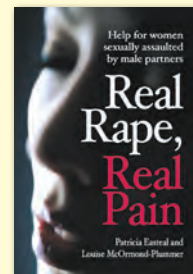


# Advice for Criminal Justice Staff and/or Advocates to Aid IPSV Survivors

Patricia Easteal

Aside from co-authoring *Real Rape, Real Pain*, Dr Patricia Easteal, an expatriate North American, has written books (e.g. *Voices of the Survivors*, *Killing the Beloved*, *Balancing the Scales: Rape, Law Reform & Australian Culture*, *Less Than Equal: Women and the Australian Legal System*) and numerous articles on sexual assault and domestic violence. She is an activist, advocate and sociolegal academic at University of Canberra.



**R**ape culture myths are alive and well throughout society, and the criminal justice system can no doubt contribute to the intimate partner sexual violence (IPSV) victim's reluctance to report. Fear of the perpetrator is the most common explanation provided for why a woman chooses not to disclose. In addition though, she may not contact the police because of concern about her credibility as a victim and confusion in defining the act(s) as rape. This self-doubt can be even more powerful if physical force was not a part of the coercion. Of the 30 women whose stories make up *Real Rape Real Pain: Help for Women Sexually Assaulted by Male Partners* (Easteal & McOrmond, 2006), only four told the "authorities" about the rape. For each of these women, the assault involved physical force.

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Delayed reporting can lead to the disappearance of evidence and can then be used against the woman in court to discredit her as a witness. The rape myth operating here is that the 'good' victim reports immediately.

**So, a partner rape survivor often needs emotional support in making a complaint.**

Police might minimize what happened in a number of ways. For example, in an interview with one survivor the officer asked, "How did he come to rape you?" After she responded that he had forced her legs open, the officer asked, "How long did he lay on top of you in that position making love to you, fu\*\*\*\*g you, whatever words you want to use...raping you?" (Easteal & Feerick, 2005).

There is a high rate of discontinuances or dropping of charges in all sexual assault cases,<sup>1</sup> but it happens even more often in partner rape. Frequently the victim plays an active role in requesting that charges be dropped.<sup>2</sup> Some women may be convinced (perhaps subtly and sometimes very directly) by the police or the prosecutors that there is little hope of a

<sup>1</sup>In looking at five Australian jurisdictions, Denise Lievore (2005) found that 38% of the prosecutions in sexual assault were dropped.

<sup>2</sup>In Easteal and Feerick (2005), 10 of the 21 cases of partner rape were dropped; seven were at the request of the victim.

guilty verdict. For others, their cross-examination at the committal hearing (indictment) was an ordeal and they simply don't have the energy to continue.

Police, prosecutors and support workers can be more sensitive to these issues and careful in their communication.

Also, a woman may have several interviews with police officers. Sadly the courts (and the defense lawyer deliberately) don't often recognize the impact of trauma and search for discrepancies in her accounts to officers. If there are any differences between what a victim said to police between different interviews and/or in her preliminary hearing testimony, the prosecutor may pre-empt the defense, raising these discrepancies at trial by labeling the victim as "not reliable" and discontinuing or dropping the case.

If you're supporting a woman, it may be a good idea to make her aware that what she says seemingly informally to a police officer at the hospital may be compared with later statements.

Prosecutors know that the chances of conviction are low.<sup>3</sup> They will be more likely to "run" with a matter if there is forensic evidence.

If you are a supporting a victim encourage her to have an examination.

If the case makes it through the prosecutors' filtering, aside from the very slow wheels of "justice" the victim needs to be prepared by a support person for certain realities of the courtroom. She may experience frustration since she has no lawyer or advocate in the trial and the defendant may not be cross-examined about matters that she feels are relevant. Further, the judge may not allow certain evidence like history of domestic violence although such evidence may be vital and its inadmissibility contributes to an acquittal.

So often in the case in rape trials, the complainant's word ends up being on trial.<sup>4</sup> The partner/complainants may be cross-examined about previous consensual sex (Heenan, 2004). And, credibility as a witness unfortunately is equated with consistency. For instance, one "hung" jury seemed to pivot around the

<sup>3</sup>In the Easteal and Feerick study (2005), of those who went to trial, there were no jury findings of guilt; six defendants pleaded guilty, three were acquitted and in two trials there were hung juries.

<sup>4</sup>In more than half (54%) of the trials studied by Pia van deZandt (1998), the complainant was cross-examined about a possible motive for making a false report to the police.

complainant's inability to remember all the particular details of the assault (Easteal & Feerick, 2005). The defense lawyer's cross-examination was exhaustive and managed to get the complainant confused about a number of details and to appear unreliable.

**Develop a plan** to assist her in dealing with confusion. **Inform her** that she can ask the judge for time out for a glass of water. **Encourage her** to make eye contact as much as possible with you or with another support person. For prosecutorial staff; **help establish** a "reality check" by developing some signals. For example, advise her that you will touch your forehead as if to say, "This lawyer is trying to play with your head." If you clasp your hands it can be a message of strength and union.

**Find out if your jurisdiction allows her to give her testimony in another room or with a partition.** She will feel more comfortable and safer if she's not in the same room as her perpetrator. You can use the knowledge of the games that are played in the criminal justice system as a suit of armor to protect her to some degree from the wounds. ○

## References

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