPTER 8: DISCUSSION AND CONCLUSION

To get abuse listened to is the first thing: to get it understood is the next.

(Elizabeth Robbins, 1907, quoted in Mills, 1991, 232)

Reviewing the police response

The results of the research presented in this thesis give cause for concern. They demonstrate the continuing impact of negative patriarchal beliefs and attitudes about women on the police organisation and on the responses of some police to rape and sexual assault complainants.

My earlier research, summarised in Chapter 3, revealed police perceptions of complainants' credibility to be experienced as problematic by a third of the women interviewed, with many feeling they were the objects of suspicion when they approached the police for assistance (Jordan, 1998a). Some of these women were challenged directly by the police regarding the genuineness of their complaint, often in ways described as hostile and accusatory.

The study of police files, reported in Chapters 4 and 5, also showed a dominant mindset of suspicion underlying the police response to reports of sexual assault. This analysis revealed a wide range of factors that influence police perceptions of complainants' credibility, particularly when clusters of variables are apparent. Thus, whereas drunkenness on its own may not diminish victims' credibility, drunkenness in connection with other factors, such as previous consensual sex with the offender or the concealment of cannabis smoking, may tip the scales of credibility. It is almost as if the scales of justice sit waiting, into which are placed factors which will either enhance or diminish a victim's credibility. The factors are weighted differently, and while a factor counting against the complainant may tip the balance seriously one way, factors in her favour may correct the balance again. Thus being a sex worker or an alcoholic may be compensated for by factors

such as prompt reporting, co-operation with the police, and visible signs of injury or resistance (Gregory and Lees, 1999; LaFree, 1980).

Interviews with detectives, reported in Chapter 6, largely confirmed these findings, although those spoken with had been selected for their particular expertise in the area of sexual assault investigations and, with some exceptions, tended overall to be less stereotypical in their attitudes. Nevertheless, their comments concerning detectives' interviewing practices with rape complainants suggested that many continue to subscribe to judgmental beliefs concerning the victim. Also highlighted was an overall lack of awareness concerning the psychological factors which may be associated with false rape complaints and poor understanding of the effects of rape trauma on victims' demeanour and behaviour. These issues prompted some detectives in particular to consider current training measures to be inadequate in preparing those involved in sexual assault investigations for the task.

Research presented in Chapter 7 on those involved in the Malcolm Rewa investigation, both complainants and detectives, showed some of the ways in which the police response to victims could be improved. The detectives said they learned much of benefit from the women attacked by Rewa, as well as from having access to books which detailed the effects of rape trauma on victims. The interviews with the women provided valuable material on their responses to police treatment and initiatives, and showed how, for these women also, it was important that the police believed them. The experiences of a few of the women signalled the difficulties some police have in believing women's accounts, as well as highlighting issues requiring greater overall police sensitivity and attention. One significant finding to emerge from this study related to the importance of having the police believe and support complainants not only to ensure case progression and victims' co-operation (Epstein and Langenbahn, 1994; Wells, 1991), but also to establish a baseline of trust which would predispose complainants to 'forgive' any mistakes or insensitive acts later made by the police in relation to the handling of their case.

The different studies presented in this thesis complement well the existing literature on rape reporting and the police response, and confirm the results of previous research which sought to identify the principal factors affecting police judgements and reactions. Since most of the major studies in this area had previously been conducted in England (Gregory and Lees, 1999; Lees and Gregory, 1993; Temkin, 1997, 1999), this research demonstrates that the trends observable there are also evident within the New Zealand context. The research aimed to elucidate the dynamics of the relationship which occurs, focussing in particular on the factors that affect police officers' perceptions of victims' credibility. A central concern, then, was the ways in which the police tend to construct rape narratives and interpret factors and cues associated with the victim. What do police routinely 'see' when different kinds of complainants approach them? What factors are seen as 'cues' and how are these interpreted? What is taken to determine 'truth' or 'falsehood'?

The results presented in this thesis strongly suggest the influence, conscious or otherwise, of particular scripts. The relative infrequency with which most individual officers deal with rape complaints means these scripts are constructed only partly from actual policing experience, and are more commonly informed by the attitudes and beliefs dominant within the police occupational culture, and within society generally (Jackson, 1978). Moreover, it is likely that the personal experiences of individual officers can also be influential – for example, their own sexual assault experiences, as either offenders or victims, or those of persons close to them. The influence of such factors will not be uniform, since the same experiences impact differently on different persons, and can be mediated by other factors and interventions such as, for example, counselling or psychotherapy. An additional factor that needs greater recognition is the impact on detectives of continued exposure to serious crime. As one commentator has observed,

Rape investigators can and often do become vicarious victims – stressed, altered, and in some cases destroyed by the crimes they investigate. (Reese, 1999, 241)

While the physical and potentially life-threatening risks of policing are frequently acknowledged, these may be over-stated in relation to the emotional risks associated with this occupation (Reese, 1999). The traditionally 'macho' culture of policing, however, inhibits the recognition of such non-physical dangers and deters most individual officers from seeking professional advice and assistance in this regard. The wall of cynicism which many police officers build as a protective defence mechanism from the emotional rigours of the job may also produce cold, hardened responses towards others (Reese, 1999).

Previous experiences with complaints believed to be false may also be influential, and predispose some detectives towards greater scepticism and suspiciousness of rape complainants in general (Burgess, 1999). As some of those interviewed remarked, better practices of case supervision and debriefing may help to some extent in remedying the development of excessive hardening and cynicism following the frustration of being involved with an actual false complaint. Moreover, the observation was also made by some that not all detectives are necessarily equally suited to dealing with rape complainants, and those who are adept at interrogating offenders may not be best suited to the sensitive interviewing of complainants.

Police perceptions of victims' credibility influence the stage that individual cases reach in the criminal justice system. The first contact that the police usually have with a rape complainant begins when she, or someone acting on her behalf, reports an alleged offence. The length of time that has passed since the offence occurred is taken into account, and, in cases of delayed reporting, consideration is also given to whether or not the victim told others about the incident (who may be called in court as recent complaint witnesses). Not telling anyone about the incident is often interpreted as dubious, despite extensive evidence demonstrating how difficult many women find the process of telling others about sexual assaults (Feldman-Summers and Norris, 1984; Gartner and McMillan, 1995; Gilmore and Pittman, 1993; Gregory and Lees, 1999; Kelly, 1988; Koss et. al., 1987; Spohn and Horney, 1992).

There are also generally accepted beliefs concerning how a rape victim 'should' look and behave; women whose demeanour is outside that expected are often regarded with scepticism (Aiken et. al., 1999; Burgess, 1999; Burt, 1991; Gregory and Lees, 1999; Temkin, 1997). The expectation is that a 'genuine' victim will appear upset, vulnerable, submissive and powerless; she will look, in effect, like a 'victim' (Burgess and Holmstrom, 1974; Burgess and Hazelwood, 1999). Withdrawal and dissociation may be misinterpreted as signifying that she does not care, and using humour as a defence may be perceived as inappropriate. Most police expect a woman to share their predominant concern of wanting to identify and arrest the offender. Yet a woman who has just been raped may not feel excessively offender-focussed, at least in the initial stages. Instead, she may be more focussed on surviving, struggling to come to terms with what has just happened to her and how she can best cope and manage it. It is likely that the woman will be in a state of shock and may be numbed into passivity at the same time as the police feel catapulted into action. She is in re-action, while they are in action mode, and the potential for miscommunication and misunderstanding is colossal.

The police generally want her to have a medical examination immediately, considering this vital in their quest to 'nail' the offender (Adler, 1991; Gilmore and Pittman, 1993; Gregory and Lees, 1999). They find it hard to appreciate that her concerns may differ from theirs. For example, that when she hears the words 'medical examination', she does not necessarily hear them as a chance to gain evidence against the offender for some future court case; instead, she is likely to hear something signifying intrusion, re-violation, and humiliation. Moreover, she may also consider, in her exhausted state, how this procedure will prolong the length of time before she is able to rest and try to sleep.

Many victims of rape feel apprehensive about whether or not the police will judge and blame them for provoking the incident (Epstein and Langenbahn, 1994; Estrich, 1987; Feldman-Summers and Norris, 1984; Gregory and Lees, 1999). As cases examined in Chapter 5 showed, if a woman presents as having been drunk or

drugged at the time of the alleged rape, police may see that as contributing to her sexual violation, rather than condemning the way in which the perpetrator exploited her vulnerability and diminished competency. Numerous research studies have demonstrated an association between rape and alcohol consumption (Amir, 1971; Crowell and Burgess, 1996; Harrington and Leitenberg, 1994; Russell, 1984; Warshaw, 1988). In one of the most extensive studies conducted on date and acquaintance rape, 75% of the men who had committed sexual assault had consumed alcohol or drugs prior to the assault (Warshaw, 1988). Within the criminal justice system, as in society at large, alcohol consumption by the victim has long been regarded as a discrediting factor – but only for the victim (Schuller and Stewart, 2000). Alcohol has been blamed for loosening her inhibitions, and the fact of her intoxication interpreted as evidence of overall moral turpitude (Etorre, 1992; Lees, 1997). By comparison, drunkenness in the offender appears to have received little condemnation. This may be related to the double standard which considers a drunken woman more reprehensible than a drunken man (Etorre, 1992; Otto, 1981). Against this backdrop, a woman who is drunk is more likely to be seen as ‘asking for it’ than he is for ‘taking it’ (Baker, 1999; Shapcott, 1988; van de Zandt, 1998; Wiehe and Richards, 1995). A drunk woman tends to be viewed as responsible for what happens to her, while a drunk man may be absolved of responsibility for what he does.

Similar interpretations are placed on factors such as intellectual disability and psychiatric instability, suggesting that these tend to be viewed as diminishing the victim’s credibility rather than as enhancing her vulnerability. It has been well documented, however, that persons with intellectual disabilities are likely to have enhanced vulnerability to sexual victimisation, arising from a combination of factors including impaired judgement, difficulties in communication, lack of knowledge regarding sexual matters, ignorance of their rights within the law, and the likelihood of their living and working in high-risk environments within easy access of both opportunists and sexual predators (Hayes, 1993; Luckasson, 1992). A recent Canadian study estimated that 83 percent of women with disabilities will be sexually assaulted during their lifetime (Roehar Institute, 1995, cited in Brook,

1997, 16). Research conducted in Australia by the National Police Research Unit and Flinders University also found that persons with intellectual disability were ten times more likely to be sexually assaulted than non-disabled people (Brook, 1997, 16-17). These findings have serious and far-reaching implications for organisations such as the police, and draw attention to the need for greater understanding of the power, control and dependency dimensions associated with disability. What the cases examined in Chapter 5 portrayed, however, was a tendency to view intellectual or psychiatric impairment as factors which reduced the 'truth'-value of the complainant's testimony.

How an individual detective responds to a rape complainant, then, is complex. The variation between police officers is matched by the variation of complainants, their personal characteristics, and the nature and context of what they are reporting. It is difficult in practice to assess each situation on its own merits, and the police rely heavily on stereotypes to assist in the general exercise of discretion (Reiner, 1994; White and Perrone, 1997). In relation to sexual assault offences, this is evident in appraisals of victims' demeanour and culpability, and in the assessments made by officers regarding complainants' credibility (Allison and Wrightsman, 1993; Burgess, 1999; Estrich, 1987; Gregory and Lees, 1999; Lees, 1997). As the police file analysis showed, this process itself involves subjective evaluations and interpretations, which may vary enormously depending on the particular officers involved and their relationship with a particular complainant.

The dynamics of the relationship between the police and a complainant are, therefore, pivotal, but need themselves to be considered contextually. Interactions between police officers and rape complainants take place against a series of backdrops, each of which can also potentially impact on the style and content of such exchanges. When police encounter non-police persons, they typically perceive them initially as 'other', as outside what is euphemistically called 'the police family', and more typically described as the police occupational or organisational culture (Brown and Heidensohn, 2000; Chan, 1996; Fielding, 1995; Holdaway, 1983; Reiner, 1994; van der Heyden, 1997). The 'them and us'

mentality which can affect police-citizen encounters is present also when rape victims contact the police. If the victim describes or names an offender who is well-known in police circles as a 'villain', then the victim may be treated in ways akin to a cousin or distant relative. She is not police, but she is not completely not-police because she and the police are now presumed to share a related sense of hostility towards the same person. Thus, if the offender is someone whom the police have no ambivalencies about catching (because he is already known to them, was vicious, or preyed on the excessively vulnerable whom the police feel protective towards), then the complainant is more likely to be perceived as credible. If, however, the police are able to empathise with the position of the alleged rapist, and find it difficult to feel antagonistic towards him, then they may turn their antagonism on the complainant. Either way, the police are the hunters, and their prey is not always the rapist; it may sometimes be the complainant. If the alleged offender wins the sympathies of the police, and the complainant loses them, then these subjective affinities are likely to influence overall perceptions of the case and of the complainant's credibility.

POLICE ORGANISATION

The response of the police organisation to crime victims is not a uniform, static entity. Rather, it is shaped by a range of factors and variables, which change and evolve over time. These include, for example:

- issues of resourcing and the assessment of priorities within the police organisation itself;
- innovations in policing philosophy and practice;
- changing community expectations; and
- shifts in political opinion.

In international terms, the police response to rape victims in particular has been the subject of considerable pressure to improve police performance overall (Brown and Heidensohn, 2000; Epstein and Langenbahn, 1994; Gilmore and Pittman, 1993;

Gregory and Lees, 1999; Temkin, 1997). As noted in Chapter 2, various developments and initiatives have been introduced with the aim of making police reporting and investigative procedures more sensitive and responsive to victims' needs and emotional states. Some of these are examined in greater detail below, and assessed in relation to the potential they present for improved police performance and victims' enhanced satisfaction. This section begins with a brief overview of similarities in the structural positions of policewomen and women victims.

Role of women within the police occupational culture

A parallel process operates between the significance accorded to crimes against women and the position of women within the police organisation. Women were excluded from policing until comparatively recently, and have long been recognised as a minority group with minority status (Brown, 1998; Brown and Heidensohn, 2000; Gregory and Lees, 1999; Heidensohn, 1992). Within New Zealand, for example, women constitute 15% of sworn police officers overall, with 94% positioned no higher than the status of constable in the rank structure, compared with 75% of male officers (New Zealand Police, 2000). Criticisms have been made internationally of the way in which policewomen are deployed differently from male officers (Boni, 1998, cited in Brown and Heidensohn, 2000; Gregory and Lees, 1999; Jones, 1986); promoted less often (Heidensohn, 1992; Waugh, 1994); and resisted by many of their male colleagues (Brown and Heidensohn, 2000; Gregory and Lees, 1999; Waugh, 1994). Issues surrounding the sexual harassment of women within the police are being increasingly noted (Brown, 1997; Halford, 1993), and related to the masculine ethos and biases of the organisation overall (Brown and Heidensohn, 2000; Gregory and Lees, 1999; Heidensohn, 1992; Waugh, 1994). The difficulties associated with promoting other equal employment concerns, such as access to childcare and challenging homophobia, have also been identified as problematic and discriminatory in practice (Gregory and Lees, 1999). Whilst such issues remain apparent within the

police organisation, women as victims of men's violence will also share inferior status. Thus Gregory and Lees have observed:

There is a clear link between the requirement that sexual attacks are treated as serious crimes and the requirement that policewomen are treated as equal within the force. (Gregory and Lees, 1999, 201)

Where the issue of gender has been recognised at times, however, has been in relation to the deployment of women officers.

Gender of police officers

Given that most rape victims are female, and that most of the police officers criticised in earlier rape studies were male, the possibility of the gender of the officer making a significant difference has been canvassed (Brown and Heidensohn, 2000; Brown et. al., 1993b; Goodstein and Lutze, 1992; Gregory and Lees, 1999; Lees and Gregory, 1997; Pike, 1992; Pino and Meier, 1999; Radford, 1987; Toner, 1982). The assumption has been made that, as more women enter the police, their deployment on sexual assault cases will automatically result in improved service delivery to victims. Women victims, it was assumed, will find it easier to disclose intimate details to another woman, and policewomen will have a 'natural' empathy with the victims (Adler, 1991; Brown et. al., 1993b).

This assumption has resulted in some jurisdictions assigning greater numbers of women to specialist rape squads. In parts of Britain, for instance, dedicated units have been established staffed by specially trained officers, most of whom are women but usually managed by a male detective (Brown and Heidensohn, 2000). Where problems may arise, however, is when supervisors assume that female detectives will require less training and less experience than their male counterparts in order to manage sexual assault cases competently (Easteal, 1993; Pollock, 1995). In such an environment, both victims and female police officers lose out. The

victims may receive less informed, professional policing as a result, with sympathy and understanding by no means guaranteed or seen as a substitute for competency. For women officers, such deployment can result in their being regarded as inferior and less competent than their male colleagues – an unfair comparison when one set of colleagues is being appraised on the basis of training and experience and the other on so-called ‘natural’ aptitude.

Some women do have strong feelings concerning the gender of the officer they speak with; others do not. Contrary to popular assumptions, rape complainants do not automatically prefer to speak with female officers and, when they do, do not always find them more understanding than their male counterparts (Goodstein and Lutze, 1992; Radford, 1987; Toner, 1982). Most of those interviewed in my previous research (Jordan, 1998a) felt that gender did not compensate for experience, and were concerned above all with receiving a professional and caring response from the police. The negative experiences some women had with hostile and disbelieving policewomen raised doubts about assumptions of ‘natural’ sympathy and aptitude. Conversely, other women rated highly the sensitivity with which some male officers treated them. Gender-based assumptions, it seems, can be highly misleading, and ‘common sense’ assumptions can, in effect, make no sense at all. Where the gender of the officer is critical, however, is when the victim requests an officer of a particular gender. Given the difficulty many victims face in articulating their needs, the responsibility lies with the police to offer complainants a choice, wherever possible, between equally qualified officers of either gender. Where such a choice is not currently available, the police then have the responsibility of selecting and training sufficient numbers of officers to make this possible. This will only happen if the police make rape a priority area in relation to training, resourcing, management, and performance appraisal.

Specialist squads

The issue of specialist or dedicated squads appears particularly pertinent to the policing of sexual assault, and has been explored within the United States context (Epstein and Langenbahn, 1994; Goodstein and Lutze, 1992), and more recently in Britain (Brown and Heidensohn, 2000). Research conducted with complainants concerning their experiences of being interviewed by the police makes a compelling case for specialisation. Clearly, when it comes to interviewing rape victims, not all officers can be considered equal in this regard. Issues of gender and training are not the only factors to consider. Attitudes, personal beliefs and experiences cannot be ignored completely. Whilst the argument can be made that a true professional will set these aside, the horrifying experiences of some complainants indicates that this does not always happen in practice. As identified in Chapter 6, detectives interviewed intimated that some of their colleagues should never be allowed near a rape victim. Some police members are known for their anti-woman stance, while others have a reputation for bullying and insensitivity. If this is common knowledge, how can the police continue to justify the assignment of such individuals to rape investigations?

The New Zealand Police currently advocate that all officers should be generalist-specialists and there is very strong resistance to suggestions of having dedicated squads for rape investigations.¹ The hostility with which this option has been greeted suggests the possibility that more underlies this reaction than the stated reason of resources. The issue appears to be more closely connected to assessments of police priorities and philosophy. Specialist units are established in crime areas rated highly by the police, such as organised crime and drugs, and the area of child sexual abuse has long been recognised as requiring specialist selection and training. Adult women's experiences of sexual violation are accorded little priority by comparison, unless a serial sex offender is involved, or an offender

¹ Strident opposition to the concept of specialist squads has been voiced at recent training sessions for police detectives that I have participated in, as well as in debate over the content of the New Zealand Police Sexual Assault Investigation Policy.

whom the police are interested in for other reasons, or the specific victim's characteristics provoke public sympathy. While a dedicated rape squad may be impossible to sustain, or even to justify outside of Auckland, ensuring the availability of specially selected and trained police personnel to conduct rape investigations would be highly beneficial for police and complainants alike. However, while some police officers' views on this issue remain so negative and entrenched, the likelihood of the police organisation offering high standards and consistency in its response to rape victims will be impossible to achieve.

Recent developments in policing

Police organisations around the world have been challenged in recent years to be more responsive to the public whom they ostensibly serve. Considerable criticism has been voiced concerning the extent to which the police obsession with crime-fighting has led to an excessive preoccupation with catching offenders, at the expense of such areas as crime prevention and awareness of issues concerning victims (Cameron, 1986; Trojanowicz et. al., 1998; van der Heyden, 1997; Walklate, 2001). Moreover, research addressing the effectiveness of traditional police practices, such as random patrolling, has produced generally damning results (Hough, 1987; Young and Cameron, 1989). Against this backdrop, 'community policing' (Bayley, 1994; Buerger, 1993; Greene and Mastrofski, 1988; Palmiotto and Donahue, 1995; Trojanowicz et. al., 1998) has emerged as a challenge to police perceptions of themselves as an alienated thin blue line, pitted against increasing tides of violence, lawlessness, and social decay. Models of community policing vary greatly, but at the heart of most is a common goal of building greater partnerships between police and community, with a view to improving law enforcement success and promoting enhanced levels of citizens' satisfaction with police service delivery (Bayley, 1994; Buerger, 1993; Trojanowicz et. al., 1998).

Consistent with a community policing model is a redefinition of the public generally, and crime victims and witnesses in particular, as valuable aids in law

enforcement (Trojanowicz et. al., 1998). Increasing emphasis is being placed on the need for high-quality interviewing of victims to elicit detailed information which will assist the police in the early apprehension of offenders (Hazelwood and Burgess, 1999). Such an emphasis, however, may appear unnecessary in the vast majority of sexual assault investigations, given the statistically high chances of the alleged offender being someone known to the complainant and usually able to be named and identified without the aid of sophisticated police sleuthing techniques or offender profiling. This by no means implies that community policing is irrelevant, however. The increased emphasis placed by this approach on enhanced police communication skills, problem-solving, and accountability to the public should, ideally, be translated into improved treatment of crime victims. The New Zealand Police have embraced community policing in their official rhetoric; it remains to be seen in practice how, and to what extent, this will impact on police officers' treatment of sexual assault victims.

Police policy on rape

In 1998, the New Zealand Police introduced, for the first time, a written policy to inform the handling of sexual assault investigations (New Zealand Police, 1998. A copy of the New Zealand Police Sexual Assault Investigation Policy is reproduced in full in Appendix I). That no such policy had existed prior to 1998 reflects to some extent both the low priority attached to such investigations and police reluctance to acknowledge the limitations of generalist training for dealing adequately with a specialist area.

Moves to develop this policy began as a response both to increasing criticism from rape support services and to the results of research documenting rape complainants' experiences of reporting rape to the police (Jordan, 1996). These results had initially been presented at an inter-disciplinary conference in March 1996, which a number of police had attended along with doctors, lawyers, academics, counsellors, support agency workers, and interested members of the public. Some officers

seemed genuinely shocked at accounts of highly inconsistent and sometimes hostile treatment of rape complainants, and shortly afterwards one was assigned to oversee the development of a policy. This process involved a lengthy period of consultation and negotiation both within the police organisation as well as with outside agencies.

The policy that was finally introduced stipulates police adherence to procedures that include assuming all sexual assault complaints initially to be genuine and referring the complainant for a medical examination. The policy also suggests that the police obtain skeletal details initially from rape complainants and defer statement-taking until the victim has been able to rest and recover slightly.

If fully implemented, the policy would assist greatly in improving the quality and consistency of service delivery in this area. However, currently it appears that the fervour for introducing a policy has not been matched by equal enthusiasm for seeing it adopted and adhered to nation-wide. The stipulated appointment of a sexual assault co-ordinator in each district did eventually occur, but sometimes appeared to be a knee-jerk response to a requirement that all districts send such a person to a seminar at the Police College. The views expressed by those present revealed there was considerable resistance to aspects of the policy and a desire to see it diluted in tone and application.

A two-year lead-in time for policy implementation was planned, which ended in February 2000; over a year later, it remains difficult to see any tangible impacts arising from its introduction (Beckett, 2000). Dispute over the contents, in fact, has resulted in the policy being currently under review and the training video being prepared to accompany the policy's introduction is not now expected to be completed until September, 2001. To date, no national co-ordinator has been appointed at the Office of the Commissioner to oversee the nation-wide implementation of the policy. Whether or not such a person is appointed will

provide some indication of the extent to which this is viewed as a priority area.² Meanwhile, opposition to the policy has not abated in some quarters, and, as I discovered when interviewing detectives, it seems likely that many are not even aware yet that a policy exists, let alone knowledgeable about its contents. From the victim's perspective, any changes brought by the policy's introduction seem largely imperceptible. For the New Zealand Police Sexual Assault Investigation Policy to be more than a token gesture of political correctness, substantive changes are needed to demonstrate to police officers that this is a priority area for service delivery and performance appraisal.

The dynamics of the police-victim relationship occur within the context of the police organisation overall. Police responses to rape complainants are therefore influenced by such factors as policy and strategy planning, deployment issues, and police resource decisions. In turn, the police organisation itself is located within the broader context of the criminal justice system, and impacted upon by developments within its sphere.

CRIMINAL JUSTICE SYSTEM

The police occupy a central role within the criminal justice system. They effectively control the turnstiles which filter members of the public into the system, and the exercise of police discretion is pivotal in its scope and influence (Gilmore and Pittman, 1993; Kerstetter and van Winkle, 1990; Lees and Gregory, 1993). Within this arena, institutional processes operate amidst an environment of changing trends and ideologies, resulting in both legal and attitudinal shifts. Several of these themes are addressed briefly here, in relation to their potential impacts on police practice.

² When the New Zealand Police introduced a specific policy on family violence in 1994, a Police Family Violence Co-ordinator was appointed; however, that individual left the police in 2000 and,

Victims' movement

Over the last thirty years, increasing criticism has been directed at the criminal justice system generally for its failure to meet the needs of crime victims (Doerner and Lab, 1995; Lee et. al., 1993; Walklate, 1995; White and Perrone, 1997). Our system has traditionally been oriented around identifying, locating, apprehending, prosecuting, convicting and sentencing offenders, with the victim being treated as an accessory to this aim.

Some significant developments have occurred in recent years. Increasing pressure has been placed on the criminal justice system to make victims more central within its processes. In New Zealand, this was partly evident in the passing of legislation in 1987 aimed specifically at crime victims. The Victims of Offences Act 1987 stipulated, amongst other considerations, that victims of crime had certain rights, including the right to be treated 'with courtesy, compassion and respect for their personal dignity and privacy'; to have details of the harm caused by the crime conveyed to the Judge in the form of a Victim Impact Statement prior to the offender's sentencing; to be kept informed concerning developments with their case; and to have the right to request notification of the offender's impending release, or escape, from custody (Lee and Searle, 1993).

Not all legislation is equally enforced, nor easily enforceable. The findings of the research conducted with rape victims (Jordan, 1998a, 1998b) clearly demonstrates that the basic tenets of the Victims of Offences Act are not being adhered to by the police. If they were, then such a proliferation of examples of the negative treatment of victims would not exist. Whilst some of the concerns raised by participants in this research related to the personal qualities and attitudes of individual officers, many arose from situations where information was withheld, property retention and return was bungled, safe environments were not provided, and, above all, respect for the needs and wishes of the victim was absent.

as yet, no-one has been appointed to assume specialist responsibility in this area.

The brutal impacts of the traditional, adversarial justice system on rape victims have been increasingly acknowledged throughout the 1990s (Koss, 2000; Lees, 1996; Scutt, 1998; Thomas, 1994). In a recent article, United States rape researcher Mary Koss noted:

Inherent features of adversarial justice within the courtroom also shape survivors' experiences, such as the environment of formality, the sequestering of witnesses who may also be the family and supporters of the victim, attorney questioning that exacerbates self-blame, and the perpetrator's unmovable stance that he is not guilty of a crime. (Koss, 2000, 1335)

Research data obtained from nearly one thousand criminal trials showed that the majority of rape victims believed that rapists had more rights than they did, that the criminal justice system was unfair, and that they were not given adequate information about their case, nor input and control into its handling (Frazier and Haney, 1996). Concerns such as these have promoted greater debate over the issue of whether or not legal reform measures can dramatically improve the current system, or whether an alternative approach needs to be developed (Bronitt, 1998; Goldberg-Ambrose, 1992; Henning and Bronitt, 1998; Lees, 1996; Smart, 1995; Taslitz, 1999; Thomas, 1994; van de Zandt, 1998).

Sentencing issues

Public concern in the 1980s that rape offenders were receiving nominal sentences resulted in changes being made in New Zealand in 1993 to extend the maximum penalty for rape to 20 years. This was a political move, designed in part to demonstrate an awareness of the serious impacts of rape in a climate where feminist criticism was strong. This move now, however, appears to be in danger of backfiring. It has contributed towards complacency in some quarters that enough has been done about rape, and even that the pendulum has swung too far in favour

of the victim (Goodyear-Smith, 1995; McLoughlin, 1997). The fact that average sentences for rape are actually in the vicinity of eight years, not twenty, is ignored. Recently, public outrage was voiced in some quarters that we treat rape more seriously than child homicide (Dominion, 10/3/01). The implication here is two-fold: the crime of rape is less serious than the crime of homicide, and adult women are less deserving than innocent children. What is also implicit is the assumption that victims will be served well by longer sentences.

Harsh sentences on statute-books, even if they were enforced, do little to address the problem of rape if most victims either refrain from reporting rape, or do so only to feel revictimised by the trial system and to see their attacker acquitted. Despite so-called improvements, rape continues to be characterised by low reporting, high attrition and low conviction rates (Gregory and Lees, 1999; Harris and Grace, 1999). Moreover, even if an offender is convicted, doubts are sometimes raised over his guilt by those who consider he was 'framed' or the victim of a woman's vengefulness. Although seldom urged to doubt a not guilty verdict, nor to spare a thought that a raped woman has possibly been re-raped by our 'justice' system, the public seem increasingly to be urged to regard rape convictions with scepticism (McLoughlin, 1997). A handful of cases of supposedly proven wrongful conviction have been manipulated for political mileage by those determined to champion the rights of men accused of rape and abuse, who use such cases to 'prove' that the criminal justice system is weighted in favour of the victim. Such cases attract widespread public interest and media coverage, precisely because they reinforce traditional views of women as malicious liars and men as bumbling Romeos.

Take the case of Nick Wills, a high profile New Zealand case involving a Hamilton student accused of rape by a young woman.³ If he was innocent, then his being arrested and charged with rape was a terrible travesty of justice. If he was not

³ Nick Wills, aged 22, was arrested and charged with the rape of an 18-year old woman in August 1995. Wills was later able to produce banking-machine transaction slips which proved he could not have been with the woman at the time she alleged. The Police Complaints Authority subsequently determined that the police had neglected their duty in not checking Wills' alibi and ordered that he be paid \$30,000 compensation for wrongful arrest. The woman was charged with making a false complaint (McLoughlin, 1997).

convicted when he was guilty, then that would also have been a travesty of justice – yet the latter occurrence, although far more common, is seldom acknowledged. This is, of course, related in large part to the justice system being overtly weighted in such a way as to minimise the chances of wrongful conviction – hence the adage that it is ten times better to let a guilty man go free than an innocent man be convicted. Wrongful conviction of the innocent always appears more injurious to the public good, but the question still needs to be asked: **for whom** is it better if a guilty man goes free? Certainly not for the victim of his offences, who has lost confidence in the justice system, been retraumatised by a court appearance, and fears retribution from her attacker as well as public shame and humiliation for now being perceived as a liar and false complainer. The victim's life may be destroyed, but our system has traditionally not held victims in high regard so that outcome appears of little consequence. This old adage that we hold so dearly, when applied to rape cases, emerges as yet another way in which laws have been written and interpreted to benefit male offenders at the expense of female victims.

SOCIAL MOVEMENTS

The criminal justice system itself is located within a broader social context and affected by the tides and currents which run through society. In the past 20 to 30 years, several trends and ideological shifts have been apparent in relation to responses to the crime of rape, and these are now briefly considered.

Feminism and the women's movement

The predominant attention given to rape as a crime committed almost exclusively by men, almost exclusively against women, guaranteed it a position of prominence within early feminist campaigns. From the early 1970s onwards, increasing criticism was made of inadequate definitions of rape and responses prejudicial to the rights of victims (Adler, 1987; Brownmiller, 1975; Estrich, 1987; Hall, 1985;

Kelly, 1988; Shapcott, 1988; Toner, 1982). Many of the changes introduced in the 1980s resulted from earlier campaigning by feminist activists and their supporters, and considerable pressure was placed on the justice system to improve its practices and responses to victims. As noted earlier, the legal definition of rape was extended to incorporate other forms of sexual violation, spousal immunity was abolished, and sentences for rape were increased. These changes, and the publicity accompanying them, also placed pressure on agencies such as the police to examine their training and procedures. Increasingly, support groups established for rape victims played an advocacy role, and greater liaison was developed between the various agencies involved, bringing together the police, doctors, and support agency workers. The dialogue that resulted, however, has seldom been credited with the same weighting and status as the multidisciplinary teams established to co-ordinate responses to child sexual abuse. Sexual assault of children is accepted as a complex and specialist area because children are involved; not, it seems, because the trauma of sexual violence produces severe and complex responses requiring highly skilled management, irrespective of the age of the victim.

Backlash to the women's movement

Centuries of patriarchal rule did not roll over quietly when challenged by feminist activists. The women's movement of the 1970s fundamentally threatened traditional social realities and relationships, in particular men's assumed 'right' of authority and supremacy. By the 1990s, however, increasing evidence was appearing of a backlash against the gains made by feminists (Enns, 1996; Faludi, 1991; Herman and Harvey, 1993). Some critics have protested that efforts to increase the exposing and reporting of men's abuse and violence have gone 'too far'; the previous climate of denial has, they argue, been replaced by a naïve adherence to such clichés as 'children never lie' and a willingness to always trust and believe the victim (Dershowitz, 1994; Goodyear-Smith, 1995; McLoughlin, 1997; Newbold, 2000). It is not men's actions that put them in prison, it seems, but women's lies.

Far from being restricted to opposition from those recognised traditionally as being anti-feminist, however, a new breed of sceptical 'feminists' is emerging. Writers such as Katie Roiphe (1993) and Camille Paglia (1992) have argued that women are being encouraged to label all 'bad sex' as rape, with Paglia, for example, advocating that the term 'rape' should be restricted in usage to brutal stranger attacks (Paglia, 1992, 69). Their labelling of women's rising resistance to acquaintance rape as an 'hysterical' over-reaction effectively reinforces historical images of rape as little more than a product of women's fantastical imaginings.

Thus the assault on patriarchy has been met with counter-blows from the male-dominated institutions established to safeguard men's social, sexual, and political positions of power and control. For example, 'feminist' itself became a dirty word, denoting strident, confrontational, man-hating lesbians who went around chaining men to trees.⁴ By the 1990s, groups of men were forming themselves into a men's rights' movement, insistent that they were now a victimised and oppressed minority voice (Johnson, 1997).

Within this environment, advocacy and support groups for women continue to struggle for resources and recognition. Services such as Women's Refuge, Rape Crisis, and the Help Foundation⁵ are typically regarded as being of low social status and priority and are forced to spend much of their energy fighting for economic survival (Foley, 1996; Stirling, 1997). The social position of such agencies parallels strongly the position of those whose causes they champion and represent, providing yet a further indicator of the obstacles victims of sexual violence face in their struggle for support and recognition.

⁴ This impression was fostered in New Zealand after a group of feminists chained lecturer and playwright Mervyn Thompson to a tree in 1984 and spray-painted the word 'rapist' on his car, following accusations that he was a sexual predator (Atmore, 1994).

⁵ The Help Foundation exists in various New Zealand cities, and provides counselling and support services for victims of rape and sexual abuse. Help also provides a 24-hour crisis line, and in some areas co-ordinates the process for calling out a DSAC doctor to medically examine victims of rape. The agency provides a support person to accompany the woman through the medical examination, and sometimes also during initial police interviewing procedures.

Advocacy groups, support agencies, counsellors, psychotherapists and rape researchers have all borne the brunt of recent campaigns aimed at discrediting the voices of those who have sought greater acknowledgement of the extent of sexual victimisation. Years of feminist research and advocacy for rape survivors are in danger of being dismissed as 'victim feminism'. It was, one might argue, to be expected that once the lid was lifted to expose the extent of sexual assault on women and children in the home, there would be some in society who would want to clamp the lid firmly back on the pot. Such 'clamping' has been evident throughout the 1990s in two distinct, but related, debates. The 'false memory' debate has sought primarily to undermine survivors' disclosures regarding historical child sexual abuse, essentially by proclaiming the unreliability of memory (Porter et. al., 1999; Loftus, 1992). The second debate has focussed on disclosures by women of adult rape experiences, arguing that perennial silencing favourite – women lie (Macdonald, 1995; McLoughlin, 1997). At a time when women's challenges to patriarchal belief systems seemed to be making significant progress, creating an environment where rape and child abuse could be exposed and confronted, these debates have emerged as the most recent manifestation of societal repression and denial.

It is within this context that, in recent years, adults recalling abuse from their childhood have been discredited for relying on repressed memories, or on memory at all (Goodyear-Smith, 1995; Loftus et. al., 1994; Ofshe, 1994). Therapists, in turn, have been condemned for implanting false memories in vulnerable clients, and for turning rape and sexual abuse into an 'industry' which they manufacture, produce, and reap the profits from (Du Chateau, 1993). To explain the mushrooming of abuse allegations in recent years, counsellors and therapists have been targetted as the 'bad guys', and portrayed as the real 'offenders'. The victims, then, become not women and children, but the men they supposedly falsely accuse.

The notion that therapists can implant scenarios of horror in the minds of their patients is easily accepted because it appeals to common prejudices.

It resonates with popular fears of manipulation by therapists and popular stereotypes of women as irrational, suggestible or vengeful. It appeals to the common wish to deny or minimise the reality of sexual violence. (Herman and Harvey, 1993, 5)

In response to such trends, it has been argued that:

The invention of a False Memory Syndrome (FMS) forms a central strand within the wider discourse of disbelief pertaining to the sexual abuse of children in Western society. It is fast becoming a free-floating explanation, bobbing up in 'ordinary' conversation, providing a mechanism by which accusations of child sexual abuse can be transformed into errors and overreactions. FMS is a dangerous idea to be on the loose. (Scott, 1997, 33)

The notion that abuse survivors are 'making it all up' has been seized upon as a defence by abusers and those who collude with them, and has also been adopted as a panacea to growing societal unease surrounding the safety of the home (Saraga and Macleod, 1997). The 1990s debate about memory and reliability needs to be recognised for having emerged within a specific social and political context, at a particular point in time. Hence, psychiatrist Sandra Bloom has argued that:

... the current controversy over 'false memory syndrome' is much more than an academic discussion about memory... in fact the scientific explanation of memory is perhaps the least vital issue. (Bloom, 1995, 273)

The memory debate has arisen in the context of resistance to feminist assertions regarding the prevalence and harm of rape and sexual abuse. As such, its assertions have become important 'props' in the continuation of patriarchal denial of sexual violence. Whilst undermining the voices of the accusers, it reifies the assertions of the accused. The assumption underlying this debate is, by now, chillingly familiar – women and children lie.

Not surprisingly, the media have often become the allies of this movement. The ingredients of a 'good story' are there: drama, suspense, 'truth' and 'lies', families torn apart, innocent men languishing in jail. Running throughout is the preservation of the status quo, and the role of the media as reinforcers of existing social relations (Barak, 1994; Lees, 1995). Hence it has been posited:

The FMS debate has taken place in the media and the courtroom, not the academy, and it mixes an appeal to 'common sense' with the positivism of experimental psychology. (Scott, 1997, 36)

The 'softer' version of the discourse of denial maintained that, maybe unintentionally, women often made 'mistaken' allegations that they had been raped, possibly encouraged by loose feminist definitions. Thus, in her controversial book, The Morning After, Katie Roiphe complains :

Rape has become a catch-all expression, a word used to define everything that is unpleasant and disturbing about relations between the sexes... Regret can signify rape. A night that was a blur, a night you wish hadn't happened, can be rape. (Roiphe, 1993, 80)

Media reporting of what are believed to be false rape allegations has become a fashionable area of inquiry and speculation in recent years. The coverage given to rape reports which are believed to be false is extensive, and articles centred round the theme of women lying appear to be positioned with greater prominence and emphasis than stories covering rape charges that end in conviction (Hamlin, 1988). Thus, newspaper headlines have proclaimed 'False rape claims worry for police' (New Zealand Herald, 22/10/98), while magazine articles have printed articles entitled 'Cry Wolf' (Metro, January 1999), and 'To Be Male is to Beware' [of false allegations being made against you] (North and South, August, 1997). Writing in the context of the United States, John Hamlin has noted that:

The resurgence or perpetration of the myth that women are liars and the willingness of the public to accept the idea that women lie wherein rape is concerned, is partially shaped by press coverage. (Hamlin, 1988, 224)

What strikes me about this are the parallels with nineteenth century media campaigns (Edwards, 1981). On both occasions, the moral panics constructed around inflated fears of women making false rape complaints have surfaced in the aftermath of a period of women's social and economic advancement. In both contexts, the media have seized upon the notion that women lie about rape to create a new breed of victim – the wrongly accused man. As depictions of rapists as two-headed beasts come to be replaced with more benign images of 'ordinary' men, and increasing attention is given to rapes perpetrated by husbands, acquaintances, and professional men, it is scarcely surprising that vigorous campaigns of resistance will be mounted to, yet again, undermine women's accusations concerning men's violence.

A new breed of rape 'victim' has thus been championed: the falsely accused man. In a recent New Zealand book, Greg Newbold claimed to have evidence of a

... mounting number of cases where women or girls, out of malice, jealousy or simple caprice, have falsely accused men of sexually violating them.
(Newbold, 2000, 137)

He cites the David Dougherty case, where a man was convicted and imprisoned for the rape of an eleven year old girl on the basis of her testimony and identification of him, only to have that conviction later overturned in the light of developments in DNA testing that were used to clear him of the offence (ibid., 238-239). Dougherty, he alleges, *is not alone*, and suggests that other innocent men are undoubtedly housed in New Zealand prisons, there in part due to *a prejudicial social climate* (ibid., 239). Whilst it must be acknowledged that a small number of convictions have been overturned on the basis of new evidence, this 'fact' should not then be extrapolated to suggest that New Zealand's prisons are full of innocent men. Retrials resulting in subsequent convictions do not elicit comparable assertions that our streets are full of unconvicted rapists. Newbold's arguments are based on selective media reports of specifically chosen cases, which he in turn emphasises to fit his own assumptions about women lying. Critical inquiry of the role of the media in perpetuating existing social relations is remarkably absent in his account (Barak, 1994; Naylor, 1995). Instead, media accounts are accepted at

face value in ways that demonstrate the dangers associated with uninformed or biased 'news' coverage.

While a few of the cases presented in the media have been accompanied by what seems to be plausible evidence supporting the accused man's version of events (for example, the Nick Wills case cited earlier), others have implied that a 'false complaint' was involved but with little or no substantiating evidence. A victim's retraction, for instance, is often assumed to signify an offender's innocence, when this may or may not be a valid deduction given the range of factors which may affect the victim's decision on such matters (Freckelton, 1998; Scutt, 1997).

In the case involving rape allegations against international rugby player, Roger Randle⁶, for example, inferences that the complaint was false seemed to be based more on attributions associated with the alleged victim than they were on evidence substantiating the account of the alleged offender. In her analysis of this case, Kate Mitchell (2001) observed in relation to the media's portrayal of the victim, Charlene Donaldson:

Labelling her 'a rugby groupie' (The Evening Post, 22.4.97: 4), 'a shark' (Sunday News, 1.6.97), 'a neurotic, pop-eyed South African' (The Daily News, 18.8.97:6; The Evening Post, 19.8.97:4), or as 'the blonde' (Woman's Weekly, 9.6.97; Evening Post, 11.8.97), effectively neutralised her ability to be hurt or victimised, and as a result trivialised her allegation. In the 60 Minutes item, images of Randle and his partner playing with their baby were juxtaposed with a picture of Donaldson walking away from the camera and a voice over detailing the allegation as originating from 'this solo mother' (60 Minutes, 20.4.97). This information was not only irrelevant, but also reinforced the difference between the two parties. (Mitchell, 2001, 32)

⁶ Randle was on tour with the Hurricanes rugby team in South Africa when he was arrested and charged with the rape of a South African woman. Two other players were also implicated in the

Enns (1996) has argued that cycles of awareness and denial of abuse have occurred throughout the twentieth century. One such cycle was evident when Freud first articulated his views concerning the prevalence of child sexual abuse. In treating women patients who presented with symptoms of hysteria, Freud was both surprised and appalled as, responding to what Judith Herman has called his 'empathic identification' with them, they repeatedly disclosed accounts of sexual abuse (Herman, 1992, 13). As Herman puts it:

Freud and his patients uncovered major traumatic events of childhood concealed beneath the more recent, often relatively trivial experiences that had actually triggered the onset of hysterical symptoms. (Herman, 1992, 13)

He presented, with great professional pride, his paper on 'The Aetiology of Hysteria' in 1896, confident that his work represented a major breakthrough (ibid.). Freud's assertions were rejected so vigorously by his contemporaries that, to save face and retain professional acceptance, he felt compelled to backtrack. Since he could not deny that women patients were disclosing high levels of childhood sexual abuse, Freud sought an alternative explanation and proposed that such abuse was the invention of fantasising or delusional women. His repudiation of his theory came swiftly, and has been attributed also to the profound social unease he felt as the daughters of men from a range of backgrounds, including those from Vienna's most respectable bourgeois families, revealed that they had suffered familial sexual abuse (ibid., 14). Ultimately, the climate of denial at the time was so strong that it silenced women's disclosures of sexual abuse. It was to take another century of social and political change before the voices of women and children would begin to be heard.

Like Enns, Herman (1992) has maintained that issues of domestic and sexual violence were debated only when political movements became strong enough to

alleged rape. Despite some evidence to support her allegation, media scrutiny of the woman concerned was harsh and judgmental, and she eventually withdrew the case (Mitchell, 2001).

challenge society's denial of abuse, with such attention waning when more conservative trends assumed power. Denying the existence, extent, and effects of sexual violence is an established social phenomenon (Taslitz, 1999). As one writer commented:

The instinctive reaction to terrible news, by either an individual or a society, is denial and dissociation, framed in the terms of everyday realism and common sense – it cannot be true, it is too implausible... Societies dissociate their knowledge of trauma – massive injustice, torture, genocide – preferring to live in the 'bleached present' of conventional disbelief and logical denial. (Wylie, 1993, quoted in Enns, 1996, 361)

Whether societal denial and dissociation mirrors individual victims' denial and dissociation, or vice versa, is a mute point; what is clear is that, just as those victimised by rape may minimise their experience (Kelly, 1988; 1996), so do many in society minimise the prevalence of, and harm caused by, sexual violence.

In this climate of societal denial, organisations such as COSA (Casualties of Sexual Assault Allegations) were formed as advocacy groups for men who believed they had been falsely accused of rape or child sexual abuse. COSA maintains its opposition to rape and sexual abuse whilst alleging that many of those accused of such offences are innocent. Greg Newbold, Elizabeth Loftus, and Richard Ofshe, all cited earlier, have been listed as members of COSA's Professional Advisory Board (COSA newsletter, October, 1998). The organisation's newsletters typically include news clips from any media accounts involving so-called false complaints, with the latter seemingly including cases of victims' retractions, offenders' denials, and acquittals of men charged with sexual offences. Examples include:

A teenage girl accused a 47 year old man of indecently touching her while she was in his car. The man denied the allegations. The evidence against him consisted of the girl's testimony, which was described as contradictory, vague, and full of inconsistencies. The man's wife and 14 year old daughter

testified that the girl did not act any differently in the presence of their family following the time that the alleged incident was said to have occurred. A Christchurch District jury found him not guilty. (COSA newsletter, October 1998, citing article in Christchurch Press, 9/9/98)

Justice Pankhurst has decided that a Christchurch man accused of raping his partner's daughter 20 years ago will not stand trial, because it would be seriously prejudiced. The reasons given were the time lapse and the fact that witnesses for the defence were either unavailable or dead. The case would rest solely on the complaint's (sic) word against the accused. (COSA newsletter, May/June 1999, citing article in Christchurch Press, 27/2/99)

A 24 year old baker was accused of having sex with a sleeping woman. He denied having sex with her at all and the issue rested on whether her allegations were fact or fantasy (ie that she had imagined the sex). The jury found him innocent. (COSA newsletter, April/May 1998, citing article in Christchurch Press, 27/2/98)

The word of a man denying his offences, it seems, can be accepted as 'truth'. Why, after all, would men charged with rape lie? It is against this backdrop that the victim's voice struggles to be heard. COSA members, however, have argued that the criminal justice system has tipped the balance too far in favour of believing the victim, suspending critical faculties and judgement. Following the introduction of the New Zealand Police Sexual Assault Investigation Policy, a front-page COSA editorial was headed *New Police Guidelines Presume Guilt*. The article went on to call the document 'alarming', and declared in relation to the Police that:

The national policy (as demonstrated by their current policy statement) still reflects the attitude that allegations are presumed to be true and that the accused is presumed to be guilty. (Editorial, COSA newsletter, April/May 1998)

This view is not supported by this research, nor by overseas research on police and trial processes (Gregory and Lees, 1999; Temkin, 1997, 1999). Support for COSA, on the other hand, appears largely to be based on the subjective opinions of those who believe themselves or their friends or family to have been wrongfully accused. The founder and former president of COSA, for example, Dr Felicity Goodyear-Smith, is coincidentally the daughter-in-law of convicted paedophile Bert Potter, whose Centrepont Community has been exposed as an environment within which adult-child sexual relations were actively encouraged and fostered by some members. Felicity Goodyear-Smith herself, in responding to a critical piece by journalist Rosemary McLeod (Dominion, 21 January 1999), made the following admission:

In the November 1998 newsletter I stated that false complaints appear to be a growing trend, especially among teenagers... I admit that my claims are not based on 'hard' data... My claim that false complaints are increasing is an impression I have gained over the past decade, based on the increasing numbers of false rape complaints I have seen reported in the newspapers, and on the rising numbers of cases reported to the Casualties of Sexual Allegations organisation, where evidence indicates the alleged offences are unlikely, improbable or impossible. (COSA newsletter, March/April 1999)

The number of media examples included in COSA's newsletters, however, is of interest when compared with the results of academic research on rape reporting and criminal justice processing. The volume of newspaper coverage devoted to apparently false complaints seriously skews public perceptions, in ways which damage both police and victims' credibility. David McLoughlin, for instance, has declared:

Under the bad, old way of investigating complaints against men by women and children, the victims were often disbelieved. These days, it seems, the man is automatically disbelieved. (McLoughlin, 1997, 42)

The above quote comes from a cover story entitled, *To be Male is to Beware*, in a monthly magazine which prides itself on investigative journalism. The actual magazine cover featured a silhouette photograph of a sad, pensive man, emotively stating that he was, on the word of a girl,

... arrested, forced to resign and thrown at the mercy of a justice system increasingly willing to convict men falsely accused of assaulting women and children. (North and South, August 1997, cover)

The impression given is that large numbers of women are making false complaints of rape, which the police gullibly accept at face value because of their subscription to political correctness. In the same vein, other journalists have written about *the sudden epidemic of bogus rape reports* (Crawshaw, 1999, 82).

In contrast, what the current and other research shows is that false complaints are rare, that even more rarely do women falsely name a rapist, and that there is a much greater likelihood of the police disbelieving genuine victims of sexual assault (Burgess, 1999; Gregory and Lees, 1999). Compared with a raped woman's chances of not being believed, the likelihood of a man being wrongfully convicted is a remote possibility. Police investigative techniques are not as naively applied as COSA suggests, and err on the side of excessive suspicion rather than excessive trust. Suspiciousness has been identified as a key police occupational trait (Mulder and Winkel, 1996; Reiner, 1992) and is certainly not suspended in rape cases; rather, it is enhanced by prevalent ideologies of lying and vindictive women.

Public perceptions are currently being skewed not by one-sided policing but by one-sided media reports. Rape complaints that are believed to be false receive considerable attention, but seldom any close examination or analysis (Hamlin, 1988). Newspaper headlines proclaim *Third Woman Makes False Rape Complaint* (Dominion, 16/3/95); *Woman Jailed for Sex Lies* (Dominion, 26/9/98); *Rape Claim Possibly 'Pubertal' Fantasy* (Dominion, 21/5/93); and *How One Girl's Lies Have Ruined A Life* (Dominion, 26/9/98). Many journalists, like many police officers,

unquestioningly accept that women are prone to lying and fail to probe beneath the surface. After all, in the wake of Lombroso, women are still often viewed as little more than *big children*, and the notion that children fabricate accounts of abuse still receives widespread support. One high profile New Zealand example has involved the reporting of repeated attempts made by Peter Ellis to overturn his convictions for the sexual abuse of multiple children at the Christchurch pre-school where he worked (New Zealand Herald, 3/2/00). Despite consistent findings by the court upholding his conviction, continuing publicity is given to the opinions of those who question the validity of the interviewing techniques used with the children. Whilst some of the methods used in the past have been acknowledged to be problematic (such as, for example, the repeated and multiple questioning of small children), nevertheless there is a danger of the pendulum swinging from the 'children never lie' assertion back to the other extreme of doubting **all** children's testimony. The concerns raised regarding the methods used to interview children may provoke legitimate doubts about those **methods**; they do not necessarily 'prove' that there was no basis whatsoever to the allegations made (Pope, 1996). However, the limited findings of such research have been hijacked, enhanced, and used for political and ideological ends by proponents of the 'women and children lie' notion. Thus, what is alleged is that Ellis's conviction resulted not from Ellis's actions but from a feminist-fostered panic about sexual abuse (Hood, 2001); what Newbold has termed 'the sexual abuse frenzy' (Newbold, 2000, 86). It is Ellis who then becomes the 'victim', and feminists become the perpetrators.

Uncovering the motivations behind the backlash is not 'rocket science' territory. The vociferous and hysterical reactions to research documenting the high prevalence of sexual violence (for example, Gilbert, 1991) confirms once again that not everyone wants these figures accepted. This should be no surprise. Given the utility of sexual violence as a mechanism for maintaining men's social control and preserving the status quo generally, combined with the legacy of beliefs discrediting women's and children's voices, the real surprise is that significant gains have been made at all in exposing and challenging those who perpetrate this violence or collude with them. For the feminist activists and researchers who have

worked to expose the violence, success has not come easily, nor without a price. Writers such as Warwick Roger⁷ have resorted to name-calling tactics, referring to *the anti man, anti-family cabal* and trying to discredit sexual violence support agencies and researchers by playing on society's homophobia:

I reckon that, judging by the short, spiky haircuts, the multiple earrings, and their writings, a lot of the people running the sex-abuse industry are lesbians. (Roger, 1998)

The contempt and derision directed at lesbian feminist researcher, Dr Miriam Saphira, has been both appalling and revelatory. Whilst some of Saphira's early research may have been based on methodologically flimsy foundations, such as a self-administered questionnaire on sexual violence published in a women's magazine, subsequent research by others largely confirmed the main findings concerning estimates of prevalence (for example, Martin, 1996, and Gavey, 1991). The fact that, like Freud, many of Saphira's understandings were derived from her clinical observations as a psychologist was generally neither recognised nor validated. Faced with opposition to his beliefs about the high prevalence of sexual assault, Freud, as was noted earlier in this chapter, chose to backtrack; Saphira, however, maintained her stance and became a target for the backlash. In a cynical article published in 1993, a supposed 'time line' of significant developments in the 'sexual abuse industry' was actually subtitled: *How the rise of Dr Miriam Saphira coincides with the increase in reported sexual abuse* (Du Chateau, 1993, 76). The inference was that Saphira had created a problem which she had then built her career upon. Why, one might ask, has one woman's efforts to draw attention to a major societal issue and promote the safety of children been so vigorously attacked? Carrol Du Chateau herself revealed the underlying fears of some of those threatened by the attention being given to rape and child sexual abuse when she asked:

⁷ Rogers is the Editor of *Metro*, a monthly, Auckland-based magazine of articles and current affairs.

Is the child sex abuse industry telling the truth? Or is the apparent current upsurge in vile practices against children part of a radical-driven, politically-correct push to undermine the traditional family? (Du Chateau, 1993, 72)

Minimising the extent of sexual abuse and violence in homes and families is important if the traditional structures that have served patriarchy so well are to be upheld. Resisting recognition of fathers as abusers and husbands as rapists is one way of ensuring the continuing dominance of the family as a social unit, and of men's power within this unit.

The politics of silence and denial operate to conceal the truths and realities of rape. A woman's word is not to be trusted in part because the very act of her speaking may be considered offensive. A silent woman has long been held up as a model of virtuous femininity, while negative connotations associated with a woman's voice have resulted in her speech being dismissed as gossip, nagging, and lying. Thus, as Taslitz has recently observed, the woman who speaks of her experience of rape *breaks the rule of silence* (Taslitz, 1999, 20); in so doing, she risks either being blamed for what happened, or being disbelieved for saying what happened.

Against this backdrop the police, as part of the criminal justice system, will continue to reflect dominant cultural narratives and stereotypes unless these are consciously identified, challenged, and changed. While such a process may sound reasonable and straightforward, in practice it may be near to impossible because what holds such beliefs in place is neither reasonable nor straightforward. Centuries of negative attitudes towards women, combined with justice systems designed primarily around men's interests, have resulted in the crime of rape being one of the most concealed, minimised, and misunderstood offences that we have on the statute books. Whilst laws and policies may verbally acknowledge the seriousness of rape, police practices and procedures continue to perpetuate distinctions between 'rape' and 'real rape', and to reflect adherence to negative and misogynistic views of women.

The findings of the research presented in this thesis are not only theoretically interesting, but also have clear practical implications which need to be considered. These relate primarily to implications arising for the police, although inferences can also be drawn which may be worth considering by victims, victim advocates, and researchers. Some of these are explored in the following section.

IMPLICATIONS OF THIS RESEARCH

I. Implications for the police

Training

There are extensive and urgent implications for police training arising from the findings of this research. These relate particularly to the widespread divergence in officers' understanding regarding the range and variability of the effects of rape. Misinterpretation of victim behaviour and demeanour appears commonplace, and signifies adherence to stereotypes regarding how victims 'should' present (Burgess, 1999; Freckelton, 1998; Gregory and Lees, 1999; Lees, 1997; van de Zandt, 1998). These attitudes appear currently to receive scant attention in training (Beckett, 2000), where awareness and understanding of victims' needs remains a secondary consideration to offender-based concerns.

Based on the findings of this research, the following suggestions in relation to training are made:

- increase the amount of time spent on victim-oriented issues and concerns;
- utilise more frequently the expertise of other professionals working with victims, such as doctors, counsellors and support agency workers;

- sensitise all police officers to the effects of rape and how trauma might impact on complainants and affect their demeanour and interactions with others;
- train detectives in particular about widespread variability in the effects of rape and post-traumatic stress disorder;
- equip all investigators with specific skills for sensitive victim-interviewing;
- use a wide variety of means to examine, and challenge, the prevalence of rape myths and negative attitudes towards sexual assault victims generally, as well as stereotypes of 'legitimate' victims;
- expand officers' understanding of repeat victimisation, to foster greater awareness of the reasons behind some women making multiple complaints of sexual assault;
- enlist specialist trainers to improve officers' understanding of intellectual and psychiatric disability, and of the increased vulnerability of these women to abuse and violence;
- address the issue of alleged false rape complaints by acknowledging the inflated nature of beliefs concerning their frequency and exploring the reasons for these; and
- enhance understanding of the possible reasons underlying actual false complaints and suggest appropriate courses of actions to follow (for example, referrals for assistance to appropriate agencies).

In addition to the above, specialised training and education to promote a fuller appreciation of the dynamics involved in sexual assault cases is advocated, and commented on specifically in the next section.

Education concerning the nature of rape

In law, rape is clearly distinguished from non-rape; in life, it is not. It is therefore not surprising that many police adhere to stereotypical definitions and

understandings regarding the nature of rape (Burgess, 1999; Gregory and Lees, 1999; Lees, 1997; Young, 1998). It is, however, reprehensible that such views are not challenged and replaced with greater appreciation of the complexities associated with this offence. Included in this should be information designed to challenge prevalent myths and misconceptions regarding who is raped and in what contexts, as well as material illuminating the difficulties often faced by complainants in defining what happened to them as sexual assault and reporting those responsible. Current appreciation of such issues appears slight and impacts negatively and destructively on complainants, eroding their trust in the police in the process.

Public perceptions of the police have taken somewhat of a hammering in recent times. In New Zealand, allegations of police racism have been rife, with strong dissent being voiced over police involvement in the killing of a young Maori man, Steven Wallace, on 30 April, 2000 (New Zealand Herald, 2/5/00). In 2001, several shocking cases involving police officers as perpetrators of rape have been exposed for public and judicial scrutiny. These have included the conviction of one officer for a rape he perpetrated while off-duty, as well as the trial of a detective for pressuring a woman to commit indecencies on him in exchange for leniency (Sunday Star Times, 20/5/01). Shining the media spotlight on these police officer-rapists is important in terms of public accountability, but such knowledge may deter some women from feeling safe about approaching the police with a rape complaint. Some of the detectives who were interviewed also referred to colleagues whom they knew to have raped, and who had been apprehended on sexual violation charges.

Such examples suggest the need for greater education of officers concerning sexual negotiation practices generally. Indeed, how can we expect police officers raised in a social climate characterised by the legacy of patriarchal thinking examined in Chapter 2 **not** to need some form of re-education? The police's role as enforcers of the law demands that they should be urged to reflect on the basis for these laws and have some awareness of the ways in which gender inequalities are related to

criminal offending and victimisation. Professional and accountable policing, in my view, means that this should not be regarded as an option but as an essential prerequisite to the informed investigation of sexual violation offences.

Supervision of staff

Staff management and supervision is a central aspect of most occupations, and this is particularly significant in occupations, such as policing, which are characterised by high levels of interaction with often distressed members of the public. From examples included in this thesis, it is clear that individual officers appear to have considerable autonomy and discretion, and that levels of supervision vary in intensity. As some detectives indicated, as evidenced in comments made in Chapter 6, this often comes down to the priorities and management styles of individual supervisors. In practice, this means that there is widespread variance in degrees of consultation, monitoring, and post-incident debriefing. While debriefing may be regarded by some as an optional extra, and is addressed here in a separate section, good management is a necessity, not an option. Greater attention needs to be given to equipping those in management positions for the task and to specifying good practices to be followed to ensure greater staff consistency in investigation procedures. Whilst the New Zealand Police are making positive efforts regarding the updating of a Manual of Best Practice, and are preparing a training video for sexual assault investigators, the danger is that such material will simply appear and disappear, unless supervisors consistently reinforce and reward such practices.

Staff debriefing

Comments made by some detectives indicated that currently few procedures exist for assisting individual officers in managing the frustration and cynicism which may result from dealing with a deliberate false complaint. Whilst stories emerged of individual officers feeling 'burned' and possibly embittered by such cases, often understandably given the resources and emotional energy devoted to them, there

was little acknowledgement of the ways in which this might impact on later complainants. In one or two cases, supervisors had temporarily removed detectives from interviewing victims while they 'got over it', but there appeared to be little recognition that they may need assistance in dealing with such negatively charged experiences. One possibility would be to foster greater consistency amongst supervisors in debriefing detectives during and after **all** sexual assault investigations. This practice would acknowledge the additional complexities and demands involved in managing such investigations and, in the case of deliberate false complaints, provide the opportunity to assess with individual detectives possible options for limiting any negative consequences which might arise. Such options could include time-out, liaison with support agencies, or team or individual debriefing with qualified professionals.

Implementation of rape policy

Around the world, police departments are endeavouring to appease the concerns of victims rights advocates by introducing policies designed to ensure the respectful, informed and sensitive treatment of crime victims (Epstein and Langenbahn, 1994; Gregory and Lees, 1999). While such efforts on the part of the police are to be applauded, the danger is that the improvements made will be deemed sufficient to correct previously identified faults and inadequacies. An English rape crisis centre worker, Marian Foley, has cautioned:

The police view that they've now 'got it right' around rape and can move on to other issues is disputed by many of us involved in rape crisis work. (Foley, 1996, 173).

Similar views have been expressed by academics involved in rape research, who note with considerable concern the fact that changes made by the police appear to have achieved little in improving complainants' experiences (Gregory and Lees, 1999; Temkin, 1997, 1999).

As noted in Chapter 2, the New Zealand Police introduced a policy in 1998 specifically designed to achieve greater police consistency in this area. Policies, however, are simply sheets of paper with words written on them, and their mere existence does nothing to change attitudes or behaviours. Their utility lies in establishing a basis against which to evaluate the consistency of performance and promote greater professional accountability. Three years on, the New Zealand Police Sexual Assault Investigation Policy appears to have changed little in practice, apart from promoting opposition in some quarters to the way it has been developed and introduced. The results of the current research provide a clear demonstration of the urgent need for the New Zealand Police to ensure this policy undergoes no further dilution and is fully implemented. Along with the training and procedures recommended, resources must be spent on monitoring and evaluating the effectiveness of this policy in addressing the concerns raised by rape victims, support agencies, doctors, researchers, and detectives themselves.

Staff deployment and specialist units

The question of officers' deployment can be a vexed one for police. Despite the opposition of some police officers in New Zealand, the merits of having dedicated squads have been well-established overseas (Epstein and Langenbahn, 1994; LaFree, 1981). Police officers in New Zealand, however, often subscribe to the view that every officer should be a generalist-specialist, and argue against selective deployment. In practice, however, key policing areas recognised as requiring specialist skills do have specialist officers assigned to them – for example, organised crime, drugs, and child abuse. The research results presented here point emphatically to the conclusion that adult sexual assault demands a specialised response. Accounts provided by both detectives and complainants clearly suggest that not all officers are equally able to manage sexual assault investigations in ways which reflect well on the police as an organisation. Whether disrespectful and insensitive treatment of victims results from personal style, past experience, inadequate training, or some other factor is irrelevant to victims who are at the

receiving end of such treatment. At the end of the day, poor police conduct alienates rape victims and their friends/family as witnesses and informants, whilst potentially aiding sexual offenders to evade arrest and prosecution. A strong case can be made for selective deployment to ensure satisfactory outcomes for both victims and the police. To continue to desist from prioritising rape investigations in this way will perpetuate high levels of dissatisfaction in communities and will

Responding to false complaints

The basic tenet of this thesis is that the proportion of allegedly false rape complaints has been greatly over-estimated by many police officers, in part because of a wider societal reluctance to acknowledge the extent of sexual victimisation against women and children, particularly within the traditionally private sphere of the home. However, it must also be acknowledged that complaints of rape are sometimes made which are subsequently proven to be false (Aiken et. al., 1999). Police understanding of the reasons underlying such false complaints appears to be minimal, and this is reflected in limited and often inappropriate responses to such complainants. Greater training and awareness of the issues which may be associated with such cases needs to be fostered within the police. One possibility, for example, is that in some cases unresolved issues arising from previous rape or trauma incidents may underlie false complaints. As examples considered in Chapter 5 showed, complainants may feel trapped in untenable situations which they are trying to draw attention to, or may have psychiatric difficulties that require attention and treatment. Whilst not necessarily victims of what they initially claimed, many of these individuals have been victimised in other ways and/or require understanding and assistance. Thus, Eugene Kanin has urged:

... false accusations can be viewed as the impulsive and desperate gestures of women simply attempting to alleviate understandable conditions of personal and social distress. (Kanin, 1994, 88)

Seen from this perspective, the approach of such women to the police is often an attempt to obtain the help they need. Attention-seeking for its own sake has been argued to be relatively rare (McDowell and Hibler, in Aiken et. al., 1999), with the suggestion being made that these women may be trying to use and manipulate the police to access ways of resolving psychological difficulties.

In much the same way that Munchausen patients manipulate hospitals and doctors, a fraudulent claim of rape might be interpreted as a form of

manipulation directed at the criminal justice system. (McDowell and Hibler, in Aiken et. al., 1999, 233)

Those experienced in the area of false allegations contend that, although numerically very rare, some women may self-injure in an attempt to meet overwhelming emotional needs (Aiken et. al., 1999). Thus whilst 'truly' false complaints are uncommon, they require skilled and professional intervention. The context within which the allegation occurs often provides the key to interpretation and understanding of what the complainant is trying to manage or resolve (Aiken et. al., 1999). To prevent these women from growing increasingly desperate, and possibly becoming a constant irritant to the police, or engaging in further self-destructive behaviour, it is important that they be responded to with great care. Such individuals are still police clients looking for a service, and whilst their chosen method of approaching the police may not be appropriate, nevertheless their situation requires a professional and supportive response. Those attempting to shed light on this phenomenon also offer:

A final word of caution: it must be remembered that even those who are emotionally prone to make a false allegation can be raped. Basic principles of police professionalism require that officers who investigate rapes remain objective and compassionate. If they do not, the veracity of the allegation may never be known, and the victim, for she is a victim in either case, may never receive the help and support she needs. (Aiken et. al., 1999, 238)

Victims with intellectual disabilities

Similar comments as those made in the above section can be made about persons with intellectual disability who report sexual assault to the police. No existing mechanism exists to ensure such individuals receive an educated and trained professional response. The enhanced vulnerability of these persons to sexual assault is ignored in favour of stressing their diminished competency as witnesses.

The increased trust that those with intellectual disabilities may place in others is compounded by their structural dependency on others, their social powerlessness, and their own emotional and social insecurities (Hayes, 1993; McCarthy, 1996; Tharinger et. al., 1990, cited in Brook, 1997). Cases examined in the police file analysis suggested a strong chance of complaints of sexual assault from persons with intellectual disability being dismissed as probably false, whilst care-givers were lone voices calling for specialised interviewing in such cases. Gross injustices will continue to be perpetrated in this area until the issue is addressed directly and responded to positively. The current inadequacies of the system virtually present persons with intellectual disability on a platter for sexual predators and opportunists.

Capacity for the police to reflect on the effect they have on victims

Greater awareness needs to be fostered in training courses at all levels, as well as through regular supervision, to equip police officers to be self-reflective concerning how they are perceived by the public and how they impact on those around them. The position and power of the police in society can make them formidable for citizens to approach, and many victims and witnesses fear they will be judged negatively if minor law-breaking becomes apparent in the course of other investigations. Attention needs to be given to encouraging police officers to engage in greater self-reflection regarding how their symbolic status as authority figures can impact on relationships with those with whom they come in contact. Many of the women who reported sexual assaults tried initially to conceal or minimise behaviours which they feared the police would condemn, only to find that the fact of concealment often irreversibly damaged their credibility in the eyes of the police. In such situations, the chances of the investigation proceeding may be substantially reduced, and there is no guarantee as to whether the complainants will be dealt with hostilely or given clear reasons as to why their case has been dismissed. The frequency with which such situations can arise suggests it may be useful for this issue to be raised with complainants prior to interviewing, a practice which

individual detectives may adhere to but which does not appear to be routinely encouraged.

Increasing recognition is being given to the significance of the police-victim relationship in relation to either enhancing or minimising the risks of secondary victimisation (Winkel et. al., 1991). Specialist training is required to equip police officers with the skills and understanding necessary to manage the interviewing of victims sensitively and professionally, and to foster awareness of the possible effects of both their verbal and non-verbal communication on complainants. Greater awareness and overall reflection on the psychological roles that police officers may adopt should also be encouraged. The 'Karpman triangle', for example, may be a useful tool in this regard (Stewart and Joines, 1987). This model suggests that certain interactions between individuals can be interpreted within the context of a triangle of dynamics as the players move between the roles of 'Persecutor', 'Victim', and 'Rescuer'. All three roles are described as 'inauthentic' to the extent that when people are in them, they are responding more to scripts and messages learned in the past than they are to what is happening in the present (ibid., 237). Police officers who take up the position of Rescuer may be in danger of assuming excessive responsibility for protecting and supporting a rape victim, but only to the extent that she is perceived as a 'Victim'. An officer's doubts regarding her credibility, however, might place the officer in the role of Persecutor. Either way, whilst in the role of 'Victim', the woman is likely to discount herself and her experience, accepting either the Rescuer's view of her as needy or the Persecutor's view that she is blameworthy. Police awareness of such issues may help to inform the stances they adopt in relation to complainants, as well as enhancing the conditions within which women can make the transition from victim to survivor.

A related issue of responsibility for the police pertains to the need for training regarding boundary-setting in professional relationships. Although this could be advantageous with regards to male officers working with female officers, it is particularly needed in relation to the police-complainant relationship in rape cases.

In Chapter 6, the possible dangers associated with having young, good-looking male detectives spending long hours with young, needy, female rape victims were canvassed. In such a scenario, it is easy for the detective to become the knight on the white charger who rescues the damsel in distress and carries her off into the sunset. Except, of course, that training and good supervision should help to ensure that no such 'romantic' and potentially abusive outcomes result.⁸ The responsibility lies with the police organisation to sensitise officers to the possibilities and to equip them to manage such situations sensitively and with ethical integrity. Issues such as this may be delicate to address, but need to be tackled directly if they are to be managed professionally.

Prospects for police dialogue with academics and researchers

In the course of undertaking this research, and interacting with larger groups of police in other contexts, I was reminded at times of the ways in which the police often perceive themselves as an isolated social group. The us/them mentality lives on in some officers, and many express deep mistrust and cynicism towards academics in particular. The notion that only the police can understand policing is strong, and is often accompanied by quick dismissal of research findings or comments by non-police. This is unfortunate, given the scope for valuable interaction between the police and academics and the opportunities for learning that this would present. Academics can also contribute to this division if they fail to adequately consult and address practitioners' perspectives in their work. Such apparent contempt for the subjective realities of those they purport to be 'researching' fuels police views of academic arrogance and ignorance. Ways to enhance mutual understanding and respect are necessary for meaningful dialogue

⁸ In my earlier research (Jordan, 1998a), two women rape complainants were sexually propositioned by officers involved in their cases.

between these two groups, and could be fostered by greater use of consultation processes by both sides.

II. Implications for victims and victims' advocates

The research findings presented here have implications not only for the police but also for victims and victims' advocates.

Advice to victims

Approaching the police with a sexual assault complaint is a scary undertaking, and victims may need not only support but also guidance on how best to do so. While some very good publications have been produced offering legal advice to victims (for examples, see Rape Survivors' Legal Guide, 1993, and Sullivan, 1986), these are not generally available when the victim first reports the offence. At this time, complainants may need information tailored specifically to their rights as crime victims, and on police responsibilities towards them. This includes such issues as those raised in the New Zealand Police Sexual Assault Investigation Policy regarding the presence of a support person for the complainant, and the option of delayed statement-taking.

Given the results of the research presented here, it may also be advantageous to offer complainants advice on such matters as not concealing drug and alcohol use or previous consensual sex with the accused, and other factors which they consider could influence police perceptions of their credibility. As these data show, any attempts at concealment are likely to damage irretrievably a victim's case.

Agencies working with victims

The effects of rape trauma on victims may diminish their capacity to assert their own needs or to be fully cognisant of their mental state (Burgess and Hazelwood,

1999; Kelly, 1988). They are also unlikely to have advance knowledge of investigation and medical procedures. The police have a responsibility to provide complainants with the necessary information and options available, with support agencies being available to ensure this happens and to provide emotional support and guidance to victims. The results of this research suggest that currently there is widespread inconsistency in police responses to rape complainants, including differential perceptions of the degree to which support agency involvement should be encouraged. Specialist agencies such as Help and Rape Crisis are regarded suspiciously by some police, who perceive them as rabidly feminist and, as one detective said, 'full of hairy-legged lesbians.' Police antipathy to such agencies has been noted also in the English context (Foley, 1996). The effects of rape, however, reinforce the need for complainants to at least be offered the choice of having an advocate present to oversee reporting and interview processes. Family members and friends may inhibit the complainant's willingness to divulge details of the attack fully, while an unknown but informed and sympathetic support person may be a safer and more reliable option (Epstein and Langenbahn, 1994; Jordan, 1998a).

Issues such as the damaging effects of concealment and the need for specialist oversight for complainants with intellectual disability are two specific areas which support agencies might find of interest in this research. Attention also needs to be given to the very mixed findings emerging regarding how complainants rated support and counselling assistance. Significant levels of dissatisfaction were voiced by some women whom Malcolm Rewa attacked, for instance, regarding their treatment by support agency workers. Specific criticisms included the women feeling that assumptions had been made that they would/should hate all men now, or would co-operate in what some of them felt to be inappropriate counselling techniques. The women's concerns usually seemed to result from their feeling disregarded as individuals and expected to fit some pre-determined pattern of response. Similar concerns were raised by complainants interviewed in my earlier research (Jordan, 1998a). These suggest a need for more intensive training and an awareness of the diversity in women's responses to rape, and in some cases

more careful selection and screening of support workers. A major obstacle to achieving consistency in this area, however, relates to the grossly inadequate levels of funding given to support agencies (Crawshaw, 1998; Foley, 1996; Stirling, 1997). Victims of rape and sexual assault have a right to expert high quality, educated, and professional treatment from all of those with whom they interact; support agencies cannot be expected to provide such professional expertise, however, when they are not funded or resourced as professional agencies.

III. Implications for researchers

The experience of conducting the various studies presented here was useful not only in terms of the results obtained but also with regard to the processes involved. Research is not simply a means to an end, but a journey in its own right. My own learning from engagement in this research was extensive, prompting the raising of issues here which I consider it would be valuable to acknowledge and to debate more fully in the literature.

Effects of rape research on researchers

Being raped is obviously traumatic; hearing women speak about being raped is also traumatic. Researching rape is not the same as researching coastal erosion or the breeding patterns of the paradise duck. Having experienced my own forms of sexual victimisation and, I believed, come to terms with them, I did not expect to experience vicarious victimisation whilst undertaking this research. I was wrong. The worst effects arose during the first rape research I conducted, when I was at home, alone, for days on end, transcribing the women's accounts. This, I discovered, was not a good arrangement. It prompted the return of some post-traumatic stress disorder symptoms, and I became jumpy, nervous, slept poorly, suffered from nightmares and had flashbacks to my own experiences. To manage this, I sought several sessions of professional supervision and altered my working arrangements to reduce the length of time I spent each day on the tapes, and to

avoid listening to them in situations where I felt isolated and vulnerable. My partner and I also decided to have a burglar alarm fitted in our home, which we set every night during the periods when I felt the most anxious and fearful of intruders.

Studying the police files I thought would be easier. These are somewhat removed accounts, different from hearing the pain in a woman's voice as she speaks and cries on tape. Again, I was wrong. To begin with, I was going in to Police Headquarters after hours, but became increasingly aware that I was sitting alone, in a dark, mostly deserted city high-rise building at night, reading accounts of rape and violence, and sensing in some offenders' accounts (and in a few police officers' as well) a deep hatred for women. Leaving the building and walking to my car became an ordeal. Again, I had to change my working patterns and negotiate desk space so that I could read the files in daylight hours with 'normal' office routines going on around me.

Interviewing the women attacked by Malcolm Rewa was also hard at times. The actual time spent with the women themselves was generally fine, because I was so heavily focussed on them and how they were feeling. It was after they had left, and I was on my own, at night, away from home in someone else's apartment, that my own emotions were unleashed. Sometimes a vast sense of fear would engulf me as I tried to sleep, and I would feel passive and in victim-mode. Other times I would rage in anger at the degradation Rewa perpetrated. These feelings sometimes accompanied me when I returned home, as the following thoughts penned in February, 1999 indicate:

I've been back in Wellington several days now and can't get these women's stories out of my head. I do so much think they need to be told... I had a hard time in Auckland, though. Hearing so much talk of the fear this man generated and the way it oozed throughout these women's lives got to me. That same fear oozed its way into me after a while so that I was feeling paralysed about going into dark rooms, or being jolted out of semi-sleep into an urgent, heart-thumping watchful alertness, convinced Rewa's

'brother' was lurking in a dark corner of the bedroom. At least I could fly back to Wellington and leave it all behind, but these women had to manage this fear for years, and will do to some extent for the rest of their lives.

Partly this situation arose because I was trying to maximise what I achieved during my short stays in Auckland. Once again, though, I needed to change my work routine so that I was not interviewing continually for days on end, but took a few hours or even a day out at times, for the sake of my emotional sanity.

In contrast to the extensive literature on rape and sexual abuse that now exists, recognition of the emotional dimensions involved in sexual violence research happens rarely. I know I felt intense relief when I discovered that feminist writers such as Liz Kelly (1988) and Betsy Stanko (1997) were willing to share publicly some of the ways in which researching sexual violence impacted on them emotionally. From my experiences, and those of others (for example, Gordon and Riger, 1991; Kelly, 1988; Stanko, 1997), I consider it is important for researchers working in areas such as rape to establish good safeguards to prevent vicarious victimisation. This will vary for different individuals and projects, but might involve careful scheduling, professional supervision, self-care, and a little pampering! It is important for us as researchers to find our own ways of debriefing and strengthening our sense of self and safety in the world. Promoting greater discussion and reflection on the ways in which research with victims of violence can impact on the researcher is an important, but often neglected, issue. It may be easier to minimise the stressful aspects of research rather than fear being criticised for loss of perspective or over-identification with the research subject. In this respect, we may still need to shake ourselves free of the shackles of positivism and acknowledge the subjectivities of all those involved in the research process. Fuller sharing about these issues with other researchers may help in accepting and dealing with the effects of exposure to such deep levels of pain, fear and anguish in women's lives. It may also promote greater sharing of the positive, encouraging and inspirational aspects of research with the survivors of sexual violence.

Future research

The police response to sexual assault has been a largely neglected research arena. Compared with the areas of family violence and child abuse, scant regard has been paid to victims of sexual violence. Even the coerced sex which is typically associated with family violence has tended to be ignored, reinforcing prevalent views that 'real' violence leaves visible physical injuries. In the case of children, physical abuse and the battered child syndrome began to be more widely acknowledged in the 1960s, while child sexual abuse remained virtually invisible for a further twenty to thirty years. The sexual assault of adults still awaits our attention. If a similar pattern occurs in relation to adults as it did for children, it may be a further ten years or so before that acknowledgement comes. It is possible that increased understanding in related areas may speed up the process; what counts against this, however, is the tenacious hold of negative stereotypes regarding both the nature of rape and the nature of women. While sexual coercion remains so little understood, and women continue to be regarded as liars, concealers, and deceivers, advances in this area are likely to be minimal.

In the meantime, it is imperative that on-going research is undertaken for several major reasons:

- to increase our knowledge base concerning the effects of sexual assault and how these impact on the demeanour and presentation of victims;
- to continue to document the ways in which police attitudes and behaviours impact on crime victims;
- to monitor the implementation process as police policies on sexual assault investigations are introduced, and evaluate the effectiveness of such policies.

The research conducted here hopefully provides benchmarks against which the results of subsequent studies can be assessed and compared. It also highlights key areas which should be prioritised for future research. These are:

- police interactions with victims of sexual assault who are intellectually impaired;
- police interactions with victims of sexual assault who are psychiatrically impaired;
- an international study assessing the specialist deployment of detectives to sexual assault investigations;
- analysis of sexual assault cases referred by dissatisfied complainants to the Police Complaints Authority; and
- comparative, international research on police training in relation to rape and sexual assault, with an emphasis on police-victim interaction.

CONCLUSION

The aims of this thesis, as stated in Chapter 1, were:

- To identify and examine the factors which inform police decision-making in relation to female rape complainants;
- To understand why police officers express doubts as to the authenticity of women who make rape complaints;
- To gain an understanding, from the complainant's perspective, of police practices, and the attitudes necessary to establish positive police-complainant relationships.

The results of the police file analysis, presented in Chapters 4 and 5, provided insights into police decision-making, which were expanded upon in the material obtained from interviews with detectives (presented in Chapter 6). These data were examined and analysed against the backdrop of the historical legacy of patriarchal thinking about women and rape, outlined in Chapter 2. High levels of belief in women lying about rape have their origins in these myths and assumptions, and are enhanced further within a male-dominated police culture characterised by

sexism and suspiciousness. The strain that such mistrust can place on police-complainant relationships becomes apparent when the victims of a serial rapist, who seldom faced difficulties in establishing their credibility with the police, discuss their experiences of policing (Chapter 7). A fundamentally positive and trusting relationship between police officers and a rape complainant will provide a solid base to ensure on-going victim co-operation, even if individual police officers do not always deliver 'perfect' policing in the victim's eyes.

Overall, the research contained in this thesis suggests that there is no single factor underlying police responses to women rape complainants. Instead, combinations of factors appear to interact within a particular social context in ways which reproduce existing power and gender relations. Any explanatory model must, therefore, be developed in ways which take account of this broader context and the factors that shape it. Such a model is proposed here.

At its heart is the police-complainant relationship. Influencing and surrounding this dynamic are the key factors which affect each party. For the police, these include evidential concerns, practical realities, and legal considerations, all of which produce a suspicious, evidence and offender-oriented mindset. The 'cues' they notice, and the meanings they ascribe to such cues, are essentially developed within a crime-fighting and offender-focussed framework. Such suspicious, aggressive styles of interviewing are not easily transferable to police interactions with victims of sexual violence. For the rape victim, the likely factors affecting presentation may relate to trauma impact, fear of the repercussions of reporting, confusion regarding desired outcomes (since, in many cases, the offender is someone well-known to her), as well as shame and self-blame. She may be tentative while the police demand clarity; she may show inconsistent and flawed recall when they expect accuracy and consistency; she may appear emotional in the face of their detached rationality; and she may seem ambivalent when they expect co-operation and commitment.

Surrounding the police-complainant relationship is the police organisation, and the dominant beliefs of the occupational culture. The beliefs of the police occupational culture have been shaped by its origins as a male-dominated organisation enforcing laws designed to protect male property owners, with women being construed as part of men's property. Police investigations require certain procedures to be adhered to and, while these will be routine to the police, they may feel arbitrary and intrusive for complainants. Greater communication, information provision and flexibility would all be advantageous from the complainant's perspective.

The police organisation, then, itself is located within the wider societal framework. A legacy of patriarchal thinking and defining of 'reality' is hard to shift, and men's beliefs about both the nature of rape and the nature of women have historically privileged men as sexual offenders. It often seems as if criminals have had their rights within the justice system recognised more fully than victims. This emphasis would change if we had a 'victims' justice system', where the starting point was an appreciation of the injuries done to the victim. Such an approach would not glorify victim-status; rather, it would validate victimisation as a necessary precursor to enable the transition from victim to survivor to occur.

The key question raised by the studies presented here relates to the need to understand why the issue of belief continues to be such a vexed and controversial issue. Beliefs in women's inherent deceitfulness appear to have existed almost as long as women themselves have trodden the earth, and show little sign of abating. Given the long history of patriarchy, the entrenchment of such beliefs is scarcely surprising given the role they have played in regulating sexual relations and maintaining men's social dominance.

A curious paradox emerges. When women accuse men of wrongdoing, they are doubted; when they retract, they are believed. If they allege abuse, their word is suspect; if they retract an abuse allegation, their word suddenly becomes credible. One is prompted to ask: Why is women's word to be trusted only when it excuses

and absolves men of responsibility for their violence against women? What makes the voice of retraction more credible than the voice of accusation? Is women's word primarily believed when it says what men want to hear and doubted when it challenges? This appears to be the very crux of the matter.

To conceal the truth of their behaviour, men have lied about women, with one of the most prevalent and destructive lies being that **women** lie. Men have made preposterous claims about women in the past, and have been believed; women have tried to reveal the truth about men, and have been disbelieved. Justice Hale, for example, believed some women were witches who could fly and cast spells on men, and when he condemned them to death, his word was believed and they were killed (Scutt, 1997); such views no longer have currency. When, as we saw in Chapter 2, this same man said women's allegations about men raping them were suspect and hard to prove, however, his word was believed and has been enshrined in legal texts ever since. Why? The particular social control mechanism of the witch-hunts depended on an ideological environment infused with beliefs concerning God, the devil, magic and superstition. Torturing and burning women for being witches could not occur once these ideas waned in popularity and power. Expressing doubts about the credibility of women's word, especially when accusing men of sexual violence towards them, is an ideological notion supported by a more universal and enduring belief system. As Chapter 2 showed, there have been centuries of history characterised by depictions of women as fickle, untrustworthy, vengeful and lying. Hale's dictum reflected this legacy and, in turn, was adopted and enshrined in legal thinking in a way which reinforced such misogynist beliefs. The view of women presented is so consistent with centuries of patriarchal thought that it is barely recognisable to some as misogyny (Johnson, 1997; Jukes, 1993). Little of substance can change while such notions continue to be one design on the ideological wallpaper against which both men and women live their lives.

In the crime of rape, we have often simply the word of a woman against the word of a man. Yet there is nothing 'simple' when it comes to assessing whether or not the

woman is telling the 'truth'. Writing about rape trials within the court system, Andrew Taslitz has pointed out that:

... 'truth' is sometimes a social notion. When a jury judges an act 'consensual', it does not discover some independent, objectively verifiable truth. Rather, it creates an interpretive truth based on its notions of worthy, coherent narratives and its moral judgment about the gendered meaning to be ascribed to the man's and woman's social behavior. (Taslitz, 1999, 141)

As the findings of this thesis demonstrate, similar processes of social construction are evident within the police. Investigative officers approach rape complainants with particular cultural narratives in mind, narratives which have been shaped within a social environment characterised by stereotypical and judgmental views of women. The legacy of centuries of misogynist pronouncements about women has not been erased by thirty years of feminists challenging such thinking. Instead of eliminating beliefs about women which saw witches burned at the stake, feminists themselves have been hailed as the new 'witches' (Faith, 1993; Faludi, 1991). While they may not be accused of removing men's 'virile members' in quite the same way, nevertheless men fear the limitations to their sexual 'freedom' posed by these new harridans.

In a society which has historically empowered men over women, and where those in charge of law-making and judicial processes have traditionally been male, it is hardly surprising that the criminal justice system has operated in ways which benefit men to the detriment of women. Trying to convict a man of rape involves swimming upstream, against the strong currents of patriarchal thought and belief. While patriarchal privilege has traditionally provided men with protection from the law, women have had to rely, in turn, on these same men for their protection. Patriarchy, in effect, removed power from women and made them dependent upon men. If these same men abused their power, through the crime of rape, for

example, the legal system was designed to operate in men's favour. In such an environment, it is scarcely surprising that the conviction rate for rape is so low (Harris and Grace, 1999; Lees and Gregory, 1993).⁹

⁹ A recent Home Office study revealed that, of all cases recorded as rape by the police, only 6% resulted in conviction; this represents 9% of 'crimed' rapes (Harris and Grace, 1999).

Until very recently, marriage contracts guaranteed men unlimited sexual access to their wives (Peacock, 1995; Russell, 1991). Wives were construed as the legal property of men, with few rights of their own. Significant changes have occurred since the late nineteenth century, ensuring that women now are able to own property themselves rather than simply be owned as part of men's property. From 1986 onwards in New Zealand, a wife's rights have been extended to give her sexual autonomy legally. In fact, the right of a woman to say no to the sexual demands of a man, even if he is her husband, has never been so completely written into law. Yet research indicates that marital rape continues, seemingly little abated by such legal changes (Easteal, 1998b; Lees, 1997; Russell, 1991). Few charges of rape within marriage have been laid since the law changes, and even fewer proceeded with through the legal system. In effect, the unprotected property status of women continues.

The position of women within marriage exists at the end of a continuum of ownership along which all women's lives are placed. The lack of protection offered to wives highlights the relative social vulnerability of all women in their relationships with men. While women's status has increased markedly in many ways over the last hundred years, fundamental gender inequalities remain. These continue to prioritise men's rights to sexual access to women over women's rights of refusal. While much of the rhetoric talks about what women want, in reality what dominates is what men want. The right to say no exists legally but is limited socially and structurally. Men who force sexual relations on women who are strangers are condemned, since the rape of the unknown woman may mean raping a woman who belongs to another man, a crime recognised for centuries as heinous. Raping one's 'own' woman is, by comparison, a mere technicality.

Within society generally, the picture is none too encouraging either. When rape was initially highlighted by feminists, women's vulnerability to sexual attack was acknowledged in the context of stranger danger (Gordon and Riger, 1991; Scully, 1990; Stanko, 1985). As long as the offender was clearly aberrant and predatory, attacking women who did not belong to him, then his threat to women was

recognised and his behaviour condemned. Women's fear of rape gradually began to be acknowledged, and small amounts of public funding were made available for rape prevention campaigns. Research into rape began, however, to identify women as being at greater risk of sexual violence from men they knew and may already be in relationships with (Gavey, 1991; Kelly, 1988; Koss et. al., 1987; Russell, 1990; Stanko, 1985; Warshaw, 1988; Wiehe and Richards, 1995). Over the last few years, women's fear of rape seems to have slipped from public and media consciousness, to be largely replaced by men's fear of false accusations. While once it was women who constituted the 'at risk' group, now men are seen as being at risk. In a climate where 'stranger danger' has been replaced by 'woman danger', access to justice for rape victims is destined to remain elusive.

The current climate does show small signs of promise, evident in greater diversity in police recruiting practices, and the introduction of policy initiatives which specifically address police interaction with sexual assault victims. The translation of policy into practice, however, seems not so assured. Whilst the crime-fighting, offender-oriented ethos of the police reigns supreme, and sceptical attitudes towards women complainants of sexual assaults remain unchallenged, significant progress in this area is unlikely. For any rape law or policy reform initiatives to be effective, significant changes in beliefs and attitudes need to occur throughout every aspect of the model outlined here. It will be impossible to fully attain women's rights in an environment which continues to credit rape myths with 'truth' status. Whilst gender inequality persists within society, the attainment of gender equity is unlikely to be achieved within the police organisation nor evident in interactions with complainants. Feminism may have impacted on the law and social conscience of society, but it has not yet managed to supplant the underlying beliefs.

This thesis has examined two conceptually related phenomena – 'true lies' and 'false truths'. Police officers, as members of a conservatively positioned and authoritarian social organisation, have traditionally adhered to beliefs that reflect both the masculinity and suspiciousness of their occupational culture (Gregory and Lees, 1999; Reiner, 1994; Smith and Gray, 1985). Within this culture, adherence

to certain 'truths' is taken for granted. Amongst such 'truths' is the perception that women routinely lie about 'sex', fuelling a belief in high numbers of rape complaints being false. What the research results presented here demonstrate, however, is that these are 'false truths', myths perpetrated about women which have achieved a form of truth-status. With reference to rape, for example, a delay by the victim in reporting the offence may be construed as indicative of a complainant's lack of credibility, reflecting a dominant mind-set which assumes immediate reporting to be a 'natural' response. As this and other research has demonstrated, there is nothing 'natural' about prompt reporting nor inherently 'false' about delayed reporting. The material presented in this thesis illustrates a long legacy of thinking based on masculinist, and often misogynist, assumptions about women, which has infused the male-dominated culture of the police organisation. The distorted lenses through which police officers view the social world skews their slant on 'reality', and their gaze is shaped and informed by a narrow set of 'understandings' and conventions that have been constructed on mythical foundations. Police 'truths' about rape reflect myth and misogyny more than they do the actualities of women's experience.

If the police had a fuller and better informed understanding of the trauma induced by rape, they would recognise that victims routinely engage in minimising behaviour and will often try to avoid disclosing sexual violation. If the police understood the difficulties associated with approaching them to report a sexual assault, they would appreciate why some women tell 'lies' to conceal aspects of the offence. They would appreciate how humiliating the process can feel for complainants, and how shame can be a silencing mechanism. If the police knew the extent to which victims feared being blamed for what happened, they would not be surprised when complainants did things to try and bolster their credibility in the police's eyes. As this research showed, such concealment by victims typically results in their entire allegation being questioned and often rejected. Yet these may be 'true lies', lies which are told when women fear that the 'truth' of their experience will be ignored. Many women, having internalised the negativity of men's thinking towards them, can anticipate how others will view, judge, blame

and condemn them. Women's own feelings towards themselves will reflect aspects of men's hatred, blame and revilement of them. Victims of rape who approach the police must walk the credibility tightrope and take their chances. To disclose and be discredited, because what was disclosed was discrediting; or to conceal and be discredited, because concealment itself is discrediting. Historically, rape discredited a woman and her family like no other crime; today, women must still fight to be seen as credible. Women's voices and women's words still struggle to be heard; if heard, to be believed; and if believed, to be understood. If the police subscribed to fewer 'false truths', they would be better able to recognise the 'true lies'.

* * *

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APPENDIX A
VICTORIA UNIVERSITY OF WELLINGTON
INFORMATION SHEET FOR A STUDY OF
POLICE RAPE INVESTIGATIONS

The aim of this study is to examine and analyse police involvement with rape investigations in order to:

- i) acquire an understanding of the nature of rape investigations from a police perspective;
- ii) estimate the frequency of false rape complaints;
- iii) evaluate the decision-making process involved in the determination of a false complaint; and
- iv) assess the impact on individual police arising from involvement with false rape complaints.

The project is being undertaken as part of my research for a PhD degree in Criminology at Victoria University of Wellington, where my supervisors are Professor Allison Morris (Director, Institute of Criminology) and Jenny Neale (Course Director, MA (Applied) in Social Science Research).

The results of this research are expected to benefit the police by providing a reliable data base of information on false rape complaints and the impacts of these individually and organizationally, which can be used to inform future organizational and training developments in relation to sexual assault investigations.

The Commissioner of Police has given his approval to the project, and the police liaison officer at Headquarters appointed on his behalf is Mary Schollum.

If you have been involved in sexual assault investigations within the last three years, you are invited to participate in this research by being interviewed by myself on the issues outlined above. Participation is voluntary, and you can terminate the interview at any stage. It is anticipated that the interview will last approximately one hour in duration.

No other person apart from myself will see the notes or hear the tapes from this interview, and no names or particular identifying details associated with the participants will be included in the thesis or any other publication or presentation arising from this research.

Meanwhile if you have any questions or would like to receive further information about the project, you are welcome to contact me by phone or at the address below:

Thank you for your assistance.

Jan Jordan
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APPENDIX B
VICTORIA UNIVERSITY OF WELLINGTON
CONSENT TO PARTICIPATION IN RESEARCH

Police Rape Investigations

I have been given and have understood an explanation of this research project. I have had an opportunity to ask questions and had them answered to my satisfaction. I understand that I may withdraw myself (or any information I have provided) from this project at any stage without having to give reasons and without penalty of any sort.

I understand that any information I provide will be kept confidential to the researcher; that the published results will not use my name; and that no opinions will be attributed to me in any way that identifies me.

I understand that the tape recordings of my interview will be electronically wiped at the end of the project unless I indicate that I would like them returned to me.

Please tick one:

☐ I would like the tape(s) of my interview to be electronically wiped at the conclusion of the project.;

☐ I would like the tape(s) of my interview returned to me at the conclusion of the project, and to facilitate this will inform the researcher of any intervening change of address.

I understand that the data I provide may be used in the presentation of a PhD thesis and in subsequent publications which may emanate from this work.

I understand that the data I provide will not be released to others without prior consultation and my written consent.

Please tick if appropriate

☐ I would like to receive a summary of the results of this research when it is completed, and to facilitate this will inform the researcher of any intervening change of address.

I agree to take part in this research under the conditions outlined above.

Signed:

Date:

Name and Rank of Participant:

(please print clearly)

Postal address:

APPENDIX C

POLICE INTERVIEWS ON RAPE INVESTIGATIONS

CODE NUMBER:

DATE:

SECTION 1: BACKGROUND DETAILS

1. Age?
2. Gender?
3. Ethnicity?
4. Length of time in the police?
5. Length of time in CIB?
6. Length of time in urban policing areas?
7. Length of time in rural policing areas?

SECTION 2: EXPERIENCE IN RAPE INVESTIGATIONS

NB Rape = rape, sexual violation, unlawful sexual connection and the attempt thereof

8. Can you provide an estimate of the total number of rape investigations you have been involved in?
9. What response do you have when told you've been given a rape allegation to investigate?
10. How would you describe or rate rape investigations compared with other kinds of criminal investigation?
11. In your experience, are there any particular kinds of women who are more likely than others to be raped?
12. How would you summarise the beliefs and attitudes held about rape victims by police officers and detectives with whom you have worked?
13. Are there any age or gender differences apparent in the attitudes held?

POLICE PROCEDURES IN RAPE INVESTIGATIONS

14. Could you please outline the procedures to be followed in a rape investigation?
15. What factors do you take into account in deciding whether to proceed with a rape complaint investigation?

16. How is the decision made to file a rape complaint as “no offence disclosed”?
On what basis?
17. What proportion of rape complaints would be filed “no offence disclosed”?

SECTION 3: FALSE COMPLAINTS

18. What proportion of rape allegations do you think are false complaints?
19. Do you think your colleagues would give a similar response?
20. What factors influence the decision-making process involved in determining a complaint to be false? How can you tell?
21. What informs the decision to either charge or not charge complainants in these circumstances?
22. Speaking just from your own experience, how many rape investigations have you been involved in which turned out to be false?
23. How many of these cases resulted in complainants being charged with making a false complaint?
24. What do you believe to be the motives underlying false complaints such as these?
25. Can you give me some examples?
26. How do you believe women who make false complaints should be responded to?

IMPACTS ON POLICE

27. If you have been involved in a hoax or false rape complaint, how has that affected you?
28. From your observations of others in the police, what kinds of impacts have you seen involvement with false rape cases have on their attitudes and behaviour?
29. Do you think there are any implications arising from false rape complaints for police training, support, deployment issues etc?

MISCELLANEOUS

30. Are there any other issues to do with police rape investigations that you would like to comment on?

APPENDIX D

POLICE INTERVIEWS ON REWA RAPE INVESTIGATION

CODE NUMBER:

DATE:

SECTION 1: BACKGROUND DETAILS

1. Age?
2. Gender?
3. Ethnicity?
4. Length of time in the police?
5. Length of time in CIB?
6. Previous involvement in rape complaints?
7. Previous involvement with Joseph Thompson inquiry?
8. Role in Rewa investigation?
9. Length of time in Rewa investigation?

SECTION 2: POLICE RESPONSE TO REWA VICTIMS

10. Were the women Malcolm Rewa attacked treated by the police as standard rape victims?
11. Any differences – reasons for these?
12. Do you think they may have received consistently better treatment than most rape complainants?
13. Any exceptions? Why? How?
14. What differences were apparent in the treatment of the women
 - at reporting?
 - at statement-taking?
 - during the medical
 - leading up to the trial?
 - during the trial?

- since the trial?
15. To what extent do you think these women received ideal police treatment and support?
 16. Were any of the women's initial complaints not believed or fully investigated by the police? If so, why?
 17. Any parallels with victims in the Joseph Thompson case whose complaints seemed initially dubious?
 18. How do you feel police, medical and trial processes impacted on the Rewa victims?
 19. How did involvement with these women impact on you?
 20. What changes, if any, would you like to see in the future to how police process rape complainants?
 21. To what extent do differences exist in the case of victims of a serial rapist?
 22. In closing, any final comments?

APPENDIX E

VICTIMS/SURVIVORS OF ATTACKS BY MALCOLM REWA RESEARCH PROJECT

INFORMATION SHEET

Introduction

This research is being conducted for a PhD degree by Jan Jordan, a senior lecturer in Criminology at Victoria University. The aim of this part of the study is to talk with women who were attacked by Malcolm Rewa about their experiences in reporting the incident to the police and subsequent court process. It is also possible that this research may be published in a book aimed at documenting the experiences and survival stories of women attacked by Rewa.

What is involved

I would like to talk to you for one-two hours, at a time and place selected for your convenience. You would, however, be free to end the interview at any time. With your permission, I would like to tape record the interview to ensure accuracy of information.

I would like to hear about why you chose to report the incident to the police and how you felt you were treated by the police. I would also be interested in hearing your impressions of the court process, as well as how you felt this entire experience impacted on your life.

You will not be asked to provide details of the attack itself; however, your permission is sought to obtain these details from the police (from your file and from your victim impact statement).

Confidentiality

Everything you say is confidential and no information which could identify you will be published in any form. If you agree to the interview being taped, the tape will be marked only with a code number or pseudonym, and it will be listened to only by myself and possibly a transcriber. When the research has been completed, the tape will be electronically wiped, unless you request that it be sent to you.

Feedback

If you would be interested in receiving a summary of the findings from this research, once the study is complete, please indicate this on the consent form.

Additional information

If you have any questions or would like to receive further information about the project, you are welcome to contact me by phone, fax, e-mail, or at the address below:

Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington,
PO Box 600, WELLINGTON
Phone: (04) 463 5811; Fax: (04) 495 5147
Email: jan.jordan@vuw.ac.nz

APPENDIX F

VICTORIA UNIVERSITY OF WELLINGTON CONSENT TO PARTICIPATION IN RESEARCH

Victims/Survivors Research Project

I have been given and have understood an explanation of this research project. I have had an opportunity to ask questions and had them answered to my satisfaction. I understand that I may withdraw myself (or any information I have provided) from this project at any stage without having to give reasons and without penalty of any sort.

I understand that any information I provide will be kept confidential to the research; and that the published results will not use my name. I understand that the tape recordings of my interview will be electronically wiped at the end of the project unless I indicate that I would like them returned to me.

Please tick one:

_____ I would like the tape(s) of my interview to be electronically wiped at the conclusion of the project;

_____ I would like the tape(s) of my interview returned to me at the conclusion of the project, and to facilitate this will endeavour to inform the researcher of any intervening change of address.

I understand that the data I provide will be used in the presentation of a PhD thesis and in subsequent publications (eg. Articles in academic journals) which may emanate from this work. I also understand that, should a suitable publisher be found, this material may also be included in a book.

I understand that the data I provide will not be released to others without prior consultation and my consent.

Consent

If you are willing to be interviewed, please sign the following statements:

(1) I understand the purposes of this research and agree to take part.

NAME:

PREFERRED PSEUDONYM:

SIGNATURE:

DATE:

Please turn over

(2) I give my consent to Jan Jordan being granted access to my police file and victim impact statement, for the purposes of this research project:

NAME:

SIGNATURE:

DATE:

If you would like to receive a summary of the research findings at the end of the study, please write your postal address below:

ADDRESS:

.....

.....

PHONE:

APPENDIX G **REWA SURVIVORS' STUDY** **DATA COLLECTION SHEET**

Name (pseudonym): _____ Date of interview: _____

Code number:

☐

PERSONAL INFORMATION

Age at time of attack: code actual

☐

*Age now

☐

Relationship Status at time of attack

married/de facto/partnered =1
divorced/separated/widowed =2
single =3

☐

*Now

married/de facto/partnered =1
divorced/separated/widowed =2
single =3

☐

Living situation at time of attack

with parents =1
with partner =2
with partner and kids =3
with kids =4
alone =5
flatting =6
other (specify) =7

☐

*Now

with parents =1
with partner =2
with partner and kids =3
with kids =4
alone =5
flatting =6
other (specify) =7

☐

Race:

Maori	=1
Pacific Island	=2
Pakeha/European	=3
Other (specify)	=4

☐

Occupation at time of attack

***Now**

Prior contact with police

Yes	=1
No	=2

☐

If yes, in what context?

prior victim	=1
offender	=2
associate with offender	=3
other	=4

☐

PART 1: POLICE AND COURT EXPERIENCES

OFFENCE INFORMATION

1. When did the incident occur?:

month _____

year _____

2. Was the perpetrator personally known to you?

Yes =1

No =2

Not certain =3

If yes, what relationship?

3. At the time, did you know or suspect the attacker was Malcolm Rewa?

Suspected =1

Knew =2

Did not know or suspect =3

(IF 1 or 2, GO TO INITIAL REPORTING)

4. When did you find out the attacker was Malcolm Rewa?

5. How did you find out?

6. How did you feel when you found out it was Rewa?

INITIAL REPORTING

1. Who did you tell first about the incident?

Police	= 1
Friend	= 2
Passer By	= 3
Partner	= 4
Family	= 5
Neighbour	= 6
Counsellor	= 7
Rape crisis/ Help	= 8
Other (specify)	= 9

☐

2. Whose idea was it to inform the Police?

Own	= 1
Friend	= 2
Passer By	= 3
Partner	= 4
Family	= 5
Neighbour	= 6
Counsellor	= 7
Rape crisis/ Help	= 8
Other (specify)	= 9
Police found out in another way	=10

☐

**If Police found out in another way,
please give details**

3a. If you did not report the incident yourself, how did you feel about it being reported?

OK	=1
annoyed	=2
relieved	=3
other (specify)	=4

☐

Please give details

3b. If you reported, why did you decide to report to the Police?

felt I should	=1
didn't want him to get away with it	=2
to protect others	=3
scared of repeat	=4
other (specify)	=5

☐

Please provide details

4. How long after the incident was this?

Code in days

☐

If there was a delay, please provide reasons

5. If you reported the incident, how did you report

phone	=1
in person at police station	=2
other (specify)	=3

☐

6. How would you describe your state of mind at the time you reported the incident?
Please provide details

7. Who did you report the incident to?

detective	=1
patrol officer	=2
watch house	=3
front desk	=4
other (specify)	=5
don't know/remember	=6

☐

8. What was the sex of this person

male	=1
female	=2
don't know/remember	=3

☐

Did that matter to you?

Yes	=1
No	=2

☐

Please provide reasons

9. Where did you report the incident to the police?

at the police station	=1
at home	=2
in the street	=3
from the hospital	=4
other (specify)	=5

☐

10. Did you have any support person with you?

Yes	=1
No	=2

☐

If no, was this offered as an option?

Yes	=1
No	=2

☐

Would you have liked to have been given the option?

Yes	=1
No	=2

☐

If yes, who was the support person?

friend	=1
family	=2
counsellor	=3
support worker	=4
partner	=5
other (specify)	=6

☐

Was this helpful?

Yes	=1
No	=2

☐

Please provide reasons

11. How long did reporting the incident take?

Less than 1 hour	=1
1-2 hrs	=2
2-3 hrs	=3
3+	=4

☐

12. How did the police treat you at this time?

understand/sympathy	=1
aggressive	=2
disbelief	=3
professional/neutral	=4
cold/ distant	=5
other	=6

☐

Please give details:

13. Were you satisfied or dissatisfied with the way the Police dealt with you at this stage?

Very Satisfied	=1
Satisfied	=2
Dissatisfied	=3
Very Dissatisfied	=4
Not sure/cannot say	=5

☐

Please give details:

14. Any other comments about reporting the incident to the police?

INITIAL INTERVIEW (this may be part of reporting)

1. Who interviewed you the first time?

detective	=1
reporting officer	=2
other	=3

☐

Sex of officer?

Male	=1
Female	=2

☐

Would you have preferred an officer of a different sex?

Yes	=1
No	=2

☐

2. Where did this interview take place?

police station	=1
home	=2
hospital/HELP	=3
other (specify)	=4

☐

3. What was the atmosphere like?

cold/clinical	=1
warm/supportive	=2
other	=3

☐

Please provide details

4. How many people were present?

Code actual number

☐

Please provide details

5. Were you able to tell your account of the incident as fully as you wanted to at this time?

Yes	=1
No	=2

☐

If not, why not? Please give details:

6. How would you describe your state of mind at the time of this interview? Please give details:

7. How long did this first interview take?

Less than 1 hour	=1
1-2 hrs	=2
2-3 hrs	=3
3+	=4

☐

8. How did the police treat you at this time?

understand/sympathy	=1
aggressive	=2
disbelief	=3
professional/neutral	=4
cold/ distant	=5
other	=6

Please give details:

☐

9. Did you have any support person with you?

Yes	=1
No	=2

If yes, who?

friend	=1
family	=2
partner	=3
counsellor	=4
agency worker	=5
other (specify)	=6

Was this helpful?

Yes	=1
No	=2

☐☐☐

Please provide reasons

10. Any other comments about the first interview?

11. What more if anything could be done to make such interviews easier for women?

Please provide details

MEDICAL EXAM

1. Did you have a medical exam?

Yes	=1
No	=2

☐

If not, please provide reasons

IF NO, GO TO NEXT SECTION

2. If yes, how long did you have to wait for the exam?

Less than 1 hour	=1
1-2 hrs	=2
2-3 hrs	=3
3+	=4

☐

What was that like? Please give details:

Was anyone able to wait with you?

Yes	=1
No	=2

☐

If yes, who?

friend	=1
family	=2
partner	=3
counsellor	=4
agency worker	=5
other (specify)	=6

☐

3. What was the sex of the doctor?

Male	=1
Female	=2

☐

Did that make a difference to you?

Yes =1
No =2

☐

Please give reasons:

**4. Who was present during the exam?
Please detail:**

5. Where did the exam take place?

Hospital =1
police station =2
other (specify) =3

☐

6. How did the doctor treat you?

understanding/sympathy =1
aggressive =2
disbelief =3
professionally/neutral =4
cold/ distant =5
other =6

☐

Please give details:

**7. How would you describe your state
of mind at the time of the medical exam?**

Please provide details:

8. Were you satisfied or dissatisfied with the way the doctor dealt with you?

Very Satisfied	=1
Satisfied	=2
Dissatisfied	=3
Very Dissatisfied	=4
Not sure/cannot say	=5

☐

Please give details:

9. Any other comments about the medical exam?

INITIAL REPORTING/ INTERVIEW PROCESS/ MEDICAL EXAM

1. How long was it (after reporting/interview/medical) before you could go home?

Less than 1 hour	=1
1-2 hrs	=2
2-3 hrs	=3
3+	=4

☐

How did you feel about this?
Please provide details

How did you get home?

own transport	=1
police car	=2
public transport	=3
other(specify)	=4

☐

How did you feel about this?
Please provide details

2. If the attack occurred at your home, were you inconvenienced at all by the police's need to obtain evidence from the scene?

Yes	=1
No	=2

☐

If so, how?

3. Was any of your property retained?

Yes	=1
No	=2

☐

If yes, specify what

**How did you feel about this?
Please provide details**

Has it been returned?

Yes	=1
No	=2

☐

If no, specify why

SUPPORT AGENCIES

1. Did you have any contact with any support agency??

Yes	=1
No	=2

☐

2. Which one(s)?

**If yes, were you satisfied or dissatisfied
with the way they dealt with you?**

Very Satisfied	=1
Satisfied	=2
Dissatisfied	=3
Very Dissatisfied	=4
Not sure/cannot say	=5

☐

Please give details:

What more could they have done?

SUBSEQUENT INTERVIEWS WITH THE POLICE

1. Did you have more than one interview with the police?

Yes =1
No =2

☐

If yes, code number

☐

and please give details of why:

If yes, was it the same interviewing officer throughout?

Yes =1
No =2

☐

How did you feel about this?
Please give details:

2. Were you required to take part in any procedures designed to help the police identify the offender (such as identikit pictures, ID parades etc)?

Yes =1
No =2

☐

How did you feel these were handled by the police

How did they affect you?

DURING ANY INTERVIEW WITH THE POLICE

1. Were you asked questions about your prior sexual history at any stage?

Yes =1
No =2

☐

If yes, please give details:

2. Were you asked questions you considered inappropriate at any stage?

Yes =1
No =2

☐

If yes, please give details:

3. Any other comments about police interviews?

4. Did the police ever behave in a way you considered inappropriate?

Yes =1
No =2

☐

If yes, please give details:

5. Did the police tell you at any stage what would be involved in a prosecution?

Yes =1
No =2
Don't remember =3

☐

Please give details:

6. How did you feel about what they said?

OUTCOME OF REPORTING

1. What contact did you have with the Police after reporting?

Regular =1
Irregular =2

☐

Was that at your initiative or theirs?

My initiation =1
Their initiation =2
Both =3

☐

Please give details of the nature and extent of this contact:

2. Do you feel you were kept informed of the progress of events by the Police?

Yes =1
No =2

☐

If no, please give details:

3. Did you feel you received sufficient feedback on the usefulness of the information you supplied to the Police?

Yes =1
No =2

☐

Please give details:

4. Did the Police tell you when Rewa was arrested?

Yes

=1

No

=2

☐

How did you feel about this?

5. What charges were laid against Rewa relating to his attack on you?

When, and how, did you hear about these charges? Were they discussed with you?

6. How did you feel when you were told about the charges to be laid relating to your case?

7. How did you feel when you heard about all the other charges he was facing in relation to the other women he attacked?

COURT AND TRIAL PROCESS

1. How did you feel when Rewa pleaded not guilty after the depositions hearing?

2. Were court procedures explained to you?

Yes =1
No =2

☐

If yes, who explained them to you?

police =1
victim support =2
rape crisis =3
help =4
prosecutor =5
other (specify) =6

☐

What did it involve? What were you told?

3. When did you first meet the prosecutor?

(specify) _____

4. Did you feel prepared about going to court?

Yes =1
No =2

☐

Why?

5. Did you understand all the procedures?

Yes =1
No =2

☐

Why? What could have been different?

6. Did anyone accompany you to court?

Yes =1
No =2

☐

If no, was this your choice? How did you feel about that?

(IF NO, GO TO QUESTION 7)

If yes, who went with you?

friend =1
family =2
counsellor =3
RC/HELP worker =4
partner =5
other (specify) =6

☐

Was their attendance helpful?

7. Were you informed about who would be in Court?

Yes =1
No =2
In part =3

☐

8. How many people were present?

code actual number (if known)

☐

9. Did you know who everyone was?

Yes =1
No =2

☐

Who were the ones you knew?

10. How did you feel about the presence of the defendant? Did you look at him? How was he behaving?

11. Were you given preparation for being a witness before the trial hearing?

Yes =1
No =2

☐

If yes, who gave you this preparation?

police =1
victim support =2
rape crisis =3
help =4
prosecutor =5
other (specify) =6

☐

12. When you gave evidence, how did you feel about the presence of people in court?

13. When you gave evidence, how did you feel about the presence of the defendant?

14. How did you feel generally about seeing the defendant?

15. Generally, how did the judge treat you?

How did the prosecutor treat you?

How did the defence counsel treat you?

16. How did you feel generally about giving evidence?

Were you asked questions you thought irrelevant?

Yes =1
No =2

☐

If yes, can you give me any examples?

Were you asked questions you thought offensive/ insulting?

Yes =1
No =2

☐

If yes, can you give me any examples?

Did you have to answer questions about your prior sexual experience?

Yes =1
No =2

☐

If yes, how did you feel about this?

17. How long did it take to give your evidence and/or to be cross-examined?
(her perception)

18. Did you feel that your evidence was accepted? Why/Why not?

19. Did the defendant give evidence at the trials?

Yes	=1
No	=2
Don't know	=3

☐

If yes, did you listen?

Yes	=1
No	=2

☐

How did you feel about what he said?

20. Did the jury find Rewa guilty on the charges involving you?

Yes	=1
No	=2

☐

How did this make you feel?

SENTENCING

1. Did you attend the sentencing?

Yes =1
No =2

Why?

If you didn't, would you like to have attended?

Yes =1
No =2

Why/why not?

Was anyone with you?
(specify)

2. Did you feel your experience of the offence was appropriately considered in the sentencing decision?

Why/Why not?

3. Did you agree with the sentence?

Yes =1
No =2

☐☐☐

Why?

4. Would you have liked to have spoken to Malcolm Rewa? If so, what would you have wanted to say?

CHANGES

1. What could be done to make this process easier for women?

2. Are there any changes in procedure you would like to see?

3. Are there any other comments you would like to make about the court process?

OVERALL SATISFACTION WITH POLICE

1. Overall, now that the court case is over, are you satisfied with the way the Police dealt with your complaint?

Very Satisfied	=1
Satisfied	=2
Dissatisfied	=3
Very Dissatisfied	=4
Not sure/cannot say	=5

☐

Please give details:

2. Would you advise anyone in a similar situation to contact police?

Yes	=1
No	=2
Unsure	=3

☐

If no or unsure, please give details:

3. Would you advise anyone in a similar situation to contact a support agency (specify which)?

Yes	=1
No	=2
Unsure	=3

☐

If yes, please give details:

FINAL COMMENTS

- 1. Are there any final comments you would like to make?**

☐

Please give details:

APPENDIX H

REWA SURVIVORS' STUDY

PART 2: EFFECTS AND RECOVERY

Name (pseudonym): _____ Date of interview: _____

Code number: _____

AFTERMATH OF INCIDENT

1. What impact did the incident have on:

your life generally?
Please give details:

your work:
Please give details:

your money and finances:
Please give details:

your relationship with family members:
Please give details:

your relationship with friends, neighbours, etc:
Please give details:

your relationship with your husband/partner:
Please give details:

your capacity for sexual intimacy:
Please give details:

your leisure time:
Please give details:

perceptions of safety:
Please give details:

your health - mental and physical
(probe sleep, appetite, depression,
anxiety). Please give details:

2. How are you feeling about the incident now:
Please give details:

Re: In yourself

Re: Malcolm Rewa

Re: Police

Re: Prosecutor

Re: Defence lawyer

Re: Jury

Re: Judge

3. What impact did involvement with the criminal justice process have on you?
Please give details:

4. (i) How did you feel about the way in which the media presented information about your case?

- (ii) How did you feel about the way in which the media presented information about the trial in general?

- (iii) How did you feel about the way in which the media presented Malcolm Rewa?

EFFECT OF KNOWING THERE WERE OTHER VICTIMS

1. During the lead-up to the trial, how aware were you of the other victims whom Rewa had attacked?

How important was it to you to know of their existence?

- 2. During the trial itself, how aware were you of the other victims whom Rewa had attacked?**

How important was it to you to know of their existence?

- 3. Did you see any of these women at the courtroom during the trial?**

If yes, how did that feel? What, if anything, did you notice about them?

- 4. Since the trial, have you met any of the other women whom Rewa attacked?**

If yes, how has that felt for you?

Has meeting these women helped your recovery process? If so, how?

If no, would you have liked to? Why/why not?

- 5. Have you met any of the other people involved in the trial since it finished?**

If so, who? What was this like for you?

IMPACT ON FAMILY/FRIENDS

- 1. What impact did your being attacked have on those closest to you (partner, family, friends, etc)?**
Please give details in relation to:

(a) Your husband/partner (if relevant)

(b) Your former husband/partner (if relevant)

(c) Your children (if relevant)

(d) Your parents

(e) Your friends

(f) Your colleagues/work mates (if relevant)

2. How did it affect their behaviour toward you?

3. How were you affected by the way they reacted?

What affects did it have on your relationship?

4. Has this changed over time? If so, how, and with what effect?

5. What do you think helped them the most in coming to terms with what happened to you?

What else would have been helpful/useful?

**6. How was your own behaviour towards those closest to you affected your having been attacked?
Please give details in relation to:**

(a) Your husband/partner (if relevant)

(b) Your former husband/partner (if relevant)

(c) Your children (if relevant)

(d) Your parents

(e) Your friends

(f) Your colleagues/work mates (if relevant)

HEALING AND RECOVERY

- 1. What would you say helped you the most in terms of your healing and recovery from this incident?**

(i) How important was the role of the police in this process?

(ii) How important was the trial in your recovery process?

(iii) How important was counselling/therapy?

(iv) How important was support from:

- your friends?
- and/or your partner?
- and/or your family?
- and/or your colleagues?

2. Is there anything else which you think helped in your recovery?

3. What do you feel you needed the most during this time?

Do you feel as though you received this? Why/Why not?

4. What was the hardest part of the recovery process for you to get through?

What helped you the most in getting through this (or hwat would helped you)?

5. Do you feel as if your recovery process is complete? Why/why not?

If not, what do you think will be necessary for you to feel its complete?

6. Do you feel there have been any positive outcomes which have emerged from this experience for you? If so, which, and how have they been positive?

7. Is there any piece of advice which you would like to give women who may be recovering from similar attacks?

8. Are there any other comments you would like to make in closing?

APPENDIX I

Safer Communities
Together

POLICY POINTERS

1998/1

Adult Sexual Assault Investigation Policy

Background

The policy has been designed and developed with the assistance of representatives from medical practitioner groups, counselling agencies and community groups. It provides the policy and principles for the practice and procedures for the investigation of ADULT sexual assault. An adult means a person 17 years and older.

Where complaints are received that victims who are under 17 years have been sexually assaulted, staff must follow the separate *Policy and Guidelines for the Investigation of Child Sexual Abuse and Serious Physical Abuse*. Note that victims who are under 17 years may come within the adult regime in some circumstances, and that, in those circumstances, the investigation process follows the adult sexual assault policy.

Where the adult is intellectually disabled, they should be dealt with under the *Policy and Guidelines for the Investigation of Child Sexual Abuse and Serious Physical Abuse*. Section 23C of the Evidence Act 1908 allows people who have an intellectual disability to be taken through the evidential interview process.

This policy on adult sexual assault investigations **MUST** be read in conjunction with the Manual of Best Practice, and in conjunction with the Victims of Crime Policy and the Family Violence Policy. The policy applies equally to both men and women.

Definitions (for the purposes of this policy)

Sexual assault: A crime of sexual nature, as defined in the Crimes Amendment Act (No 2) 1989.

Support person is the specially trained person from a crisis counselling agency or group that supports sexual assault victims, or a trained sexual assault counsellor, where there are no groups available who support victims. The support person's group or counsellor will have been identified in the local agreement.

Note that the victim may also choose to have another person present, including from family, whanau, iwi, hapu or Maori group member, acquaintance or any other person.

Trained Investigator: A sworn police member who has received specialised training in adult sexual assault investigation procedures, as defined in section 4.3 of this policy, and is the police member who conducts the formal interview and takes the statement from the victim.

There will be a two year lead in time from the date of approval from the Police Executive Committee for the training of police officers to meet the requirements of a trained investigator.

1 Policy Principles

- 1.1 The Police acknowledge the destructive consequences of adult sexual assault, and that the safety of the victim is paramount.
- 1.2 The Police will treat the reported sexual assault of an adult, as a serious criminal act which will be investigated, and when evidence is available, consider prosecution.
- 1.3 That when the alleged sexual assault is reported within seven days of the incident, such complaints will be given priority, whenever possible.
- 1.4 Perpetrators of adult sexual assault must be held accountable for their actions.
- 1.5 The Police will be the lead agency in any criminal investigation. The Police will take an inter-agency approach and will work cooperatively with approved medical practitioners and a variety of groups and individuals that support victims including iwi and Maori groups.
- 1.6 An inter-agency approach to the investigation and management of adult sexual assault cases will enhance protection of the adult victim, accountability of any offender, and reintegration of the victim into the community.
- 1.7 The Institute of Environmental Science and Research (ESR) must be consulted when forensic information is required.
- 1.8 A sworn police member, who has received specialised training in adult sexual assault investigation procedures, must undertake adult sexual assault investigations, including conducting the formal interview and taking the statement from the victim.

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- 1.9 Wherever possible, the selection of Police personnel and procedures must recognise and reflect the diversity of the community, victims and their families.
- 1.10 Consultation with the victim should occur throughout any decision making process.
- 1.11 The Police response to the needs of the victim is aimed at:
 - i ensuring early intervention and maximum protection;
 - ii aiding the victim's long term recovery from the trauma; and
 - iii ensuring the victim's cooperation with the investigation through to completion.

2 The Police Commitment

- 2.1 Police have four main functions in sexual assault investigations:
 - 1 to ensure the safety of the victim;
 - 2 to investigate and, when evidence is available, consider prosecution;
 - 3 to coordinate the support for the victim, and keep the victim informed of the progress of the investigation as far as possible; and
 - 4 to identify those responsible for offending and ensure they are held accountable.

2.2 District Managers shall:

- 2.2.1 ensure that all frontline, and watchhouse staff under their control are trained in taking initial sexual assault complaint action and dealing with victims, including Maori victims;
- 2.2.2 ensure that sufficient and suitable investigation staff are fully trained in all aspects of the investigation of adult sexual assault, including protocols with other agencies including Maori;
- 2.2.3 consider the setting up of adult sexual assault investigation teams;
- 2.2.4 ensure that investigating staff receive supervision by an appropriate NCO;
- 2.2.5 ensure that this NCO monitors the work and development of staff to ensure staff have the appropriate attributes required for the investigation of adult sexual assault complaints;
- 2.2.6 recognise that investigations of all sexual assault complaints can be emotionally demanding on staff and ensure that supervisors monitor the psychological welfare of staff. The Police Trauma Policy must be adhered to; and
- 2.2.7 note that the CIB shall, in general terms; be responsible for the investigation of adult sexual assault complaints.

2.3 Communication Centre managers shall:

- 2.3.1 ensure that communication centre staff under their control are trained in taking initial sexual assault complaint action and dealing with victims, including Maori victims.

2.4 District Manager will be responsible for:

- 2.4.1 implementing this policy;
- 2.4.2 ensuring that appropriate facilities and MEK kits are available;
- 2.4.3 appointing Adult Sexual Assault Coordinators in their districts;
- 2.4.4 employing Crown Solicitors, where necessary, for prosecuting cases;
- 2.4.5 in consultation with the chief medical officer ensuring that doctors who have had specialised training in the examination of suspected victims of sexual assault, such as Police Medical Officers and DSAC Doctors, are available for such examinations; and
- 2.4.6 ensuring, in conjunction with their Adult Sexual Assault Coordinators, that local agreements are in place with support agencies to ensure that early assistance is provided to all victims.

2.5 Agency Responsibilities during the investigation are as follows:

- 2.5.1 *Police are responsible for the investigation of criminal offences, including the forensic scene examination, call-out of the specially trained medical practitioner, conducting the formal interview and taking the victim's statement, the prosecution of the offender, and call-out of the support person;*
- 2.5.2 *Support person, namely the crisis counselling agencies and the trained people in groups that support victims, and the trained individual sexual assault crisis counsellors are responsible for ensuring that the victim receives crisis support, counselling and the initiation of therapy. The support person may need to extend their support to the victim's immediate family, whanau and other family members;*
- 2.5.3 *Specially trained; Medical Practitioners are responsible for both the forensic or standard medical examination of the adult; and*
- 2.5.4 *ESR, in conjunction with the Police, is responsible for forensic scene examination.*

3 Selection of Personnel for Adult Sexual Assault Investigations

- 3.1 Police personnel who investigate or have responsibility for these investigations should possess the following specific knowledge, skills and attributes:

- 3.1.1 be aware of the needs of adult sexual assault victims;
- 3.1.2 be a trained investigator;
- 3.1.3 possess communication and interview skills, and be able to use these in sensitive situations;
- 3.1.4 possess knowledge and understanding of specialist agencies' roles and responsibilities with potential to liaise and build professional working relationships with others;
- 3.1.5 possess knowledge of the trauma that can result from this type of victimisation, and that this can include a range of emotions and reactions;
- 3.1.6 possess knowledge and understanding of issues particular to victims who identify as Maori; and
- 3.1.7 possess knowledge of relevant laws and practice as relates to adult sexual assault investigations.

4 Training

- 4.1 Trained police investigators are essential for the successful functioning of this policy.
- 4.2 These trained investigators must have fully undergone the specialised training into all aspects of adult sexual assault investigation procedures, including protocols with other agencies including Maori, before becoming responsible for any such investigations.
- 4.3 The Research and Development Group at the Police Training Directorate has the responsibility for developing this specialised training programme.
- 4.4 Trained investigators should be encouraged to attend subsequent on-going training appropriate to their needs.
- 4.5 The local Adult Sexual Assault Coordinators, in conjunction with other specialist local agencies, must facilitate joint on-going training, supported by District Training Sections who should assist by providing resources to ensure that these training needs are met.

5 Procedures - Investigation Management

5.1 Receipt, Initial Action and Evaluation of Complaints

- 5.1.1 When the Police receive a report of suspected adult sexual assault, it should be referred as soon as possible to a trained investigator.
- 5.1.2 Where a trained investigator is not available at that time to deal with a complaint, and it is necessary that initial action investigation or intervention proceed as a matter of urgency, then the most suitable police personnel should be tasked.

While the initial action should be completed as soon as practicable, the formal interview and statement taking can be completed at a later date by a trained investigator.

The complaint should be then handed over to a trained investigator within two days, for completion, including conducting the formal interview and taking the statement from the victim.

- 5.1.3 A trained investigator is responsible for planning the investigation.

5.2 Victim Safety

- 5.2.1 Given that in all cases the first priority is the safety and protection of the victim, the Police must ensure that all victims have a support person/s during the interview process. The victim can request the support person/s presence in the medical examination. This person must be from an identified sexual assault support group or trained sexual assault counsellor.

The victim may choose to have another person present. This may include an iwi, hapu or whanau member.

- 5.2.2 The victims have the choice of deciding whether or not to proceed with a formal complaint. Police should advise victims about available assistance, whatever decision is reached.

5.3 Interview and Investigation

- 5.3.1 The formal interview and taking of the statement is a critical part of the investigation process, and a successful prosecution of sexual offences can often hinge on this. Therefore conducting the formal interview and taking of the statement from a sexual assault victim must only be taken by a trained investigator.
- 5.3.2 The formal interview and taking of the statement may be delayed to accommodate the medical and emotional needs of the victim.
- 5.3.3 Such an interview of the victim must be conducted in an area that is appropriate, comfortable, secure, private and safe and not a suspect interview room.
- 5.3.4 Should the victim withdraw their complaint, the investigation and prosecution may continue depending on the circumstances. If the decision is made to continue, the victim must be informed.
- 5.3.5 For a guide to investigation procedures, refer to the Manual of Best Practice. The Criminal Investigative Analysis (CIA) process must be considered throughout the investigation. The information must be collated in the correct format.

- 5.4 Medical examination
'In reference to responsibility refer to 2.4.5)
- 5.4.1 Doctors with specialised training in the examination of suspected victims of sexual assault, such as DSAC Doctors and Police Medical Officers, are the preferred medical practitioners.
- 5.4.1.1 If the gender of the examining doctor is identified by the victim as an issue, then every attempt should be made to meet the victim's wishes.
- 5.4.2 If the alleged sexual assault is reported within seven days of the incident, the forensic medical examination, using the approved Medical Examination Kit (MEK), must take place as soon as possible, and before the formal interview and taking of the statement.
- 5.4.3 If the alleged sexual assault occurred more than seven days prior to the incident reported, consideration should be given to conducting a forensic or a standard medical examination of the victim. The trained investigator should make this decision in consultation with a preferred medical practitioner and/or ESR, before the formal interview and taking of the statement is conducted.
- 5.4.4 Where a forensic medical examination of an adult is considered necessary, the victim should be referred to a preferred medical practitioner by the trained investigator for that examination.
- 5.4.5 The doctor's fee is a police responsibility and payment will be made within the Police scale of fees, where, as part of the investigation, there was a police referral for a medical examination.
- 6 The Offender
- 6.1 The interview and any prosecution of the offender are a Police responsibility.
- 6.2 Refer to the Manual of Best Practice for a description of operational procedures.
- 6.3 In order to provide the maximum safety possible for the victim, police officers must ensure that the Victim of Offences Act 1977 and the Domestic Violence Act 1995 are adhered to, particularly in relation to bail conditions, consulting with the victim, custodial status and release dates.
- 7 Legal Action
- 7.1 If a prosecution is not proceeded with, the reasons for not proceeding must be carefully explained to the complainant either by the Officer in Charge of the case or the Coordinator of Adult Sexual Assault Investigations.
- 7.2 Crown Solicitor must be employed for
- 7.2.1 indictable jurisdiction cases;
- 7.2.2 in depositions, and in summary jurisdiction cases, where appropriate; and
- 7.2.3 at the preliminary hearing when an application is made to the court for the victim to appear as a witness at depositions, where appropriate.
- 8 Facilities and Equipment
- 8.1 Interviewing Facilities
- 8.1.1 The District Manager is responsible for ensuring that an appropriate venue is available for interviewing adult sexual assault complainants.
- 8.2 Medical facilities
- 8.2.1 The District Manager is responsible for ensuring that the specialist medical practitioners undertake the medical examinations of victims in surroundings that are comfortable and non-threatening to the victim. The facility should be adequately equipped and available 24 hours a day.
- 8.2.2 The medical examination of the victim should be conducted in an area that is appropriate, comfortable, secure, private and safe and not in rooms where medical examinations of suspects are carried out.
- 8.2.3 If medical examination facilities for victims are to be situated in police stations, then prior approval must be obtained from the Police Chief Medical Adviser for these facilities.
- 9 Statistics
- 9.1 To ensure Police are well placed to deal with the volume and the seriousness of adult sexual assault crimes, accurate and up to date quality information about the victim and offender is required to determine trends and develop systems to enhance investigation practices and procedures.
- 9.2 Offences shall be promptly entered, in the usual manner, with family violence related offences being entered via the Family Violence Report, Pol 400.
- 10 Historical Complaints
- 10.1 Given that reports of adult sexual assault can be made to the Police some years after the incident, the Police response to such complaints will take into consideration factors such as:
- Choice made by the victim; evidence offered by the victim; availability of other evidence; availability of witnesses; legal precedents; the of-

Adult Sexual Assault Investigation Policy Continued from page 14

fender's response; and likelihood of continued offending.

- 10.2 Consultation with the victim is a priority throughout the investigation process, and decisions must be made in consultation with the victim and the Coordinator Adult Sexual Assault Investigations.

11 Options available for resolution of complaints

- 11.1 In complaints where the alleged sexual assault is reported within seven days of the incident, the following options for resolution of adult sexual assault investigations are available:

- Investigation and prosecution; full investigation and warning; recording the complaint and talking to the offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and offender for counselling.

- 11.2 For historical complaints, the options available for resolution include:

- Recording the complaint and talking to the offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and offender for counselling; warning; or prosecuting the offender.

12 Administration

- 12.1 The Manager: CIB Support Group has the administrative responsibility for the Policy entitled "Investigation of Adult Sexual Assaults."

Peter Doone
Commissioner of Police

Appendix 1

Sexual Assault District Coordinators Responsibilities:

- 1 To liaise with all appropriate local support agencies to ensure that Police policy is being complied with.
- 2 To liaise with local police medical officers and DSAC doctors to ensure that Police policy is being complied with.
- 3 To ensure that local training, in line with national directives, is being carried out.
- 4 To ensure that sufficient locally qualified police members are in place to satisfy local demands.
- 5 To monitor performance of trained members to ensure that they are performing satisfactorily, and institute the Trauma Policy when required.
- 6 To monitor all complaint files to ensure that the policy is being adhered to.
- 7 To assist PNHQ in any surveys of sexual assault victims.
- 8 To act as liaison people for dissemination of national procedures and information. ■

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¹ Wherever possible, authors' first names have been included to signify gender, a decision consistent with the gendered nature of this study. This approach, however, has produced regrettable but unavoidable inconsistencies in presentation.

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