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528



DISTRICT ATTORNEY FOR BENTON COUNTY

Court House, Corvallis, Oregon 97330 — Telephone (503) 757-6815

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Deputy

May 9, 1983

MAY 12 1983

Honorable Vic Fischer
Vice Chairman
Senate Committee on Health
and Social Services
Pouch V
Juneau, Alaska 99811 .

RE: Spousal Rape

Dear Senator Fischer:

The 1977 Session of the Oregon Legislative Assembly enacted the nation's first spousal rape law. The purpose of my letter is to describe Oregon's experience with spousal rape prosecution.

To my knowledge, there were only four spousal rape prosecutions between 1977 and late 1980. The first, of course, was the infamous Rideout case, which resulted in an acquittal.

The second case resulted in a negotiated plea to felony assault. The third resulted in rape and kidnapping convictions at trial. The fourth case, tried by my office, resulted in a conviction of the lesser-included offense of sexual abuse.

Following the Rideout spectacle, Oregon's 1979 legislature reconsidered its position; but after a public hearing before a joint session of the House and Senate Judiciary committees, declined to introduce legislation to repeal the law.

Since 1980, the number of prosecutions has increased, but not to a great extent. My office has received no reports of spousal rape since 1980, and, consequently, there have been no prosecutions.

I recently spoke with Chris Van Dyke, the Marion County District Attorney (population 240,000). He reports that his office has prosecuted five cases with reasonable success. He supports the law.

I also spoke with Mike Schrunk, the Multnomah County District Attorney (population 559,000), who stated that spousal rape cases are relatively rare and tightly screened by his office. He volunteered the opinion that Oregon's spousal rape law has not been abused.

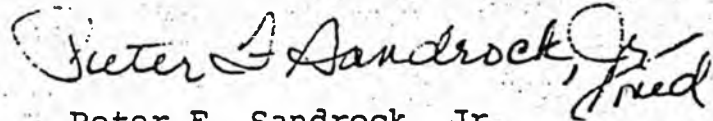
A frequently expressed concern is that spousal rape cases would not be provable. The same difficulty of proof exists, however, in virtually every rape by an acquaintance of the victim. About half of

all reported rapes are by acquaintances of the victims and a fair number of those involve relationships in which there had been some degree of sexual intimacy. Obviously the problem of weighing the evidence when deciding whether to charge rape is a difficult one, but it is the kind of problem prosecutors must deal with every day.

My discussions with rape and domestic violence counselors suggests that they receive significantly more reports of spousal rape than do Oregon prosecutors, but even the counselling centers have not been deluged with reports. Victims are apparently very reluctant to discuss sexual abuse inflicted by their husbands.

In summary, Oregon's prosecutors have not been inundated by a large number of spousal rape complaints, nor have the victims used the rape charge to extort a favorable divorce settlement.

Respectfully submitted,



Peter F. Sandrock, Jr.
District Attorney
for Benton County

PFS:med

I am here to speak in favor of SB 528.

The marital exemption to the violent crime of rape is invariably traced back to the 17th century when Mathew Hale, Chief Justice in England, pronounced,

"But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract."

This ruling was based upon the notion that women were the property of their husbands and procreation was the sole purpose of matrimony.

Since most of us have had sexual intercourse and because our magazines, movies and now television have given so much time and attention to sexuality, it is impossible for us not to relate personally to this discussion of marital rape. When considering this legislation, I kindly request that you refrain from imagining in your mind a gallant Rhett Butler sweeping a petulant Scarlett O'Hara off her feet and up the stairs. Followed, in keeping with 1950 sense of proprieties, a fade out to the next morning -- a sun-filled room and a smiling Scarlett. I emphatically assure you that it not the situation out of which a marital rape charge could ever rise.

Until fairly recently, our law reflected the opinion of many lawmakers that rape was a charge easily made and difficult to defend against. However, as the recently highly publicized New Bedford rape trial reaffirmed, the women victim is very much on trial as well. Her past sexual history and behaviors, her motivation, and even what she was wearing, and where she was at the time of the crime are given a thorough public scrutiny.

Through the increasing number of studies being done, we are learning that rape is a crime of violence. It rise out of a desire for conquest and domination greatly exacerbated by the media images that tell us sexual prowess is part of the definition of masculinity. As in the case of domestic

violence, sexual violence in the context of marriage exists on a continuum. The continuum extends from a non-violent marriage where sex is the result of mutual desire and consent, all the way to the opposite extreme of the rape/murder of a spouse.

As long as wife rape is condoned by our legal system many men will continue to feel that their wife has no right to refuse sex, and many women will continue to feel that they have no right to control their own bodies. By 1980, New Jersey, Oregon and Nebraska had completely abolished the marital rape exemption. It has been variously considered and debated in many other states since that time. State by state variance is so extreme that in West Virginia, a man may not be charged with first degree sexual assault if the woman has ever been a voluntary social companion of the man, even though they have never had mutually consensual sexual relations.

In arguing for SB 528 and against marital exemption, I first sight the moral and philosophical implications of the law as it presently exists. To allow marital exemption endorses the antiquated principle that women are property. Those who would argue that the charge will be made lightly and that the circumstances will be ambiguous, should take some time to familiarize themselves with the recent work of Irene Frieze, Nicholas Groth, Del Martin and Diane Russel. The case study descriptions make sobering and chilling reading.

The marital exemption has been shown to be in violation of the constitutional right to "equal protection" - both in the sense of married versus unmarried women and in the sense of wives versus husbands. Further, why in this one instance are we saying that identity and relationships of the perpetrator to the victim is relevant to our judgment of the crime. Isn't

murder always murder? Is murder less serious if you murder your wife or your child? It is a distortion of justice to rule that rape outside of marriage is a violent, heinous crime, while within the bonds of matrimony, it is allowable.

Nor does the evidence support the charge that rape is less traumatic to a woman when it is done by a man with whom there has been previous mutual consent. The violation of personal trust can be deeply disturbing, and we know from case studies that marital rape frequently occurs in conjunction with life threatening violence.

To tolerate wife rape in law is to minimize the seriousness of rape in other contexts. When we codified bigotry and racial prejudice, we tacitly perpetuate that prejudice. So to with violence. Violence condoned, made glamorous in our media and entertainment, violence used as a subject of humor, violence excused by its context promotes and perpetuates violence.

To quote Diane Russel from her book, "Rape in Marriage"

"To continue to see rape in marriage as husbands privilege is not only an insult, but a danger to all women. We must strive to stop wife rape, including working to eliminate the conditions that have given rise to it."

Patty Kastelic, Director
Women's Center
Board Member of Women In Crisis Counseling Assistance
4920 Anderson Road
Fairbanks, Alaska 99701
(907) 479-5744

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for SB528 and

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To quote Diane Russel from her book "Rape in Marriage"

"To continue to see rape in marriage as husbands privilege is not only an insult , but a danger to all women. We must strive to stop wife rape, including working to eliminate the conditions that have given rise to it"

*Patty Kastelic
Director Women's Center
BOARD member Women in Crisis Counseling Assistance*

*4920 Anderson Rd
Fairbanks, Alaska
99701*

479-5744

Husband acquitted on charge of raping wife

ROBERT De GIULIO/P-I PHOTO

By Larry Lange
and Jack Hopkins
P-I Reporters

EVERETT — Roger Braaten, charged with raping his wife, expressed relief after being acquitted by a six-man, six-woman jury yesterday, but the verdict drew fire from the head of a woman's support organization.

Karen Bosley, president of the Washington Coalition of Sexual Abuse Programs, said she was "very disappointed" at the trial's outcome because it could make abused women "think more than once or twice before they report this kind of case."

Officials said many women remain reluctant to complain despite a change in Washington state law that permits wives to bring criminal charges of rape against their husbands.

"You don't hear about it until somebody reaches the end of her rope," said Rebecca Roe, senior deputy prosecutor in King County.

Members of Braaten's family cheered when the verdict was read in Snohomish County Superior Court.

"Hallelujah!" shouted Braaten's sister, Gloda Ferrin, when Judge Paul Hansen relayed the jury's finding. "Praise the Lord God for everything."

Braaten's attorney, Lorne Grier, said the state's marital-rape law is "good," but said the verdict shows the jury thought Braaten, who denied the charges, "was being truthful on the witness stand."

The unanimous verdict ended a three-day trial in which Braaten, 27, was accused of first- and second-degree rape by his estranged wife, Amanda Braaten, 26.

The trial is believed to be the first in the state on a marital rape charge. The accused husband had faced up to 30 years in prison and up to \$70,000 in fines.

After the verdict was announced, Braaten told reporters he was relieved, but still puzzled by his wife's charges.

"I still have a little feeling in my heart for her," he said, but he added: "I don't know if I could ever go back to her."

Amanda Braaten, who charged her husband with forcing her to commit oral and anal sex, filed for divorce last fall and has not lived with her husband since then.



Pierce to a run

By Neil Modle
P-I Olympia Bureau

OLYMPIA — Pierce County Executive Booth Gardner will be the first candidate to plunge race for governor Monday, well-financed but recognized campaign for the Democratic nomination.

Besides being the first candidate, Gardner, 48, has a campaign war chest — a quarter of a million dollars — either of his potential rival also is the least known of the candidates and, therefore, who most needs an early start.

So little-known is Gardner side Pierce County that an internal memorandum by county Gov. John Spellman's director seems to have whittled his chances of winning the Democratic nomination.

Spellman memo

"It is all but certain that Sen. Jim McDermott will win the Democratic primary based on results of several polls just said the Jan. 26 memo, wrote Brian McCauley to other members of Spellman's organization.

"We must not allow Gardner's possible presence to down our campaign against McDermott," McCauley's memo said.

The memo, a copy of which was obtained by the Post-Intelligencer, predicts that "Booth Gardner, the 'Charley Rorer' of 1984, has more disadvantages than he had." That is a reference to Mayor Rorer's loss to County Mayor Mike Lowry in the Democratic primary race for the U.S. House.

Pierce County quits to b

With Pierce County Executive Booth Gardner preparing to run for governor this year, Sheriff

divorce last fall and has not lived with her husband since then.

Tearful testimony

Testimony in the trial pitted her story against her husband's denials. Attorneys involved said that, as in other rape cases, the wife's credibility became a key issue in the emotion-packed trial.

In tearful testimony, she told jurors her husband had poked her with a knife and threatened her life last Sept. 7 while demanding oral sex.

She also testified that she feared for her life when her husband grabbed her by the waist, held her down and forcibly performed what she called "gross" and "disgusting" sexual acts with her Oct. 12.

Roger Braaten, who appeared equally emotional on the witness stand, denied his wife's charge, contending she willingly participated and that, in the darkness of their bedroom, he thought he was engaging in normal sex.

Braaten said that during the September incident he was using the knife to soothe his wife's fears about the instrument.

Grier conceded the claim was "bizarre," but explained it by saying Braaten has "thought processes like a little kid. He doesn't understand what's going on."

Grier emphasized that the wife had delayed reporting the September incident until after the October incident, and suggested that the criminal charges were a ploy to gain an upper hand in the couple's divorce case.

He further attacked her credibility by saying she had stayed married to her husband more than eight years despite alleging he'd threatened her with a knife within weeks after their wedding.

"She's no shrinking violet," he said, playing on jurors' doubts.

Deputy Prosecutor David Kurtz said Grier's divorce theory made no sense. He said the wife had delayed reporting the first incident because it

Roger Braaten enters the Snohomish County Courthouse in Everett shortly before announcement of his acquittal by a six-man, six-woman jury on charges that he raped his wife.

was a "shattering experience." He said she initially wanted to work out problems with her husband without going to authorities.

"Something had to be wrong for Amanda to go to these people and reveal all these embarrassing, humiliating things . . . to go through the humiliation of a public trial," Kurtz said. "Why did she want a divorce in the first place?"

Kurtz described Roger Braaten as a "fundamentally insecure man" whose male self-esteem had been damaged after major surgery had forced him to give up a job and stay home to recover.

He said Braaten's assaults on his wife were actions of a man "trying to reassert himself. The weapon he used, other than the knife, was his sex."

According to Karen Bosley, the verdict in the Braaten case reflects "a general misunderstanding" of domestic violence by members of the public who sit on juries.

"I hope this does not discourage

other women who are abused by their husbands from reporting this kind of thing. Women definitely need support."

She said 16 states have laws like Washington's but many women won't bring complaints because of the embarrassment and trauma involved.

Bosley's observations were confirmed by Puget Sound-area prosecutors, who said they suspect the small number of complaints they hear is just the tip of the iceberg.

Other incidents of marital rape have come to the attention of officials, including a trial set for April in Snohomish County, said chief criminal deputy prosecutor Larry McKeeman. But a Pierce County case last summer was reported the night before the state's new law took effect, making prosecution impossible.

Deputy Prosecutor Roe said police brought in a marital rape case about two months ago but the woman refused to be interviewed by prosecutors or to press charges.

"There's tons of battering that goes on that you don't hear about and undoubtedly it's the same in marital rape," Roe said. "You just don't hear about it."

Mighty Mo could move in the spring

PLI Staff and News Services

The Navy wants Congress to move full speed ahead on refitting the battleship USS Missouri, and will ask to move the warship this spring from Bremerton to Long Beach, Calif.

The plan had been to take the vessel under tow to Long Beach in August.

Secretary of the Navy John Lehman says he will ask Congress for permission to move the historic, 45,000-ton ship to Long Beach this spring to save 200 jobs at the Long Beach Naval Shipyard.

During the small on-board museum would be removed, and the below-deck's area would have to be secured and generally everything that was loose would be prepared for possibly rough seas.

Lehman's plan could save the jobs of about 200 workers due to be laid off because of a lack of work at the shipyard, said Gil Bond, director of industrial relations for the shipyard.

"We will be prepared to tow the Missouri down to Long Beach as soon as the weather permits, which at the earliest will be mid to late spring," Lehman told reporters Tuesday after meeting with the

with Pierce County Governor Booth Gardner preparing to resign this year, Sen. Smith has resigned to help out with Gardner duties.

However, Smith, a Republican, denies that his new job as administrative assistant in any hopes of heading a Patrol should Gardner, a Democrat, succeed in a bid for the post.

"I don't think that's an erosion of his, or mine, Smith, 38, said last night.

"I had expressed to the executive, prior to this, my retire."

Smith said he plans to

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ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

110 SEWARD #13 JUNEAU ALASKA 99801
(907)585-3550

POSITION PAPER

SB528: An Act relating to the spousal defense to sexual assault

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation composed of 20 programs statewide that provide services to victims of domestic violence and sexual assault, supports SB528, which would remove the marital exemption in cases of rape.

Under current Alaskan law, in order for a woman to prosecute her husband for rape, the couple must either be living apart or the perpetrator would have had to cause serious physical injury to the victim. In the opinion of the Network, this exemption provides no protection to the married woman who is the victim of forced, not consensual, sexual contact with her husband.

The Network is especially concerned about this issue because of the proven correlation between domestic violence and marital rape. A study conducted by Morton Hunt in 1979 and reported in Family Circle magazine indicated that one-fifth of the estimated 2 million battered wives in America were "forced to have sex as part of the beating or as a sequel to it." In a survey of 930 women conducted in 1981 and reported in the Family Law Quarterly, 14% of the women indicated that they were victims of marital rape.

By passing laws which recognize spouse abuse and child sexual assault as serious crimes, the Legislature has indicated that criminal behavior is not based on the relationship of the perpetrator and victims. The Network believes that the same recognition should be afforded the crime of rape within marriage, and urges your support of this bill.

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER


SB 528

"An Act relating to the spousal defense to sexual assault."

Marital rape, like stranger rape, is an act of power and hostility. Nicholas Groth, who has extensively studied men's motivations for rape, identifies five reasons why men rape their wives: "to assert power and strength; to punish and degrade; to prove their virility; to overcome feelings of being unloved; and to convince themselves that all is right with the world."

Victims that are raped by their spouses often suffer devastating effects. Among the most common reactions are self-blame, reduced self-esteem, humiliation, guilt, anger and depression. Diana Russell, a San Francisco sociologist, notes that these women's intense feelings of self-blame are heightened by the knowledge that society holds them more responsible for rape than it does victims of stranger rape. Further, many of the women she interviewed confessed to overwhelming feelings of betrayal. These feelings can destroy the victim's capacity for intimacy forever.

Yet most state laws and many people condone forced sex if the victim is married to the rapist. Only sixteen states have stricken the marital rape exemption from their criminal codes and permit prosecution of husbands who rape their wives under most circumstances. The Council on Domestic Violence and Sexual Assault supports this proposed legislation to make marital rape a crime in Alaska under all circumstances.


Jana Varrati, Vice-Chair
Council on Domestic Violence
and Sexual Assault

RECEIVED

MAR 21 1984

Bus. 278-7279
24-hr.
Crisis 278-RAPE



Josephson,

March 16, 1984

Senator Joe Josephson
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Josephson,

I am writing this letter in support of Senate Bill 528. Alaska should enact this legislation to abolish its marital rape defenses. Under current law a victim is not accorded protection if she is raped by her spouse while living with him or if she has not sustained physical injury.

A rationale exists in our society that a wife consents to sexual intercourse by marrying her spouse. To accept this incredible notion indicates that an exchange of wedding vows implies the right to have sexual intercourse at any moment, even by force with one's spouse. Clearly forcing one's spouse to engage in sexual relations violates her contractual marriage agreement, but also, physically abuses her body and violates her right to privacy.

In the past emphasis has been placed on the appropriateness of using the criminal justice system in domestic disputes. The notion being that the family should solve their own problems. The victim in a domestic disturbance may be in grave danger for her safety and the crime should be treated the same as if she were assaulted by a stranger. We have recognized this by recent changes in statutes regarding child sexual assault. Indeed the violence by a husband is even more traumatic than that by a stranger because the wife has been sexually assaulted by someone she trusted.

Recently someone suggested to me that immunity from prosecution is justified because marital rape is hard to prove. Granted there are many rape cases and other crimes which are hard to prove, however no one suggests ignoring those crimes for that reason. Victims should have the same rights whether assaulted by a friend, husband or loved one.

Further there is a notion that a wife will bring false and malicious accusations of rape against her husband. Women in rape trials often feel that they are on trial, so the rationale that wives will bring malicious accusations can be discounted.

STANDING TOGETHER AGAINST RAPE
PO BOX 103356 ANCHORAGE, ALASKA 99510

Thanks to you
it works
for all of us



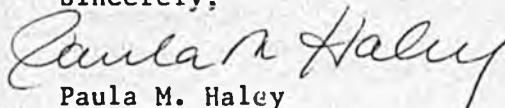
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page 2 continued:

Rape is not matrimonial misconduct. It is a violent act of abusing the victim's body, violating her right to privacy and inflicting physical, emotional and psychological harm to the victim. The legislature should abolish Alaska's marital rape defenses by enacting SB 528. Alaska could then join sixteen other states who have acknowledged the violence of rape and removed marital rape exemptions.

Should you have any questions regarding my position on SB 528 please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Paula M. Haley". The signature is written in dark ink and is positioned above the typed name and title.

Paula M. Haley
Executive Director

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer



1024 W. 6th Avenue, Suite 203
Anchorage, Alaska 99501
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: SENATOR JALMAR KERTTULA
FROM: ELIZABETH J. HICKERSON
RE: MARITAL RAPE
DATE: January 21, 1984

CURRENT LAW

Under Alaska law less protection is afforded individuals who are victims of sexual assault and abuse if the perpetrator is the victim's spouse.

For one prosecuted under AS 11.41.410 - 11.41.440 (sexual assault in the first and second degrees and sexual abuse of a minor in the first, second, third, and fourth degrees) it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the spouses were living apart or the defendant caused physical injury to the victim.

While separate domiciles of the marriage partners at the time of the offense and physical injury to the victim trigger protection under our laws, the victim's consent to sexual assault or sexual contact is not at issue in cases of marital rape or sexual abuse. Lack of consent to sexually abusive acts is defined by the Alaska statutes at AS 11.41.470:

- "without consent" means that a person
- (A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or
 - (B) is incapacitated as a result of an act of the defendant.

These violent acts defined above are protected by law only if the victim and perpetrator have entered into a marriage contract.

We have no means of assessing the occurrences of rape in marriage since few are ever reported. It does exist however. According to the statistics compiled by Standing Together Against Rape, between

January 1, 1982, and December 31, 1982, one percent of the female victims seen by the staff in Anchorage were victims of marital rape. Domestic violence is on the increase in Alaska. The Abused Women's Aid in Crisis in Anchorage provided shelter for 596 battered women in 1982, a 55% increase over 1981. These victims are particularly susceptible to sexual assault and abuse in a marital relationship.

PROPOSED LEGISLATION

Attached is draft legislation that abolishes all defenses in cases of marital rape or sexual abuse. The sole issue to be considered is whether or not the victim consented to the sexual acts.

Last session the laws pertaining to sexual abuse of minor were extended to include "statutory rape" or sexual penetration and contact between consenting minors. Since marriages involving minors is sanctioned under certain conditions in this state and other jurisdictions, the draft legislation exempts these cases from prosecution under AS11.41.434 - 11.41.440 unless the victim did not consent.

TREND IN OTHER JURISDICTIONS

According to the National Center on Women and Family Law, as of November, 1983, eight states had abolished marital rape exemptions. Rape by a spouse is treated the same as rape by a stranger in the following states: Florida, Kansas, Massachusetts, North Dakota, New Jersey, Nebraska, Oregon and Wisconsin.

Eight states have partially stricken, or limited the marital rape exemption so that rape by a spouse is a crime under most circumstances: California, Connecticut, Delaware, Hawaii, Iowa, Minnesota, New Hampshire and Washington.

CONCLUSION

By retaining the affirmative defenses in marital sexual assault and abuse cases, the state of Alaska interprets the marriage license to be an absolute right of the husband to sexually assault and abuse his wife.

Marital Rape: What Happens When Women Fight Back? (1)

by Teresa Priem

In marital rape, the wife is the victim. But occasionally, the victim strikes back, and sometimes she kills her husband.

The National Clearinghouse on Marital Rape, a new project of the Women's History Research Center in Berkeley, California (see letter in *NWT*, Mar., 1981, vol. VII, no. 3), has on file eleven cases in which marital rape or sexual abuse was a known factor in causing a wife to kill her husband. Four of these women are still incarcerated under lengthy sentences.

Definition and History of Legal Marital Rape

Rape is defined in the statutes of 36 states as forced sexual relations with someone other than the "perpetrator's" wife. So, for a woman to get the State to charge her husband with raping her, marital rape has to be criminalized in her particular state. The only states that have criminalized marital rape are Nebraska, Iowa, Oregon, New Jersey, California, Minnesota, Massachusetts and Connecticut--and only within the past seven years.

A New Hampshire bill criminalizing marital rape was voted on in April (*Ed. note: at the time we went to press, the outcome of the vote was not known.*) Assemblywoman May Neuberger is sponsoring a New York bill, and a bill will soon be introduced in Wisconsin--letters of support are crucial now. (Letters on the Wisconsin bill can be sent to Representative Barbara Ulichny of Milwaukee.)

In the six remaining states where husbands are not specifically exempted from rape charges by statute, the district attorneys could try to prosecute, but the judges could dismiss the charges if they think the English Common Law tradition applies. (See "The Common Law Does Not Support a Marital Exemption for Forcible Rape" by Dennis Drucker in *Women's Rights Law Reporter*, vol. 5, no. 2-3, Winter/Spring, 1979)

Thus it appears that a woman can use marital rape as a defense when she is being prosecuted for killing her husband only in the eight states where marital rape is criminalized. In fact, even in Oregon, after the exemption for husbands was removed, Greta Rideout's divorce attorney told her before the trial of her husband John for raping her, that marital rape was not a grounds for a divorce in Oregon. (From the Clearinghouse pamphlet on Greta Rideout before, during and after the trial, \$2.00. After his acquittal, John publically apologized, and they reconciled. However, she divorced him after he became violent.)

So even though marital rape is criminalized, it is often not taken seriously, and criminalizing it may not necessarily provide an adequate legal defense for a woman who defends herself against her husband's sexual attack.

The original comment exempting husbands from being charge with the rape of their wives was made by England's mid-17th century Chief Justice Sir Matthew Hale, who was also known for his overzealous hanging of witches. He wrote that:

"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."

200 years later, Justice Pollock in England still insisted that "a wife cannot resist her husband no matter how cruel or brutal" because she gave up her right to consent by marrying him.

300 years after Hale, his doctrine is still enforced in the 36 states which protect husbands married to their victims. Furthermore, in 13 states, it is legal for a man to rape the woman he is merely living with; and in four of these states, he can only be charged with a lesser degree of rape of a date ("voluntary social companion") with whom he



CLYTEMNESTRA

has had previous voluntary sexual intercourse. And in West Virginia, he can be charged with a lesser degree of rape even if he has not had previous voluntary sexual contact with his date. (The breakdown by states is available from the National Center of Women and Family Law, 779 Broadway, Suite 402, New York, New York 10003)

Marital Rape as a Part of the Lives of Battered Women

Marital rape is an often unreported form of violence towards battered women. According to Dr. Lenore Walker (in a call made to the Clearinghouse in the fall of 1980), she discovered in reviewing the sample for her 1979 book, *The Battered Woman*, that 80% of the women had been raped by their husbands.

Many women do not describe their rapes as "rapes" but instead say "he forced me," "he used me," or "he took advantage of me." Saying the word rape makes the shame more acute and raises the intolerable question of how she is going to leave him.

Battered women are often raped, because they refuse to have sex or they refuse another of their husbands' orders. They are also beaten because

they refuse sex. When women are beaten because they refuse sex, they sometimes submit after the beatings to prevent further beatings.

Because of this, men often say women want to be beaten as foreplay! This was John Rideout's attorney's basis for defense in the December, 1978 Oregon trial, because Greta finally submitted (after her jaw was nearly broken).

Deadly Fear as a part of the Lives of Battered Women

Many battered women have recently been accused of killing their husbands. And it's not because women are frequent killers. In the United States, the homicide rate for women is only 1% and declining. "Most women in this culture are trained to inflict their disappointments on themselves, we are taught not to become angry, but to become depressed and self-destructive...programmed to commit suicide, not homicide." (from "The Lady is a Felon, the Harris Case is a New Morality Play for the Instruction of Uppity Women." by Anne Jones. *In These Times*, April 1-7, 1981)

According to a 1969 government report about as many wives kill their husbands as vice versa, but women are motivated by self-defense seven times as often as men (from "Battered Women--The Fight to End Wife-Beating" by Beverly Jacobson in *Civil Rights Digest*, Summer, 1977). "In many cases the homicide is an accident; the woman means merely to prevent or stop a beating, but a chance blow or hair-trigger brings death instead. But in all the battered women's cases from accident to justifiable homicide to premeditated murder, the women are impelled by deadly fear." (from "The Lady is a Felon")

According to Police Chief James Bannon, from 1971 through 1981, "all the men who were arrested in Detroit for killing their wives had previously beaten them." (from a phone call to Chief James Bannon in April, 1981 and *One Battered Woman Strikes Back, Murder or Self Defense?* by Jane Lindsay, September, 1978)

Wives who report beatings to the police find little help or protection. A study done by Claudia McCormick in the Chicago jail shows that all the women who were there for killing their husbands had called the police at least five times. And 27% of the women said that the beatings became even more severe after each arrest. (from *One Battered Woman Strikes Back, Murder or Self Defense?*)

Another obstacle that battered women face is that only 2% of the battering males are even prosecuted. (from "Battered Women, the Fight to End Wife-Beating." by Beverly Jacobson in *Civil Rights Digest*, Summer, 1977)

So what are the alternatives open to a battered woman? She can try to escape the situation knowing that he might eventually catch up with her, she can seek help--if it's available, she can be passive or she can fight back. According to Dr. Elaine Hilberman and Kit Munson in their study "60 Battered Wives":

"This passivity reveals an emotional state of helplessness and despair, plus feelings of incompetence, worthlessness, guilt, shame and being unlovable. The women felt they deserved the battering. The women were also trying to control their own aggressive impulses as a result of a violent encounter."

The women were also trying to control their own aggressive impulses as a result of violent encounter. "Passivity and denial of anger, then, did not imply that the battered women is adjusted or likes the situation. It is the last desperate defense against homicidal rage." (from *Victimology: An International Journal*, vol. 2 [3-] 1977-1978)

So there is a fine line between being passive and fighting back. Battered, sexually abused and raped wives who fight back are of all ages and races with the common link of having abusive husbands. The accounts of some of these women will follow.

Bernadine Howard

Bernadine Howard is a marital rape victim who was convicted of the murder of her husband on November 1, 1980. She is still institutionalized. She comes from Richmond, California, which is near the location of the Clearinghouse. Bernadine is young, Black and poor. She was found guilty of second degree murder and sentenced to five to seven years in the California Youth Authority Correctional Institution in Camarillo, California, at the Ventura School. When called, Barbara Nious, Bernadine's future parole officer when Bernadine is actually on parole, said that efforts to free Bernadine would be appreciated, especially since Bernadine won't be considered for parole for at least two years, and probably three.

Bernadine was only 18 when she killed her husband Lurria (Larry). The incident occurred in March, 1980, just three months after marital rape was criminalized in California. Therefore, Bernadine was able to plead self-defense since she was avoiding her husband's attempts to rape her.

According to the testimony of witnesses, Bernadine and Lurria had previously fought. Bernadine also told the police that Lurria was a karate trainee who practiced karate on her.

Her public defender, William Veale, said that the tape of her interrogation by the police was played at the trial and that she gave, "maybe five different statements to the police, totally contradicting herself." He said that her psychiatric state, as explained by psychiatric testimony showed that, "she could not tell the truth because she couldn't bear to look at what she did." Veale tried to show that Bernadine was mentally ill but not violently crazy. He believes that Bernadine is innocent and that the jury "was wrong and callous" because it judged so harshly on her mixed-up testimony to the police.

"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 herself up..."

On March 19, 1980, Lurria had come home around 3 a.m. after drinking at a neighbor's apartment. Bernadine said that she hit him with a wine bottle four times to fend off his rape attempts. She said that they fought and then he beat her. Afterwards, Bernadine told her mother, Bessie Gilbert, that she got dressed and called Bessie from a neighbor's apartment (the same neighbor who Lurria had visited). The neighbor testified at the preliminary hearing that he heard the couple arguing, then struggling, then Lurria telling Bernadine to put a knife down. He said that Bernadine came to his apartment, carrying a knife, to phone her mother. He said that Lurria staggered into the neighbor's and said, "Look, she hit me with a bottle" and then died. That was a curious thing for Lurria to say because medical testimony showed that Lurria died after being stabbed in the heart with an eight inch carving knife.

Bessie told the Clearinghouse that Bernadine called from the neighbor's apartment to say, "Larry's going to kill me!" Bernadine wanted her mother's help, but Bessie is crippled and has no car. Bessie said that she wanted to talk to Lurria, but he was yelling in the background, "It's our fight and stay out of it!"

Bessie emphasized that Bernadine, "hadn't cut him" before the phone call. When Lurria arrived at the neighbor's apartment, Lurria was in a rage and "there was no one to come to her rescue," sadly said Bessie. Bessie said her daughter told her afterwards that Bernadine shut her eyes and "stuck a knife in him in the neighbor's apartment. Bessie concluded, "She had to do it since he (Lurria) was going to kill her."

The neighbor committed suicide a month before Bernadine's trial, and Bessie is sure it is because he had guilt feelings pertaining to the incident.

"Saying the word rape makes the shame more acute and raises the intolerable question of how is she going to leave him."

Veale said that the main issue was not where the killing took place, but whether Bernadine was innocent of murder. He said that there was blood all over the Howard bedroom, and only one bleeding wound, so it was impossible to fight the physical evidence that Bernadine had stabbed him before entering the neighbor's apartment. (Bessie said that Bernadine told her that the blood found was from wounds he received from the bottle).

Prosecutor John McTigue argued at the trial that if Lurria had intended to rape his wife, he would have been found in some stage of undress. Instead, all of Lurria's clothes were fastened when he was examined. The prosecutor said that Lurria's clothes did not show any signs of the struggle that Bernadine described, and that the scratches she had received were consistent with his defending himself from her hitting him with a wine bottle. The jury was swayed by the prosecutor's arguments and found Bernadine guilty.

An employee at the Ventura School told Bessie that if Bernadine "obeys, she'll only get two more years." So Bessie has resolved herself to helplessly accept Bernadine's conviction because Bernadine is getting the education she needs and couldn't get before. In fact, Bessie said that the schooling will keep her daughter "off the streets" and out of trouble. Bernadine recently phoned Bessie saying that the authorities are "so good to her that she's really satisfied."

But Bessie has mixed feelings. She would also like to have her daughter home. Bernadine's imprisonment is a hardship for Bessie because she is unable to visit her daughter since the school is far from any bus service. Bessie doesn't know where to turn for help, nor does she have the money to pay for assistance. The Clearinghouse is trying to connect her with interested organizations. (Our sources are Barbara Nious, Bernadine's future parole officer; Bessie Gilbert, Bernadine's mother; and William Veale, Bernadine's defender - all interviewed by phone in March and April, 1981; plus the Contra Costa Times of November 2, 1980, and the San Francisco Examiner of November 4, 1980).

Juanita Davenport

Juanita Davenport, a white 48-year-old mother from Cave Junction, Oregon, pleaded no contest to the manslaughter of her husband who had sexually abused her during their thirty year marriage. Her husband, Roland, 59, was described in court testimony by their 28-year-old daughter who had also been sexually abused by Roland, as "a somewhat of a cross between Charles Manson and Hitler."

According to a call to District Attorney Bob Burrows, Roland had been impotent so he "engaged in vicarious sex" by making her have sex with others while Roland looked on. Burrows also indicated that Roland even attempted to mate her with a dog once.

The press reported that Burrows, who prosecuted her, said she killed her husband under extreme stress and provocation because of Roland's sexual perversions and domination of her. She shot Roland in March, 1980. She then dismembered his body; boiled the hands, feet and head in a pressure cooker, and cremated his remains in their barbecue pit. She testified that her husband told her that when he died he wanted to be cremated. Other witnesses said that she did anything to please him, including abnormal sex acts.

Burrows told the Clearing House that Juanita had been "very subservient to a dominate male; she makes Edith Bunker look like Susan B. Anthony."

Juanita's adult son found his father's remains in the barbecue pit and buried them in the garden. Five months later, the son showed the authorities where the grave was located.

"(Juanita) is the last desperate defense against homicidal rage."

Juanita pleaded no contest to first degree manslaughter after a murder charge against her was dismissed. Judge Larry Cushing sentenced her on January 12, 1981, up to ten years at the Oregon Women's Correctional Center in Salem. He said that the psychiatric facilities there were excellent, and that her stay there would be "the best thing" for her. Juanita has not yet had a hearing before the parole board, but Burrows guessed she would be in prison for three years. (Our sources are District Attorney Bub Burrows, the court reporter and employees at the Women's Correctional Center who were phoned on March 23, 1981; and the Associated Press article as printed in the Berkeley Gazette on January 16, 1981.)

Frances Conyers

Frances Conyers was a 53-year-old mother of a married son when she shot her husband of 32 years, Byron, 52, in September, 1978. Frances, who is white and from Boone, Iowa, was often sexually, physically and verbally abused by her husband after his drinking bouts.

On the night of the killing, Byron repeatedly sexually abused Frances. She finally managed to escape, and she shot him before he could get out of bed to get her again.

Frances told the Clearinghouse that the county attorney was "vindictive," plus the chief of police knew Byron. She was charged with first degree murder, but she said, "To me it was self-defense. He carried his weapon, his fists, all the time." She said she refused to plea bargain for second degree murder because she "never did feel guilty. So I'm doing time."

Frances said that Byron was totally different when he was drinking, and his drinking grew worse as years went by. She kept thinking that "things will be better, and it won't happen again," and anyway it was a woman's place to accept the bad with the good and there were good times. But that night, she finally blew up and fought back. She said, "I've never been in a speck of trouble

before. "It's all a waste (the abuse that led up to the shooting, the shooting and her years in jail), and I miss the poor old guy too." Frances was sentenced to 10 years for voluntary manslaughter in July, 1979. She is now in the Iowa State Women's Reformatory at Rockwell City, and won't be eligible for parole until May 4, 1982. (Our sources are Frances Conyers, her attorney and Beth Bochnak, from the Center for Constitutional Rights, an organization which helps defend women who fight back. They were all phoned in March, 1981.)

Jennifer Patri

Jennifer Patri was a 32-year-old mother of two when she killed her husband, Robert. Jennifer, who is white and from Weyauwega, Wisconsin, is currently under a 10-year sentence for manslaughter. Her attorney, Al Eisenberg, said the killing was a result of "13 years of emotional, psychological and physical brutality." Eisenberg said that Jennifer was also a victim of sexual abuse, but she was too embarrassed to give the details in the courtroom. According to Eisenberg, Jennifer's husband also sexually abused their 12-year-old daughter and a niece, and maybe some boys.

"... men often say women want to be beaten as foreplay!"

In March, 1977, Robert threatened to assault Jennifer and kidnap their children. Eisenberg told the Clearinghouse that Robert brandished a knife and chased her to the basement. Then he pretended to leave but returned, so Jennifer shot him with a shotgun. The next day she buried his body and set fire to her house in an attempt to commit suicide.

Jennifer was charged with first degree murder and arson, but was only found guilty of manslaughter. In February, 1978, the judge (who Eisenberg said "was a sexist pig") gave Jennifer the maximum sentence for manslaughter, even though Jennifer had no previous record and had even been a Sunday school teacher and P.T.A. president.

Jennifer is attending a school during the day and spending her nights in jail, but may be on parole by the time this article is read. (Our sources are her attorney Al Eisenberg, who was phoned in March and April, 1981, and Time from November 28, 1977.)

Gloria Timmons

Gloria Timmons, a Black woman from Seattle, Washington, spent four years in prison for the manslaughter of her husband, Ronald, before she was released on parole. She was 21 in January, 1973, when she shot Ronald, who had raped and beaten her during the year they were married. Amazingly, he worked as a CSO officer (someone who brings witnesses to court) for the police department, but when details of his battering his wife became known, he resigned.

Occasionally, his treatment of her sent her to the hospital - once for burns after he threw scalding water in her face, and once for injuries after he threw her down a flight of stairs.

Gloria reported him, and Ronald retaliated by striking her in front of witnesses while she was in the hospital emergency waiting room for injuries he had inflicted.

The district attorney charged Ronald with misdemeanor assault for this inci-

"To me it was self defense. He carried a weapon, his fists, all the time."

dent.

Ronald was released prior to the trial and asked her for a reconciliation. According to public records, she said that when she met him, he tried to strangle her, but two friends freed her. One accompanied Gloria to a bar to calm down. Gloria's friend left but gave Gloria a gun for protection. Ronald showed up at the bar and threatened Gloria. Gloria told him she had a weapon and would use it if he tried to hit her. He was about to hit her when she shot him.

Gloria pleaded guilty to manslaughter on April 11, 1973, to avoid being tried for murder. Since she used a firearm, she faced mandatory imprisonment and was sentenced to a 20 years maximum sentence on May 9, 1973. Gloria escaped twice from prison and was released on parole on August 31, 1979, after four years of incarceration. (Our sources are the Feminist Alliance Against Rape News, as printed in the *Center Against Sexual Assault Newsletter* of December, 1977; and the public defender's records, and the district attorney's office - both called in March, 1980)

Cynthia Denny

Cynthia Denny pleaded guilty to voluntary manslaughter of her husband, Gary Denny, 36, a softball pitcher who was well-known in their hometown of Prescott, Arizona. Cynthia, who was 28 when she shot her husband, was abused about three times a month. Her attorney, Tony Shaw, told the Clearinghouse that the abuse included beatings and sodomy.

Shaw said that on September 28, 1974, Gary and Cynthia were returning from an argument at a bar. Gary had that look in his eye that warned Cynthia that a beating would soon follow. He left for a little while, so she got a shotgun and tried to commit suicide with it, but he returned before she was successful. She intended to scare him off with a shot, but the bullet hit Gary in the chest. She took off, and he grabbed at her as she left. She returned when she realized he wasn't following her and found that he was hurt more than she had supposed. Cynthia became hysterical, called the police and was rocking Gary's head when the police arrived.

A change of venue was granted because of pretrial publicity. She was tried for murder and found guilty of voluntary manslaughter. The conviction was reversed because she had renounced to the shooting after she had been reassured that Gary would survive. She was



tried in another city and convicted of involuntary manslaughter because the jury could not understand why she hadn't left her husband long ago. This conviction was also reversed because of a technicality.

Shaw thought the next retrial would be a "sure winner" because he planned to show through expert testimony exactly why she had remained with her husband. Instead, Cynthia opted to plea bargain so that she would not have to spend any more time in jail. She pleaded guilty to voluntary manslaughter on October 6, 1978, and she now works at a shelter for battered wives. (Our sources are Cynthia's attorney, Tony Shaw; and Beth Bochnak. Both were called in March, 1981.)

"I've never been in a speck of trouble before. It's all a waste (the abuse that led up to the shooting, the shooting, and her years in jail)."

Judy Hartwell

Judy Hartwell was a 28-year-old mother of two little boys when she killed her husband, Fred. Judy, who is white and from Detroit, Michigan, was found innocent in the stabbing of her husband who had frequently assaulted her before. She had called the police on numerous occasions, but the authorities did nothing to help her.

On November 9, 1975, Fred came home drunk and gave her a choice - either to have sex with him or to be tied to the bed and whipped. Judy grabbed a paring knife and tried to escape, but he blocked her way. She stabbed him.

In March, 1976, the jury acquitted her on grounds of self-defense following Judge Victor Baum's instructions that a woman has a legal right to forcibly resist unwanted sexual advances by her husband. These instructions were surprising since marital rape is not a crime in Michigan. Judge Baum also disregarded judges' opinions in previous cases where the wife was expected to submit to her husband's demands. (Our sources are K... of August, 1976; and Beth Bochnak, from a call made in March, 1981.)

Deborah Davis

Deborah Davis, a 22-year-old white woman from Lyndon, Kansas, was found innocent in the shocking death of her husband, James Curnutt, 38. They had been married six months, but he had already sexually abused her for five years by torturing her with rubber balls, pins, and an electric cattle prod. He had also imprisoned her in an underground tank.

"Thirteen years of emotional, psychological, and physical brutality."

James owned books on torture, brainwashing and hypnotism. According to Diane Wiley, (who worked on the case for the National Jury Project, which is a nationwide organization of legal workers and social scientists specializing in helping attorneys pick juries), James made Deborah's suffering bearable by giving her "reasons" for it. For instance, he'd say, "I'm going to stick pins in your breast because you don't cry enough, and crying is good for you." Of course, she would cry, and would bring some relief.

But her torture became unendurable when James announced his plans to keep her wrapped in tape, like a mummy, in a coffin beneath the bed. Deborah discovered he was serious when she found a catheter and air pump for keeping her alive. She testified that she was afraid for her life, so she shot James in the back of the head while he was sleeping on Christmas, 1979. The jury in her June, 1980, trial sympathized with her ordeal and cleared her of murder.

Diane said that Deborah acted out of self-defense, which is the use of necessary force. With his prior history of cruelty and power, the gun she used was the equalizer in her hopeless situation. The precedent for this was the reversal of Yvonne Wanrow's 1973 conviction for murder. Yvonne was 5-foot-4, had a cast on one leg and was using a crutch; and the man she killed was a 6-foot-2 drunken man with a prior history of child molestation. He was breaking into her friend's house, and she thought he had already gotten to her children when she shot him in self-defense. Because of the Wanrow precedent the jury is more likely to look at the incident from the woman's point of view, so Deborah was not seen as shooting a helpless man.

"She was tried in another city and convicted of involuntary manslaughter because the jury could not understand why she had not left her husband long ago."

According to Diane, Deborah was a great witness because she was "not angry." Diane said that after a battered woman kills her husband, women's groups tell her that she should be angry about the way he treated her (when she was battered, she couldn't afford to be angry because he would batter her more). So by the time the trial comes about, she is usually justifiably angry, and the jury gets the impression

Deborah had not arrived at this stage prior to the trial. (Our sources are Diane Wiley of the National Jury Project, who was called in March, 1981; and *The Longest Revolution* from August/September, 1980.)

Idalia Mejia

Idalia Mejia, a 30-year-old Mexican woman from Lindsay, California, was found innocent of murder on October 3, 1978, in the shooting death of her husband, Ralph, 30. They had been married for 14 years, but he became abusive when he started drinking. Her public defender, Joe Altschule, said that Ralph once attempted to force Idalia to mate with a dog, another time he "fondled" their 12-year-old daughter to "antagonize" Idalia. Altschule also said that there was sexual abuse because Idalia submitted when, where and how Ralph wanted it, but at the time she just considered it her wifely duty.

Ralph often beat Idalia - with his hand, belt strap or buckle. On one occasion, he grabbed her hair and banged her head against the dashboard and steering wheel of their car. By the time they reached their destination, K-Mart, her head hurt and she had big lumps on the back of her neck. He also repeatedly threatened Idalia and their four children with death. She called the police four times to tell of Ralph's abuse, but he charmed the police and then beat her even more for her audacity.

On December 18, 1977, he was drunk again. They were in bed after yet another quarrel, and he had again threatened to kill her and the children. He alternated between telling her how much he loved her and smashing her face against the wall. She got out of bed, found his .22 caliber revolver and shot him four times, once through the heart, before he could get out of bed.

She was tried for murder in three separate trials; but the first two times, she had hung juries. In September, 1978, the third jury found Idalia innocent. (Our sources are New West, from March 12, 1979; and a March, 1981, phone call to Idalia's public defender, Joe Altschule.)

Frances Hughes

Francine Hughes, from Lansing, Michigan, and the mother of four, was found innocent of the death of her ex-husband, James (Mickey), 31. Francine, who was 29 when she burned the house with Mickey in it, pleaded innocent, not because of self-defense, but because of temporary insanity.

Francine had undergone beatings, plus sexual and verbal abuse from Mickey since her marriage at 16. She eventually divorced him, but after he was injured in an automobile accident, he moved in again. She tried to escape him through seeking help from the police, the courts, and friends and relatives, but no one was willing to help her. In fact, the police often arrived just after a beating and when Mickey was still threatening her, but as long as Mickey didn't touch her in front of them, they couldn't arrest

him. Mickey's threats to kill her were not unfounded--on a few occasions, he choked her or chased her with a knife. He also told her that if she left him, no matter where she went he would find her.

On March 9, 1977, he beat her yet again and forced her to have sex with him. He also forbade her from going to school--her one escape from the house. He even made her burn her books and term paper. After Mickey had gone to sleep, she poured gasoline on the floor around the bed and lit it.

The prosecutor charged her with first degree murder. But the jury accepted Francine's plea of temporary insanity in November, 1977, and she was freed from prison. (Our sources are *The Burning Bed, The True Story of Francine Hughes-A Beaten Wife Who Rebelled* by Faith McNulty, Harcourt Brace Jovanich, New York, 1980; and the *Feminist Alliance Against Rape News*, as printed in the *Center Against Sexual Assault Newsletter* of December, 1977.)

"She called the police four times to tell of Ralph's abuse, but he charmed the police and then beat her even more for her audacity."

Eva Mae Heygood

Eva Mae Heygood, a 27-year-old Black mother of five from Milwaukee, Wisconsin, was charged in the shooting death of her husband, but the judge dismissed the charges at her preliminary hearing.

In the summer of 1976, Eva's husband beat her and tried to force her to perform a "variety of acts of sexual perversion," said her attorney, Al Eisenberg. Eva refused, so he got a loaded .38 and pressed it to her forehead. She grabbed the barrel and twisted it toward him and the gun went off. Eva then draped his body from the rafters of the garage, and tried to throw suspicion off herself by writing a letter from a fictitious jealous lover. But when the police arrived, Eva admitted that she had killed her husband in self-defense, and the judge accepted her testimony. (Our source is Eva's attorney, Al Eisenberg who was phoned in March, 1981)

CONCLUSION

Convictions and acquittals are sporadic, but Black women are more readily convicted. According to Diane Wiley, this is often the case. Since the wife is usually the only witness, she has to look credible to the jury, but when she is not white, the jury looks at her case differently and less sympathetically.

The inconsistent acquittals and convictions show that a woman's legal rights to defend herself against her husband's rape attempts are rather shaky. But "case law allows the use of deadly force to prevent forcible sodomy between male..." (From pamphlet, "Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault" by Elizabeth Schneider and Susan Jordan, 1978.)

A CONVERSATION WITH AL EISENBERG:

"I have defended more major women's cases than anybody in this state (Wisconsin) and won them all. I have also represented more accused rapists than anybody in this state."

Eisenberg considers Jennifer Patri's case a win because she bought and readied the gun, plus shot her husband from the back but instead of getting murder-one, she received a sentence of manslaughter and a school release program.

Eisenberg indicated that he had defended a man accused of raping his wife, but it really wasn't "rape" since the man had "only threatened to commit suicide." (Wisconsin is one of the states where women "in effect" have to ask the court if they have the right to say "no". One spouse has to file a petition for an annulment, divorce, separation, or separate maintenance before the husband can be charged.)

He also defended two accused rapists by suggesting the victim had invited a gang-rape (from DOB, June, 1980 and a phone call to the court reporter)

Eisenberg said that he's a feminist and a member of N.O.W., "But that doesn't mean I'm going to back off my case because someone has a different political feeling. Those men (the two accused gang rapists) are innocent as far as I'm concerned. They got rail-roaded by the judge." The two men were convicted but an appeal is now pending.

In the courtroom during the gang-rape trial, he said that the courtroom was filled with "radical feminist, lesbian separatist banshees." Eisenberg said that he used that phrase because the women that were disrupting the courtroom were a particular group that he recognized from previous encounters as being "lesbian separatists."

He said that this same group said he was "defending a murderer" when he took on Jennifer Patri's case. These "lesbian separatists" have also "tried unsuccessfully" to have him removed from N.O.W.

The findings of Dr. Elaine Hilberman and Kit Munson in their study "60 Battered Wives" sum up why these wives tried to solve their problems through violence. They found that:

"the few women who resorted to counterviolence did so as an act of desperation associated with failure of other options. Their use of violence was related to a direct threat to life and usually came as a surprise to the women who were themselves unaware of the extent of their rage. This is in contrast to the minimal provocation which precipitated violence by the husbands."

(From *Victimology--An International Journal*, vol. 2 (3-4) 1977-1978)

As Elizabeth Schneider says about the number of battered women whose self-defense cases she worked on through the now defunct Women's Self-Defense Law Project,

"Many of these women are literally killing to avoid being killed. Some of them have left home many times before, but their husbands have followed them everywhere they went. Often, they've called the police and gotten no help. Killing may have seemed like the only way they could defend themselves."

(From "When Victims Kill" by Tamar Levin in the *National Law Journal*, Oct. 29, 1979)

We've got to find alternatives for these women. For further information about these women, and about the Clearinghouse membership, publications and resources, send a self-addressed stamped envelope to the National Clearinghouse on Marital Rape, 2325 Oak St., Berkeley, CA 94708.

For information, legislation, and litigation on behalf of battered women, contact The National Center of Women and Family Law, 799 Broadway, Suite 402, NY, NY, 10003.

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Laura X will be doing a workshop at the National Coalition Against Sexual Assault Conference in Syracuse, NY., and in Storrs, CT., at the National Women's Studies Association Conference, from May 31 through June 4. If anyone wants to meet with her or have her speak, she needs paid speaking engagements in the area around these states (or donation) to afford the trip. Write to her at the National Clearinghouse on Marital Rape.



Teresa, a journalism volunteer, investigated each of these cases just for this article, starting with newspaper clippings, then by library research and telephoning all over the country. Contributions for the several dozen phone calls and for her time and transportation costs are tax-deductible. The National Clearinghouse on Marital Rape is a project of the Women's History Research Center, which has no funding except donations.

Laura X, Director
National Clearinghouse
on Marital Rape

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National
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Item 39

MARITAL RAPE EXEMPTION PACKET

1. Marital Rape Exemption Chart -- State-by-state summary of the Exemption in Criminal Statutes (8 pages). 1.50
2. Marital Rape Litigation -- Summary and Citations of Case Law (3 pages). \$.75
3. Resources on Marital Rape -- Bibliography of articles, legal articles and studies (3 pages). \$.75
4. Schulman, J., "The Marital Rape Exemption in the Criminal Law," 14 Clearinghouse Review 538 (Oct. 1980) (4 pages). \$1.00
5. Marital Rape Fact Sheet (4 pages). \$1.00

Total Packet: \$5.00

* * * * *

If you wish to receive any of these materials, please check off and enclose appropriate payment. Prices cover costs of xeroxing and postage only.

Thank you.

South Dakota - Compiled Laws Ann. §22-22-1 (1979)
(Note: South Dakota amended its statute to strike the marital rape exemption, but the following year repealed that amendment)

*Texas - Pen. Code Ann. §21-02(a) (1979)

Vermont - Stat. Ann.; Title 13 §3252 (effective 7/1/77)

*West Virginia - W. Va. Code §61-8B-1 (1977)

Washington - Rev. Code Ann. Ch. 9A.44.010,
9A.44.040, 9A.44.050, 9A.44.060
(effective September 1, 1979)

(Note: in 1979, the city of Seattle passed a city ordinance striking the marital rape exemption).

-- 11 states: marital rape exemption ends when parties are separated under a court order:

*Kentucky - Rev. Stat. §510.010(3) (1975)

Louisiana - Rev. Stat. Ann. §14.41 (1978)

Maryland - Ann. Code §27-464D (1979)

Missouri - Ann. Stat. §566.010:2 (1979)

New York - N.Y. Pen. Law §130.00

(Note: exemption also ends if parties entered into separation agreement which includes an express provision that husband will be criminally liable for raping woman. 1980 legislation to strike "express provision" requirement failed).

North Carolina - Gen. Stat. §14-27.8 (1979)

(or living apart pursuant to a written separation agreement).

*North Dakota - Code Ann. §12.1-20-01, 12.1-20-02 (1977)

Rhode Island - Gen. Laws §11-37-1 (1979 Supp.)

South Carolina - Code §16-3-658 (1977)

Utah - Crim. Code Ann. §76-5-402, §76-5-407 (1979)

Wyoming - Stat. Ann. §6-4-307 (Laws 1977)

-- 6 states: marital exemption ends where parties are living apart and one spouse has filed a petition for annulment, divorce, separation or separate maintenance:

Indiana - Stat. Ann §35-42-4-1(b) (amended 1977)

Michigan - Mich. Second Rev. Crim. Code Ch. 23
§2340 (1980)

Nevada - Rev. Stat. §200.373 ()

*See "Expansion" Section, infra.

Ohio - ORC §§ 2907.01(L), 2907.02 (or if parties have entered into a written settlement agreement).

Tennessee - Code Ann. §39-3709 (1979)

Wisconsin - Stat. Ann. §940.225 (6) (1978)

-- 2 states: no marital exemption when parties are living apart, OR one spouse has initiated legal proceedings:

Idaho - Code §18-6107 (1977) (parties must be living apart at least 180 days).

New Mexico - Stat. §30-9-10 (1978)

-- 10 states: no marital exemption where parties are living apart (do not need court order or separation agreement):

Alaska - Stat. §11.41.445(a) (effective 1-1-80) (marriage is an affirmative defense, except where parties are living apart, or defendant caused serious physical injury).

Arizona - Rev. Stat. §§13-1401.1, 13-1404 to 13-1406 (1978)

Colorado - Rev. Stat. §18-3-409 (1975)

Idaho - Code §18-6107 (1977) (parties must have been living apart for at least 180 days).

Iowa - Code Ann. §§709.2, 709.3, 709.4 (1978) (exemption in third degree only).

*Maine - Rev. Stat. Ann. Title 17A §§11-251, 252 (1979)

Mississippi - M.C.A. 97-3-95 (Supp. 1981) [Sexual battery].

*Montana - Rev. Code §45-5-506 (1979)

New Mexico - Stat. Ann. §§30-9-10E, 30-9-11 (1978)

*Pennsylvania - Stat. Ann. Title 18 §3103 (1977)

(Note: no exemption if parties have entered into a written separation agreement even though they are still living together).

-- 5 states: have no express marital rape exemption in their statutes. Whether the alleged "common law" exemption (barring prosecution) is applied is a matter of judicial decision and/or legislative intent.

Arkansas - Stat. §§41-1801, 41-1803 (1976) (Note: express exemption for statutory rape, §§1804-1806).

*See "Expansion" Section, infra.

Georgia - Code Ann. 26.2001 (amended 1978)
(Note: express exemption for
statutory rape, §26-2018).

Mississippi - MCA 97-3-65(2) (1979) [rape statute]
Virginia - Va. Code 18.2-61 (1981 Amendments)
Washington, D.C. - R.S.D.C. §22-2801 (1967)

STATES WHICH HAVE STATUTORILY LIMITED OR
STRICKEN THE MARITAL RAPE EXEMPTION

-- 5 states: have abolished the marital rape exemption altogether. Rape by a spouse is the same as rape by a stranger.

Florida - Stat. Ann. §794-011 (1979). No exemption; spouses can be charged the same as strangers, State v. Larry Smith, Court of Appeal, Fifth District, Case No. 80-878, decided July 1, 1981. (See LITIGATION Section.)

Massachusetts - Ann. Laws. Ch. 265 §22, Ch. 277 §39 (1979). No exemption; spouses can be charged the same as strangers. Commonwealth v. Chretien --- Mass. ---, Docket No. E-2276, decided March 9, 1981. (See LITIGATION Section.)

New Jersey - S.A. §2C:14-5(b), effective 9/1/79.
This is the only state which has affirmatively abrogated the alleged "common law" exemption:

"No actor shall be presumed to be incapable of committing a crime under this Chapter [Sexual Offenses] because of age or impotency or marriage to the victim." N.J.S.A. §2C:14-5(b).

Nebraska - Rev. Stat. §§28-319, 28-320, effective 1/1/76, repealing and replacing §28-403.03 and .04 which included exemption.

Oregon - Rev. Stat. §163.305, amended by 1977 c. 844, deleting marital rape exemption.

-- 7 states: have partially stricken, or limited, the marital rape exemption so that rape by a spouse is a crime under most circumstances:

California - Pen. Code §262, effective 1/1/80, establishing a separate crime of spousal rape. However, the marital rape exemption is still applicable where (1) the rape is not reported to the police or district attorney within 30 days after the day of the violation; or (2) the victim is "incapable" of giving legal consent (e.g., mentally or physically handicapped; intoxicated or drugged, even when victim's state is due to acts of the defendant; unconscious of the nature of the act).

Connecticut - Pen. Code 53a-67(b), effective October 1, 1981 (HB 5247). Marital and cohabitant exemption deleted from first degree, forcible rape. Exemptions remain, as affirmative defense, to lesser degrees of rape and sexual assault.

*Delaware - exemption deleted from first and second degree rape (D.C.A. §§763, 764). However, D.C.A. §764 (first degree rape) includes a "voluntary social companion" exemption which may operate to exempt spouses and cohabitators.

Exemption still applies to Sexual Assault (D.C.A. §761, Class A Misdemeanor) and Sexual Misconduct (D.C.A. §762, Class E Felony). Additionally, exemption, where applicable, is extended to unmarried cohabitators. D.C.A. §772.

Hawaii - Rev. Stat. §§707-730, 707-731, 707-732, effective 6/21/79. By amending statutes to gender neutral terms, marital rape exemptions were deleted. However, "voluntary social companion" exemption in §707-730 (first degree rape) may operate to exempt spouses and cohabitators.

Minnesota - Stat. Ann. §609.349, amended 1980, expressly deletes marital rape exemption in most cases: "Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse."

However, exemption (which includes cohabitators) still applies in statutory rape, and cases where victim is mentally or physically disabled.

New Hampshire - RSA §632-A:5 (amended by HB 516; effective September 1981). Exemption deleted, except for statutory rape cases, or cases involving "mentally defective" victim-wives. (RSA 632-A:2, :3)

Iowa - Code Ann. §§709.2-709.4. No exemption in first and second degree Sexual Abuse; exemption for third degree Sexual Abuse.

* See "Expansion" Section, infra.

EXPANSION OF THE MARITAL RAPE EXEMPTION

-- 13 states have now expanded this marital "privilege" or "right" of rape to unmarried cohabitants (hereinafter referred to as "cohabitators") e.g., "the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship." (Montana, RCM §45-5-506(2)).

Additionally, 5 states* have also provided a partial exemption to "voluntary social companions", thereby, to an extent, legalizing "date rape":

Alabama, Crim. Code §13A-6-60(4) (exemption extends to cohabitators).

Connecticut, Pen. Code §53a-67(b) (cohabitation is an affirmative defense, except to first degree rape)

*Delaware, Code Ann. §772(b) (exemption for cohabitators to sexual assault and sexual misconduct); and Code Ann. §764(2) (first degree rape exemption where defendant was victim's "voluntary social companion" on the occasion of the crime and victim had previously permitted him sexual contact).

*Hawaii, Rev. Stat. §707-730(1)(a)(i) exemption to first degree rape where victim was defendant's "voluntary social companion who had within the previous thirty days permitted him sexual intercourse". If defendant inflicts "serious bodily injury", the "voluntary social companion" exemption does not apply. There is no exemption for second or third degree rape.

Iowa, Code Ann. §709.4 (exemption to third degree Sexual Abuse for cohabitators. No exemption to first and second degree Sexual Abuse).

Kentucky, Rev. Stat. Ann. §510.010(3) (exemption extended to cohabitators; marriage defined as "persons living together as man and wife regardless of the legal status of their relationship". Decree of judicial separation required to end exemption for legally married spouses).

*Maine, Rev. Stat. Ann. Title 17-A §252.2 (cohabitation as an affirmative defense) and §252.3 ("voluntary social companion" defense)

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MARITAL RAPE LITIGATION

The following pleadings and materials are available from NCOWFL unless asterisked. If asterisked, they are available from Clearinghouse for Legal Services, 500 North Michigan Avenue, Suite 1940, Chicago, Illinois 60611.

1. State of New Jersey v. Albert Smith, 426 A.2d 38 (1981), appeal of defendant-husband's motion to dismiss charges of rape of his wife on the grounds that the criminal rape statute codifies the alleged common law marital rape exemption. Defendant's trial motion was granted, 148 N.J. Super 219 (Law Div. 1977). The Appellate Division affirmed the dismissal, 169 N.J. Super 98 (App. Div. 1979). The Supreme Court of New Jersey unanimously reversed the dismissal and reinstated the indictment for rape.
 - * (a) New Jersey Supreme Court 27 page opinion, and concurring opinion (J. Sullivan), 426 A.2d 38 (1981), holding that New Jersey's former rape statute, having no express exemption, did not incorporate or codify a "common law" marital exemption to rape. The Court discusses at length the doubtful origins and authority of the alleged "common law" rule (Hale's doctrine), concluding that "[n]either was the law of this State under the former rape statute as blind to personal liberty and privacy as defendant would have this Court believe. A man separated from his wife - and perhaps one not separated - could not invoke an outdated and doubtful rule to avoid prosecution for rape simply because he was still legally married to his victim." (p. 27) Clearinghouse No. 30,489.
 - * (b) Amicus Brief of the National Center on Women and Family Law, Inc., arguing that the exclusion of married women from the protection of the criminal law when they are raped by their husbands is a denial of equal protection. Clearinghouse No. 30,489.
2. State of New Jersey v. Daniel Morrison, defendant-husband's pretrial motion to dismiss rape charges was denied; defendant subsequently stood trial and was convicted and sentenced for raping his estranged wife. The Appellate

Division, by per curiam decision, summarily reversed defendant's conviction for rape (Docket No. A-271-78, decided Jan. 18, 1980; unpublished). Supreme Court of New Jersey reversed Appellate decision, reinstating the rape conviction based on their decision in State v. Albert Smith, supra.

- (a) Petition for Certification and Appendix on behalf of the State of New Jersey (dated February 19, 1980), which includes a copy of Appellate Division's per curiam decision reversing rape conviction. The State argues that the alleged "common law" marital rape exemption does not extend to estranged marriages.
 - (b) Brief and Appendix for the State of New Jersey on appeal to Appellate Division of Superior Court.
3. State of Florida v. Larry Smith, appeal of defendant-husband's pretrial motion to dismiss the charge of sexual battery on the grounds that the criminal statute codifies a pre-existing "common law" marital exemption. Defendant's trial motion was granted (order dated July 30, 1980). The State appealed the lower court's dismissal of the sexual battery charge. The Florida District Court of Appeal, Fifth District, Case No. 80-878, opinion filed July 1, 1981, held that no exemption existed in Florida, and reversed the trial court's order; Husband must stand trial for rape of his wife.
- * (a) Florida Court of Appeal, Fifth District Decision, holding that Florida's sexual battery statute does not incorporate a marital exemption. The court reviewed at length the New Jersey Supreme Court's decision in State v. Smith, 426 A.2d 38 (1981), and relied heavily on the New Jersey court's reasoning. The Florida court noted that sexual battery is a crime of violence, not sex. Additionally, the court pointed out the absurdity of defendant-husband's claim under the current sexual battery statute, which prohibits nonconsensual sexual conduct between persons of the same or different sex. "In Hale's time, a man could not be the victim of rape, but under section 794.011, Florida Statutes, he can be. It is inconceivable that a husband would accept the argument that by marriage he consented to the conduct defined in the statute if inflicted upon him by force or violence." (p. 5). Clearinhouse No. 31,552.
 - (b) Amicus Brief of the National Center on Women and Family Law, inc., and Central Florida Legal Services, Inc., arguing that the exclusion of married women from the protection of the criminal law when they are raped or sexually battered by their husbands is a denial of equal protection.

(c) Initial Brief of Appellant, State of Florida, arguing that Florida's sexual battery statute, which codifies the crime of rape, makes no mention of and does not include a marital exemption. The Legislature in enacting the sexual battery statute did not preclude charging a husband for the forcible sexual battery of his wife.

4. Commonwealth v. James K. Chretien, appeal of defendant-husband's conviction of rape of his wife. At trial, defendant's motion to dismiss the rape indictment based on the "common law" spousal exemption was denied. On September 21, 1979, defendant was convicted by a jury of rape and breaking and entering, and was sentenced to 3-5 years in prison and three years probation after release. On March 9, 1981, the Massachusetts Supreme Judicial Court, in a unanimous opinion, affirmed the conviction, holding that a person may be prosecuted for and convicted of rape even if the rape victim is defendant's spouse. (— Mass. —, Docket No. E-2276)

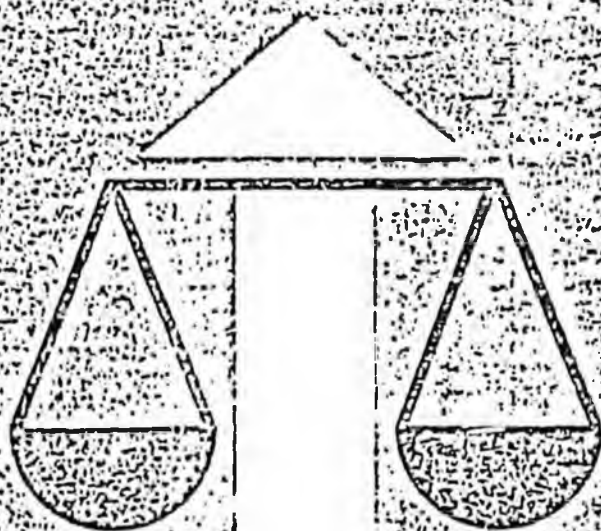
*(a) Massachusetts Supreme Court unanimous opinion (20 pages, written by Chief Justice Hennessey), holding that the legislature's revision of the rape statutes in 1974 eliminated any "common law" spousal exemption. The court analyzes the history and bases for the alleged common law doctrine. The court finds that the legislative intent to criminalize marital rape is evidenced in the state's "Domestic Violence Act" (G.L. ch.209A) which expressly defines "abuse" to cover and include sexual abuse. The court does not limit its holding to separated or estranged spouses; the terms of Massachusetts's revised rape statute clearly applies to married couples even while living together. Clearinghouse No. 31,712.

Clearinghouse Review

National Clearinghouse for Legal Services

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The Marital Rape Exemption In the Criminal Law

The battered women's movement has brought to public light the abuse and violence women suffer from their husbands, ex-husbands, male mates and ex-mates. Researchers and advocates on behalf of battered women have realized that this violence includes severe physical abuse as well as non-physical violence such as threats of severe harm or degradation. Until recently, however, rape of women by their husbands and male mates has remained a silent and hidden crime. Men's right to rape their wives is in fact not a crime in most states. The legal right of marital rape is known as the "marital rape exemption" and is embodied in state criminal statutes as well as the Model Penal Code (sections 213 *et seq.*). There has been limited progress towards the erosion of the marital rape exemption, but this has been more than offset by the significant extension of the exemption to additional classes of defendants.

The legal system has been and continues to be a not-so-silent partner to this "marital right" of violence. Historically, battering and rape of wives has been recognized as a husband's legal right. The legal system's condonation of wife-beating was expressed in 1824 by the Mississippi Supreme Court which held that a "husband should be permitted to chastise his wife moderately in cases of great emergency 'without subjecting himself to vexatious prosecution for assault and battery, resulting in the discredit and shame of all parties concerned.'" *Bradley v. State*, 2 Miss. (Walker), 15th, 158. Other states limited the husband's common law right to beat his wife by the "Rule of Thumb": He was allowed to beat her as long as the stick was "no thicker than his thumb." Prosser, *Handbook of the Law of Torts*, 136 (4th ed. 1971). Since the mid-1800's, wife beating has been a crime in every state, yet these laws have not been enforced against battering husbands or boyfriends. Today, this "marital right" is upheld in the policies of noninvolvement by the courts, nonarrest by police, and nonprosecution by district attorneys.

The principle that a husband cannot, as a matter of law, rape his wife first appeared in written English Law in the 17th century and was stated in the following manner:

But 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 herself in this kind unto her husband which she cannot retract. 1 Hale, *History of the Pleas of the Common Crown* 629 (1736 ed.).

Lord Matthew Hale authored this alleged common-law rule with absolutely no supporting authority. Lord Hale's recognition was not, unfortunately, restricted to the area of marriage. His infamous statement that rape is a charge "easily to be made and hard to be proved, and harder to be

defended" (1 Hale, *The History of the Pleas of the Crown*, 635 (1978)) is preserved in state jury instructions (see 61 Cal. L.R. 919, 931-932 (1973)). Additionally, Hale played a significant role in the persecution of witches in England. For a thorough analysis and discussion of the lack of support for this alleged common-law rule see Drucker, *The Common Law Does Not Support A Marital Exception for Forcible Rape*, 5 Women's Rights L. Rep. 181 (1979).

Present Status of the Marital Rape Exemption

Today, a husband's "marital right" to rape his wife is expressly recognized in at least 37 states. Husbands are afforded this right through an express statutory exemption provided in state criminal statutes.

(a) A male person of the age of 14 years and upwards who has sexual intercourse with a female, not his wife, by force and against her will, commits rape. (Emphasis added). Ill. Ann. Stat., ch. 38, §11-1 (1977).

In 10 states (Alabama, Connecticut, Illinois, Kansas, Oklahoma, South Dakota, Texas, Vermont, West Virginia and Washington) the statutory marital rape exemption is absolute. It applies regardless of whether the parties are living apart voluntarily or by court order; only a final decree of divorce terminates the exemption.

In 27 states certain limitations are placed upon the statutory marital rape exemption. These limitations reflect the varying degrees in which states recognize a wife's intent to extricate herself from the marriage as a basis for limiting the exemption. In 11 states (Kentucky, Louisiana, Maryland, Missouri, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Utah and Wyoming) the statutory exemption is denied to a spouse once a judicial decree or order of separation is entered. The exemption still applies, however, when the spouses are living apart, and/or legal action to terminate the marriage is pending. In six states (Indiana, Michigan, Nevada, Ohio, Tennessee and Wisconsin) the marital exemption ends when the spouses are living apart and a petition for annulment, divorce or separation has been filed. In 10 states (Alaska, Arizona, Colorado, Idaho, Iowa, Maine, Montana, New Hampshire, New Mexico and Pennsylvania) the marital rape exemption ends once the parties are living apart; no court order is required.

Rape statutes in seven jurisdictions (Arkansas, Florida, Georgia, Massachusetts, Mississippi, Virginia and the District of Columbia) contain no express marital exemption. Whether the alleged common-law exemption applies in these states, thereby barring prosecution of husbands for marital rape, remains a matter of judicial decision and legislative intent. Arkansas and Georgia provide express marital exemptions for statutory rape (Ark. Stat. §§41-1804-1806; Ga. Code Ann. §26-2018) but not forcible rape (Ark. Stat. §§41-1801, 1803; Ga. Code Ann. §26-2001). It is therefore arguable that the legislatures of these states did not intend a common-law exemption to apply when the statute is silent. In Florida and

1. Citations to state statutes are available upon request from the National Center on Women and Family Law.

Massachusetts husbands have been convicted of rape of their estranged wives.² There are no reported cases regarding marital rape in Mississippi, Virginia and the District of Columbia.

Lobbying efforts to end this archaic and sexist "marital right" or protection afforded husbands have been hard fought and, to a large extent, unsuccessful. Opposition to legislative efforts is being met with the following typical arguments:

...the state of Florida has absolutely no business intervening into the sexual relationship between a husband and a wife.... We don't need Florida invading the sanctity and the intimacy of a husband and wife's sexual relationship. [Rep. Tom Bush, Ft. Lauderdale, Fla., Transcript of Floor Debate on House Bill 680, at 3-4, May 29, 1980];

...the Bible doesn't give the state permission anywhere in that Book for the state to be in your bedroom, and that is just exactly what this bill has gone to: its meddling in your bedroom, the State of Florida, as an entity, deciding what you can do and what you can't do. [Rep. John Winter, Winter Park, Fla., Transcript of Floor Debate on House Bill 680, at 6, May 29, 1980];

...if you can't rape your wife, who can you rape? State Senator Bob Wilson, addressing a group of women lobbyists regarding California's Marital Rape Bill AB 546, Spring 1979]

To date, only three states have totally abolished the marital rape exemption. The express exemptions in Oregon and Nebraska statutes were stricken (Neb. Rev. Stat. §§28-319, 28-320, effective 1976, repealing and replacing §§26-403.03 and §28-403.04; Or. Rev. Stat. §163.305, amended by 1977 c. 544). New Jersey legislators went one step further in abrogating the marital rape exemption by including an express statutory provision that "no actor shall be presumed to be incapable of committing [sexual offense] because of . . . marriage to the victim." (N.J. Stat. Ann. §2C:14-5(b), effective Sept. 1, 1979). Additionally, the exemption has been deleted in most, but not all, cases in California (Cal. Penal §262, effective Jan. 1, 1960, establishing a separate crime of spousal rape), Minnesota (Minn. Stat. Ann. §609.349, amended in 1980, deletes the exemption in most cases), and Iowa (Iowa Code Ann. §709.2-709.4, exemption deleted from first and second degree sexual abuse; exemption retained in third degree).

Delaware and Hawaii have amended their rape statutes by deleting the marital rape exemption on one hand, but then granting an exemption to a previously unprotected class of defendants. In Delaware the marital exemption was deleted from first and second degree rape (Del. Code Ann. §§763, 764). However, in first degree rape the marital exemption was replaced with an exemption for "voluntary social companions" (*see infra*). The Hawaii legislature amended its rape

statutes to provide for gender neutral terms, and in so doing deleted the marital rape exemption. However, like Delaware, a "voluntary social companion" exemption was included in first degree rape (Hawaii Rev. Stat. §707-730).

Expansion of the Marital Rape Exemption

The marital rape exemption has traditionally only applied to, and protected, husbands in legally valid marriages. Various theories, in addition to Hale's "matrimonial consent," have been subsequently offered as the basis for this marital right or privilege of rape: the "unity of person" common-law doctrine, whereby the legal identity of a woman merged upon marriage into that of her husband and made rape by her husband legally impossible since he could not rape himself; or the position of women as property or chattel of their husbands meant that a husband's rape of his wife was merely making use of his own property. All of these "rationales" underlying the marital rape exemption depended upon and required a valid marriage contract.

Exemption for Unmarried Cohabitants

While efforts to abolish the marital rape exemption are meeting strong resistance, legislators in 12 states (Alabama, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maine, Minnesota, Montana, North Dakota, Pennsylvania, Texas, West Virginia) have extended this "privilege of marriage" to unmarried persons. Eleven of these states extend the marital rape exemption to persons living together who are not married to each other (i.e., cohabitation relationships). For example, Montana provides that "...the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship." Mont. Rev. Codes Ann. §45-5-506(2). *See also* Alabama (Crim. Code §13A-6-60(4)); Delaware (Code Ann. §772(b)); Iowa (Code Ann. §709.4, exemption only for third-degree sexual abuse); Minnesota (Stat. Ann. §609.342, exemption only for statutory rape and specified cases involving handicapped couples); Pennsylvania (Stat. Ann. Title 18 §3103); Texas (Penal Code §21.12). In West Virginia (Code §61-6B-1(2)) and Kentucky (R.S.A. §510.010(3)) "marriage" is defined in the criminal statute to include unmarried cohabiting persons. Connecticut (Penal Code §§3a-67(6)) and Maine (R.S.A. Title 17-A §252.2) expressly provide that cohabitation shall be an affirmative defense to rape.

The expansion of the marital rape exemption to cover unmarried cohabitants is "justified" in the Practice Commentary following Texas Penal Code §21.12:

Adults cohabiting may terminate their relationship if one dislikes the other's sexual conduct, and there is no justification for the criminal law's intrusion into the relationship. This section restates and expands the prior law's recognition of this commonsense notion, which was reflected in [Texas] Penal Code art. 1153's definition of rape to exclude sexual intercourse between husband and wife.

While men in these unmarried cohabiting relationships are increasingly being granted the "marital privilege" of rape, women in these relationships have fared far worse in their attempts to obtain privileges of marriage such as spousal sup-

2. Commonwealth v. Chretien, No. 49983-84, 85 (Essex County Superior Court, Mass., Sept. 1979); People v. Finley, No. CRC 82-877 (Criminal Division, Pinellas County Circuit Court, Florida, Apr. 1980).

port ("palimony"), division of the couple's property, or civil orders of protection. In these few states where unmarried women are accorded these rights, courts have first required an express or implied agreement between the parties. No such requirement is made with respect to the expansion of the marital rape exemption.

"Voluntary Social Companion" Exemption

The extension of the marital rape exemption has gone even further in five states. Delaware, Hawaii, Maine, North Dakota and West Virginia do not require cohabitation and they provide partial exemption or immunity for those "date rapes" in which the victim was defendant's "voluntary social companion" who had previously permitted him sexual contact. See Del. Code Ann. §764(2) (first degree rape); Hawaii Rev. Stat. §707-730 (first degree rape; exemption requires sexual intercourse within previous 12 months); Maine Rev. Stat. Ann. Title 17-A §252.3 (affirmative defense which

reduces offense to Class B crime); N.D. Code Ann. §12.1-20-03:3 (reduces crime to Class B felony; exemption applies if victim has at any previous time permitted defendant "sexual liberties"). West Virginia presents the extreme example of legalizing "date rape." The "voluntary social companion" exemption to first degree sexual assault requires no previous voluntary sexual act between the defendant and victim (W. Va. Code §61-8B-3(aXiii)).

Conclusion

These new exemptions, like the original marital rape exemption, are without any basis in the common law. The effect of these extensions is that if a woman cohabits with a man, or agrees to intercourse once, or, in some states, if she dates a man, she has lost the protection of the criminal laws that she at least in theory formerly had.

Joanne Schulman
Staff Attorney

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Divorced Spouses Are Left Out in the Co'd for Distribution of Former Spouses' Pension Benefits

With all of its inadequacies, one aspect of the Social Security Act which borders on real progress is its provision of a separate benefit to the divorced spouse of an insured wage-earner when the couple was married for at least 10 years.¹ Neither of the two largest federal public pension programs, Civil Service Retirement and Railroad Retirement, make provision for divorced spouses. Indeed, the Railroad Retirement Act has taken pains to ensure that divorced spouses are explicitly excluded from ever obtaining an annuity based on the work record of the former spouse.² Moreover, the private pension area affords no more

progressive an outlook. The Employee Retirement Income Security Act of 1974 (ERISA),³ which was intended as a comprehensive effort to provide the most basic guarantees to individuals dependent on private pensions, does mandate that plans provide employees with the option to select a "joint and survivor annuity,"⁴ but the requirement is not applicable to former spouses.

It is not news that the divorce rate doubled during the seventies, and many couples who were married for a significant period of time—20 or more years—are dissolving their marriages. One obvious result is that the number of divorced spouses without work records of their own—the great majority of whom, for the time being, are women—has also grown dramatically. And without covered employment, they are deprived of retirement benefits, except for the relatively low benefits available to those whose divorced spouses were covered by Social Security.

Some litigative approaches have been considered to remedy the situation. Divorced spouses of former railroaders, for instance, have suggested that it is unconstitutional to provide divorced spouses' benefits under the Social Security Act but not under the Railroad Retirement Act. It is true that the two Acts are comparable to a limited degree, that they were intended to provide similar coverage to workers in non-railroad and railroad industries, and that they are integrated in some aspects. However, at the same time, they were designed for somewhat different reasons and are different in many significant respects.⁵ The likelihood of forcing the

1. 42 U.S.C. §4020(b)(1). Although the statute has not been rewritten, a class-wide decision ensured that the benefit was equally available to men and women. *Oliver v. Califano*, USMPR, 183, 184, 185 (CC) 15,244 (N.D. Cal. 1977). The former 20-year requirement was reduced to 10 years on January 1, 1979. Pub. L. No. 95-216, §337(c) (Dec. 14, 1977).
2. See 45 U.S.C. §231(d)(3). One bizarre and apparently unintended result of providing benefits for surviving divorced spouses in the Social Security Act, but having no comparable provisions in the Railroad Retirement Act, is that surviving divorced spouses of individuals who were insured under both Acts are denied the social security benefits which they would receive if their deceased former spouse had been insured under only the Social Security Act. 42 U.S.C. §402(b). Because of the boggling irrationality of this result, a challenge is being prepared.

3. 29 U.S.C. §§1001 *et seq.*

4. 29 U.S.C. §1055.

5. For instance, railroad retirement benefits are greater than social security benefits because the former include a private pension "component" while the latter have always been theoretically intended to complement private pension payments—however unrealistic that purpose has proved in practice. See *Hisquierdo v. Hisquierdo*, 975 Ct. 802, 84-805 (1979).

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MARITAL RAPE FACT SHEET*

1. Fact or Fiction? "MARITAL RAPE ISN'T AS SERIOUS AS RAPE BY A STRANGER--IT'S JUST A WOMAN NOT BEING IN THE MOOD AND HER HUSBAND INSISTING."

As a matter of fact, marital rape is often just as violent, just as degrading, and oftentimes more traumatic than rape by a stranger. It is perpetrated with knives, at gunpoint, repeatedly, brutally, in front of others, and most often is the final violent act culminating a series of physical abuses. One woman has reported being beaten and raped by her husband virtually every day for six months, anally raped 9 or 10 times. He told her that, if she ever tried to leave, he would kill her. In terror she fled to another state, changed her name, and lived there for a year inognito.

2. Fact or Fiction? "MARITAL RAPE ISN'T OFFENSIVE--AFTER ALL, A WIFE HAS HAD SEX WITH HER HUSBAND BEFORE, WHAT'S ONE MORE TIME?"

As a matter of fact, a woman raped by a stranger has to live with the memory of that experience. A woman raped by her husband has to live with her rapist. Many wife victims, trapped in a reign of terror, experience repeated sexual assaults over a number of years. What happens to a capacity for intimacy when the person who has promised to love and protect, and on whom one may be economically dependent, commits such a brutal and violent violation?

* Prepared and distributed by the Pennsylvania Commission on the Status of Women.

3. Fact or Fiction? "MARITAL RAPE IS A BIZARRE AND UNUSUAL ACT AND DOESN'T NEED LEGISLATIVE ACTION."

As a matter of fact, most experts consider rape to be the most underreported of all crimes and marital rape even more so. Over a third of women who appear at battered women's shelters report being sexually assaulted by their husbands. It is seldom discussed. Humiliated and ashamed, marital rape victims don't talk about it. They don't report it because the law does not help them.

4. Fact or Fiction? "WHEN A WOMAN MARRIES, SHE CONSENTS TO SEXUAL INTERCOURSE WITH HER HUSBAND."

As a matter of fact, sexual expression in love is one thing. Forced, brutalized sex is another. No one consents to violence by marrying. Under current law prosecution is impossible for even the most brutal rapes in marriage.

5. Fact or Fiction? "IF PROSECUTIONS ARE ALLOWED FOR MARITAL RAPE, A LOT OF INNOCENT HUSBANDS WILL HAVE RAPE CHARGES FILED AGAINST THEM BY ANGRY, VENGEFUL WIVES WHO HOPE TO BARGAIN FOR A BETTER PROPERTY SETTLEMENT IN A DIVORCE ACTION."

As a matter of fact, this myth is built on the ill-founded belief that women are innately vengeful and willing to go through the tortures of a courtroom trial in order to "get back" at a man, and that somehow women should be treated as less credible victims of crime than others. Actually, there are many other types of complaints which a woman could file for retaliation that would require less public self-exposure and trauma. Further, our legal system has built in mechanisms to determine the merits of a complaint. Police investigations, prosecutor discretion, and jury deliberations are employed to determine the truth or falsity of other allegations. Why should marital rape be treated any differently? Finally, no such misuse has been documented by the states that have eliminated immunity of spouses from prosecution for rape. Only the most extremely brutal and horrifying incidents of marital rape have been reported.

6. Fact or Fiction? "MARITAL RAPE IS SIMPLY ONE SPOUSE'S WORD AGAINST THE OTHER, HENCE IT WILL BE DIFFICULT TO PROSECUTE."

As a matter of fact, when has difficulty to prosecute determined what a crime is? Treason, conspiracy, child abuse, and incest are difficult to prove, but there is no outcry to decriminalize them.

7. Fact or Fiction? "THERE ALREADY EXIST REMEDIES FOR MARITAL RAPE--A WOMAN CAN FILE ASSAULT CHARGES OR GET A DIVORCE."

As a matter of fact, all rapists assault their victims. Rape is a crime different from assault. That is why special rape laws exist. Rape involves a special humiliation and special violation. Assault is a less serious crime, its penalty less a deterrent. Even though a woman might escape as a victim by filing for divorce, should the committer of the criminal acts escape punishment for them? An appropriate deterrent to this type of violent behavior is not now available.

8. Fact or Fiction? "MARITAL RAPE LAWS WOULD HAVE THE STATE MEDDLING IN PEOPLE'S BEDROOM AFFAIRS."

As a matter of fact, the state is meddling in the bedroom whether there is a marital rape law or not. In one case the state allows husbands to rape their wives. In the other, the state protects wives from this type of violence. Should murder and assault between spouses be decriminalized just because it's a family affair? A husband should no more fear criminalization of marital rape than a parent fears laws on incest or child abuse. The law should condemn a brutal, hostile, revengeful, hateful, and anti-social act whether it happens within a marriage or without.

9. Fact or Fiction? "MARITAL RAPE LAWS WILL DESTROY MARRIAGES BY PREVENTING ANY POSSIBLE RECONCILIATION."

As a matter of fact, isn't a marriage in which a husband rapes his wife and she presses charges already destroyed? Withholding justice and equal protection to try to hold together such a marriage is an unrealistic and improper goal for the criminal law. The law now protects a raping husband rather than a victim wife, and women can be coerced into staying in violent marriages. Should the law encourage such forced cohabitation?

10. Fact or Fiction? "SINCE SO FEW CASES ARE BROUGHT TO TRIAL, WHY BOTHER WITH A MARITAL RAPE LAW?"

As a matter of fact, the law protects either the victim or the rapist. Husbands who commit acts of violence against wives now receive special protection from the law in Pennsylvania. Should such special protection more rightly belong with the victim? Passage of H.B. 1122 would call attention to the problem, let the victims know there can be help, and, by removing society's sanction for such behavior, work to deter it.

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RESOURCES ON MARITAL RAPE

National Clearinghouse on Marital Rape (Laura X),
2325 Oak Street, Berkeley, California 94708, (415) 548-1770.
Listing of over 600 files (bibliography/contacts) available,
\$3.00. For information and assistance, send self-addressed
return stamped envelope, plus tax deductible membership fee
(\$10 students and activists; \$15 faculty, researchers; \$25
attorneys; \$30 libraries and organizations).

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12/80

*California Socio-legal Chart
of Marital Rape Cases Since
January 1980*

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APRIL 1983

Name	Arrested	Charges	Arranged	Bail	Plea	Prelim Hearing	Trial or Court Plea	Verdict	Sentence	Other disposition
pr 1 Kevin Green -C44170	9-30-79	262 - Spousal rape 664 - attempted murder 245A - assault with a deadly weapon 259 - murder	4-18-80	\$20,000	not guilty	4-7-80 July initial. 6-18-80	not guilty	guilty - 2nd degree murder 2nd degree attempted murder, assault with a deadly weapon	11-7-80 15 years to life in state prison.	spousal rape 262 dropped because crime occurred before law went into effect
pr 2 David William Waddingham #74060	11-5-79	207 - kidnapping 288 - anal copulation 644 & 286 - attempt to sodomize via force	1-3-80	\$10,000	no contest to 256 - false imprisonment infliction of traumatic injury on wife				5-2-80 1 year in county jail, 3 years probation, psychiatric counseling over probation period, work furlough recommended	
pr 3 Lupe Garcia Renalado #26586	12-19-79	207 - kidnapping 211 - robbery 203 - mayhem 245A - assault with a deadly weapon	1-21-80	\$7,250	guilty to kidnapping and mayhem	1-4-80 hearing 1-21-80 not guilty Burrton of insanity 4-21-80 5-19-80	no trial because of plea		5-19-80 7 years in state prison (153 days credited for time in jail), psychiatric counseling. The defendant is serving time for kidnapping because it is a worse crime than mayhem. The mayhem crime will go into effect if kidnap charge ever dropped because 657 - court cannot double punish.	defendant could not be charged or arrested on spousal rape because the crime happened before the law was passed.

code: pr - pre-trial
C - conviction 262
P - Plea Bargain
L - guilty of lesser charges
D - case dropped
N - NO ARREST
M - wife murdered
AQ - Acquittal
A - ATTEMPTED RAPE

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
21	Diana - 20	together	Victim 2 weeks overdue with first child. When she resisted his advances he hit her head with large metal key container- raped her.	their apt.	none	♂ white ♀ white	♂ marine ♀ house wife	Tustin; Orange Co.	Green called ambulance when victim became comatose. Infant delivered dead by Caesarean due to victim's injuries. She remained in coma 1 month, memory regained 3 months later at which time Green re-arrested. Victim now aphasic and suffers permanent brain damage.
28	Victoria- 31	separated 2 months	He came to discuss separation, kidnapped her in van, drove to secluded area in Santa Cruz mts. Repeatedly threatened to kill her with gun he claimed in glove compartment. Beat her with belt, raped her- overcame her when she tried escaping, raped her two more times.	van in Santa Cruz mountains	1	♂ white ♀ white	♂ courier ♀ unavail- able	San Jose, Santa Clara Co.	Waddingham eventually dropped her at her home; she called the police.
28	Maria 27	separated 8 months	He picked her up to go to the cinema drove instead to a cornfield. Forcible her to walk four miles through the field nude, raped her, shaved her head, carved swastika on her cheek & cross on hip, covered her with shoe polish & red paint, pulled four teeth and burned her hands	cornfield	not known	♂ mexican-am. ♀ mexican-am.	both farm workers	Yuba City, Sutter Co.	A rancher discovered her in the field the next morning.

	Name	Arrested	Charges	Arraigned Bail	Plea	Atelim. Hearing	Trial or Court Plea	Verdict	Sentence	Other disposition
d 4	Anonymous	1-5-80	Charges dropped	for unknown reasons						
L 5	Joseph Bray #70954	1-6-80	220 - assault with intent to commit felony 262 - spousal rape 211 - robbery	2-5-80 \$500	not guilty	1-14-80	Jury trial not guilty	guilty - misdemeanor assault 240, theft 488	5-15-80 2 years formal probation, \$500 fine plus penalty assessment, \$1,000 reformation to public defender, no contact with victim except through an attorney	Bray NOT CONVICTED ON 262. 220 ASSAULT CHARGE APPLIES ONLY TO ASSAULT TO COMMIT FELONY SINCE THERE WAS NO LOWER A FEW CHARGE, THE 220 WAS LOWERED TO A MISDEMEANOR ASSAULT (THE 240 CHARGE)
c 6	Frank Martinez #A525411	1-8-80	262 - spousal rape 261 - rape 207 - kidnapping 288A - forcible oral copulation 487.1 - grand theft auto	2-7-80 \$20,000	not guilty	1-23-80	Jury trial 8-8-80 not guilty	guilty 9-2-80 - 1's counts including spousal rape (see charges) by jury	11-12-80 16 years in state prison approx. 6 or 14 yrs for marital rape charges	THE MARITAL RAPE AND STRANGER RAPE (RAPESTAMEN) WERE TRIED TOGETHER. THE STRANGER RAPE/ROBBERY CRIMES WERE USUALLY AS THE PRIMARY CHARGE SINCE MARITAL RAPE CARRIES A GREATER PENALTY THAN STRANGER RAPE. THE MARITAL RAPE CHARGE ACCOUNTS FOR APPROXIMATELY 6 OF THE 16 YRS. SENTENCE. THE KIDNAPING CHARGE WAS DROPPED AS IT WAS CONSIDERED TO BE PART OF THE RAPE.
d 7	Roy Lee Rogers	2-12-80	262 - spousal rape	2-11-80	not guilty	2-26-80				WIFE VISITED HUSBAND IN JAIL AND SAID SHE FELT HE HAD LEARNED HIS LESSON AND WOULDN'T HURT HER AGAIN. SHE WAS VERY UNCOOPERATIVE WITH D.A. - REFUSED TO TESTIFY - HUSBAND'S BAIL DROPPED - HE WAS RELEASED. CASE DROPPED BECAUSE OF LACK OF EVIDENCE. THOUGH WIFE HAD PREVIOUSLY STATED SHE DOUBTED RECONCILIATION, APPARENTLY COUPLE REUNITED AFTER HUSBAND'S RELEASE
pc 8	Albert Beltran #126767	3-10-80	220 - assault 236 - false imprisonment 207 - kidnapping 262 - spousal rape	4-22-80 \$10,000 reduced to \$5,000 exonerated	guilty	5-6-80	hearing plea bargained (dropped 220 & 207 charges). MISDEMEANOR 262	6-10-90 30 days county jail, 3 years probation, work forking.	case plea bargained victim urged judge not to imprison Beltran but to order counseling instead. she commented her opinion was not based on fear.	

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
31	33	separated	argument, rape					Bellflower, Los Angeles	
31	Karen	26 separated 1 month married 5 years	Bray came to victim's home to pick up photographs—argued—280 lbs Bray threw her (120) onto chair and raped her	her apt.	none	♂ white ♀ white	♂ studying to be a mechanic ♀ unavailable	Chico, Butte Co.	Police in area heard her screaming for help from window and saw her jump through it to ground.
21	Rena	18 separated 4 months married 6 wks prior to living together 5 years.	(wife) stolen Martinez lured victim into van claiming he had a gift for her. Drove around area stopping at intervals to rape wife (4 times). Van had been stolen the day before w/ the woman sales-agent abducted for 10 hrs. and raped 4 times by Martinez.	Staten van	none	♂ Mexican am ♀ Mexican am.	♂ unemployed laborer ♀ Factory worker	Comona, Los Angeles Co.	Victim managed to slip message to another woman in gas station saying she'd been kidnapped and raped. The woman called police who caught him in van.
25	Edith	20 together married 4 years many separations he beats her several times all kinds of counseling, police interviews, rescribed drugs for his band to "calm him down"	He was watching television, wanted sex, when she resisted he beat her head against floor, tore her clothes with a knife, raped her.	thru apt.	none	♂ Black ♀ Black	♂ unemployed Lake Elsinore ♀ unemployed Riverside Co.		VICTIM'S SISTER, WHO LIVES IN THE SAME APT. BUILDING, HEARD VICTIM'S SCREAMS FROM HER APARTMENT, HELPED VICTIM ESCAPE, AND PHONED THE POLICE.
25	Carmen	24 separated 3 months married 1-20-74 to 1-20-80	Beltran kidnapped her at knife-point from shopping center, drove to rural spot, threatened to kill her, raped her.	country-side in car	none	♂ white ♀ mex am.	♂ member of carpenters union ♀ sales clerk	Hayward, Alameda Co.	Beltran drove her back to shopping center, victim went home and called the police

CALIFORNIA SOCIOLOGICAL CHART

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	Name	Arrested	Charges	Arraigned	Bail	Plea	Trial or Prelim. Hearing	Court Plea	Verdict	Sentence	Other disposition
pc 9	Hughen Watkins #66933	3-17-80	262 spousal rape 286c sodomy 289A - rape with a foreign object	4-7-80	\$1,500 exonerated	not guilty	6-17-80 hearing 7-18-80 defendant entered plea of guilty to 262 (misdemeanor)			9-2-80 guilty to 262, other counts dismissed, 8 months in jail, 3 years formal probation, counseling at discretion of probation officer, must submit to warrant less search of person, vehicle, or residence during parole period. Must submit to chemical testing during parole must refrain wholly from drugs except when prescribed and refrain from alcohol as well as establishments predominantly selling alcohol.	plea bargained
d 10	David Jesse Carter #2555	4-23-80	262 spousal rape 236 false imprisonment	5-19-80	\$15,000 reduced to 5,000	not guilty	5-5-80				case was dropped because DA didn't think victim's testimony was believable she was a heavy drug user - had criminal record - she tried to take child by impersonating an authority, then by threatening with gun a witness at apt. also claimed no rape occurred.
c 11	John A. Chiarpolti #21990	4-27-80	207 - kidnapping 262 spousal rape	4/28/80	\$20,000 reduced to \$5,000	not guilty	5-8-80 hearing	no contest to misdemeanor 262 spousal rape		6-10-80 1 year suspended sentence, 3 years probation, psychiatric counseling, 25 day comm. volunteer work.	trial had been set for jury, then Chiarpolti plead no contest before the Judge

Age	Wife's Name	Marital Status	Crime	Place	Children	Race	Ethnicity	Occupations	Residence	How Incident Ended
24	Catherine	23 together married 3 1/2 years	He raped victim in bedroom of their home with mouth wash bottle twice, then sodomized her	their apt	3	♂ white ♀ white		♂ unemployed ♀ unemployed waitress	Redding, Sasta Co.	Victim called police the next day, filed for divorce, then went to a women's shelter
28	Sandra	22 separated 1 month married 5 years	Victim came to his apartment to see children, he pulled her into bedroom where she succumbed out of fear. Husband was on Probation on a 242 Battery misdemeanor.	his apt	2	♂ white ♀ white		♀ HOME MAKER (believed to be).	Hayward, Alameda Co.	VICTIM WENT TO SHERIFF OFF. EARLY. - Victim later received phone call from Carter telling her he would send the Hell's Angels after her if she didn't drop charges. CALL MADE 4/22 FROM SANTA RITA JAIL. CHARGE OF THREATENING WIFE WERE DROPPED, BECAUSE THEY WEREN'T THREATS AGAINST HER, BUT AGAINST CHILDREN (ACCORDING TO NEWSPAPER REPORTS). CARTER REPRIMANDED IN COURT FOR MISBEHAVIOR - HE WAS LAUGHING AND 'SMIRKING' AT WIFE DURING HER TESTIMONY.
23	Lisa	22 separated 2 weeks	KIDNAP & RAPE. HUSBAND WANTED TO MEET WITH WIFE. PICKED HER UP AND TOOK HER TO A SECLUDED SPOT WHERE HE RAPED HER.	van in secluded spot	none	♂ white ♀ white		♂ grocery store Employee	Livermore, Alameda Co.	

	Name	Arrested	Charges	Arraignment Bail	Plea	Prelim. Trial or Hearing	Court Pleas	Verdict	Sentence	Other disposition
d 12	Michael Eugene Maggard	5-15-80	220 - assault with intent to commit rape 273.5 - felony wife-beating 242 - assault & battery 602 - trespassing							charges dropped by D.A. over wife's objections WIFE SAID THAT D.A. CATTERTON'S DECISION SHOWED HE DID NOT TAKE THE CASE SERIOUSLY.
SM 13	Peter Edelbacher	5-28-80 1-8-82 (murder)	262 - spousal rape 259 - murder	muni. 1-25-82 (murder) superior arraignment (murder) 5-24-82 - moved to 6-1-82	held w/o bail (murder)	jury hearing 2-25-81 (murder) pre-lim 2/11/82 and 3/16/82 - (above dates rescheduled) trial: 9-7-82 - reset to 9-16-82		not guilty (rape) not guilty (murder) not guilty	2-26-81 not guilty	WIFE WAS MURDERED. HUSBAND BEING CHARGED WITH MURDER
d 14	Philip Ramirez	6-10-80	261 (.2+3) - rape	6-11-80	not guilty	DA. dropped case 11-24-80 when wife stated she did not want charges pursued - SPT FOR 11/8/80				REASON UNKNOWN, WIFE STATED WOULD PRESS BATTERY CHARGES, BUT NEVER SIGNED NEW COMPLAINT. JUDGE STATED "TRADITIONALLY WOMEN HAVE AVOIDED THIS ISSUE BY HAVING A HEADACHE." (DURING PRE-LIM HEARING)
PL 15	Joseph Romagno	7-15-80	262 - spousal rape 273.5 - inflicting corporal injury on spouse	7-18-80 \$15,000	guilty to battery				8-1-80 3 years probation, psychiatric counseling, protection order issued, 1 year in county jail if breaks parole.	ALLOWED plea bargain because he confessed before being read Miranda rights and police entered home without a warrant.

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
32	Linda Jean	30 separated	tore off victim's nightclothes hit her boyfriend	her apt.		♂ white ♀ white		Westminster, ORANGE Co.	
24	Lela	25 Separated 1 year married 4 1/2 years	Victim raped on two consecutive nights. On second night he broke down door - he claimed he'd forgotten his keys inside and victim refused to let him back in so he broke door	her apt.	1	♂ white ♀ white	♂ works for painting con- tractor ♀ interior decorator	Fresno, Fresno Co.	Victim called police on second night. - 1 month later victim was murdered, shot gun found under husband's bed, Edet Becker being sought for questioning.
		18 - Separated wife filed for divorce on day BEFORE THE RAPE	VICTIM WAS SICK THEN RAPE. WIFE AGREED TO HIS BAND COMING OVER TO SIGN PAPER OF DIVORCE PAPER. FRIEND OF WIFE'S UNLAWFUL BAND LEFT, WIFE UNTIL FRIEND DEPARTED INTO FORCED HIS WAY INTO THE HOUSE.	her apt.		♂ mexican-am.	♂ unemployed	Santa Rosa, Sonoma Co.	Ramirez left the apt.
27	Jolene	22 Separated 1 year	Romagnolo asked victim to his apartment to discuss financial matters, once there she was hit then raped	his apt.	2	♂ italian-am. ♀ italian-am	♂ truck driver ♀ housewife	Bakersfield kern Co.	Victim called police on her CB radio in her car - At time of attack Romagnolo was free on \$1500 bail after he had kicked in the door to her apartment, ripped up her furniture and sprayed obscenities on the walls.

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PM
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AQ 17

PC 18

PC 19

d 20

Name	Arrested	Charges	Arraigned	Bail	Plea	Trial or Prelim. Hearing	Court Plea	Verdict	Sentence	Other disposition
Gerald Frank Stanley #1323	- never arrested while wife was alive - incident (rape) in July, 1980.	7-29-80 262 - spousal rape - rape by threat 288 - oral copulation - felony wife - 273.5 - beating 187 - murder while lying in unit. - murder to prevent testimony. 459 - burglary 451 - arson.								Stanley arrested 8-27-80 charged with wife's murder and suspect in another murder (of stranger). STANLEY convicted of killing 2nd wife. Third wife disappeared and has not been found. Buried down horse (4th wife).
John Bealin #C-4559b	9-12-80	262 - spousal rape		\$2,500	not guilty	jury trial 2-17-81 mistrial jury trial 5-11-81 acquitted	not guilty	deadlock not guilty		BEGLIN FILED SUIT AGAINST COUNTY FOR fabricating evidence (dismissed)
Timothy Hiebert #261707-1	Aug. 29, 1980	262 - spousal rape 289 - rape with a foreign object	10-22-80	\$4,000	1-7-81 guilty to spousal rape dropped 2/81	11-10-80			3 years in prison	plea-bargained.
Emil Gabriel #10573-C	10-29-80	262A - spousal rape 1664 - assault with a deadly weapon 245 - assault 273.5 - assault	12-9-80	OR	not guilty	waived hearing for 1-27-81 3-26-81	no contest to 262 (misdemeanor)		5-5-81 5 years suspended sentence, 3 years probation, psychiatric counseling.	Plea bargained out of assault with deadly weapon, corporal punishment & criminal contempt of court order (on wife's insistence that it was not in the children's best interest and she felt sorry for him).
Maximilian Eddiz Vargas #A-M 20242	11-23-80	262 - spousal rape 242 misdemeanor battery	12-9-80	\$2,000	not guilty	1-2-81	Case dismissed, D.A. NEEDED WIFE'S DESIRE THAT PROSECUTION SHOULD NOT CONTINUE (REASON UNKNOWN FOR HER DECISION)			

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
35	Cynthia	29 separated - married 1 month	DRIVING TOGETHER TO REDDING. HE BEAT HER, RAPED HER AND HAD FORCED ORAL COMBINATION WITH HER.	near Resort 3 from off the road (in Trinity County).	3 from her former marriage.	♂ white ♀ white	♂ trapper ♀ bookkeeper	Redding, Shasta Co.	FAMILY KEPT VICTIM IN MOTHER'S HOUSE FOR A FEW DAYS -- WIFE THEN REPORTED RAPE AND BEATING.
34	Pauline	Together	BEGUN FIED WIFE TO BED, TOOK NUDE PICTURES OF HER, THEN ASSAULTED HER AFTER WATCHING AN X-RATED MOVIE ON CABLE TV.	their home	none	♂ white ♀ white	♂ auto refinisher ♀ sales manager	Cypress, Orange Co.	Victim left home.
27	Mary	25 separated 6 months married 6 years	Penile rape and rape with a hairbrush	her home.	1	♂ white ♀ white	♂ service station attendant	Fresno, Fresno Co.	WIFE CALLED A FRIEND FROM (WIFE'S) APARTMENT AFTER HER HUSBAND LEFT. THE FRIEND CALLED THE POLICE.
46	Florence J	37 separated WIFE PURSUING DIVORCE SINCE INCIDENT	FAMILY RAPE AND ASSAULT WITH A DANGEROUS WEAPON, FELONY RAPE - KIDNAPING. HUSBAND UNDER RESTRAINT. HX ORDER NOT TO COME TO WIFE'S HOME. CALLED TO HER IN CLOSET - CAME OVER INTOXICATED. TALKED TO WIFE UNTIL CHILDREN WENT TO BED. Raped & BEAT WIFE.	her home	2	♂ white ♀ white	♂ business ♀ clerical for police dept.	San Rafael, Marin Co.	SINCE HUSBAND CAME OVER TO GET HIS CLOTHES, WIFE USED CLOTHES TO GET HIM OUT OF HOUSE. THREW CLOTHES OUTSIDE AND LOCKED HIM OUT (NAKED) WHEN HE WENT AFTER THEM. WIFE CALLED POLICE (WHICH FOUND CHARLES) (CLOTHES) FOUND ON HER DOOR. D.A. SAID CHARLES HAD DRUNK THE DOOR DOWN AND REFUSED TO GET UPON FLOOR - BUT HIS WIFE HAD CALLED THEM. WIFE STAYED AT HOME DID NOT WANT TO PRESS CHARGE, BUT ARGUMENTED WITH THE PRIVATE CIVIL LAWYER WHO CONVINCED HER TO PRESS CHARGE. SHE SAID THAT HE WOULD NOT BE IN JAIL.
24	Patricia	23 separated	TOOK WIFE FROM HER SISTER'S HOME. VARGAS FORCED VICTIM INTO VAN WITH CHILDREN, STRUCK HER, DROPPED CHILDREN AT BROTHERS HOUSE, DROVE TO MOTEL WHERE HE RAPED AND BEAT HER (W/ FISTS & FEET). THREATENED WIFE AT WOULD "KICK IT LONE LIKE AN ACCIDENT". VARGAS MADE HIS TAXI SIGNUP. AFTER RAPE.	motel in modesto.	2	♂ mexican-am ♀ white	♂ unemployed ♀ unemployed	Atwater, Merced Co.	PATRICIA'S MOTHER REMOVED VARGAS AND A FIRM WAS "LOOKING TO KILL THE [NAME]". VARGAS LATER CALLED & TOLD WIFE SHE SHOULD "STAY WITH ME UNTIL I CAN GET YOU OUT OF HERE". VARGAS DROVE IN THE NIGHT. DROVE IN HER HOME THE A- WIFE & THREATENED WIFE. POLICE WERE CALLED BY NEIGHBORS IN THE [NAME]. VARGAS RAN FROM POLICE. WHEN THEY CAME IN A PRESS INM. ASKED A FEW QUESTIONS. STAYED IN POLICE "IT WAS MY OWN WIFE". VISITED HIS MOTHER [NAME].

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	Name	Arrested	Charges	Arraigned	Bail	Plea	Prelm. Hearing	Trial or Court	Verdict	Sentence	Other disposition
21 PC	Thor Hawkell Asgardson #G-39782	12-15-80	262 - spousal rape	12-17-80	none out on his own rec.	guilty			There was never a hearing because the 1st date was cancelled for some unknown reason as with the second date for a hearing. He pleaded guilty between 2nd & 3rd hearing. The plea bargaining brought his felony down to a misdemeanor.	3-26-81 2 years with summary probation, 60 days minimum in jail.	Plea-bargain from felony to misde- meanor.
22 PL	Paul Norman Munday #4-3113	11-24-80	2x 288a - oral copulation 262 - spousal rape 207 - kidnapping	11-26-80	no bail	not guilty	2-19-81 hearing 3-5-81	no contest to 242 - misdemeanor bittery	Guilty	6 months suspended to court probation and counseling	Plea bargained - 21 preliminary charges changed to 288A from C, and 262 dropped to 242. At hearing plead no contest to 242 if other charge dropped. (misd- emeanor assault) Wife pregnant - RL - Cancelled. As per 21100 262 RL - Arresting and oral cop
D 23	William Shacklett C-0132899	12-30-80	2 counts 289 - rape with a foreign object 245A - assault with a deadly weapon	1-19-81	\$13,000	not guilty	2-11-81	case dismissed;	DA did not proceed w/case as wife did not want prosecution to continue. When the case got to court, she refused to testify. It was not taken post the prelim. hearing. wife described by D.A. as strong- willed. wife embarrassed & uncomfort- able with trial, which she felt was not handled with total legitimacy.		Victim is now back with defend- er.
N 24	Emanuel Gonzales	no arrest	Wife would not press charges despite D.A.'s urging, reason unknown.								
d 25	Anonymous	arrest date unknown	Woman reported estranged husband beat and raped her, charges dropped for unknown reason.								

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
29	Julie	25 separated	rape, no weapons	his home	none	♂ white ♀ white	♂ sporadic work ♀ nurse (student?)	Eureka, Humboldt Co.	Victim waited a week before reporting rape.
21	Brenda	20 separated	D.A. office said she was kidnapped from alpha beta grocery store then taken to house where raped.	Bus Station (center) husband's house		♂ white ♀ white	♂ unemployed (housewife) ♀ housewife	Livermore, Alameda Co.	Victim ran from house where rape occurred to her own home. Monday followed, broke window and kicked in door then left when crowd gathered as a result of the commotion. WIFE CALLED POLICE.
31	Kathy	28 together married 5 years	He came to bed after drinking and watching pornographic tapes; said he had some "new ideas." first voluntary sex, then became angry, raped her with crowbar and tire iron, slashed her breasts with crowbar and poured brandy on her wounds, struck her with belt.	their home (bedroom & garage) floor	1	♂ white ♀ white	♂ concert promoter ♀ housewife	San Jose, Santa Clara Co.	Victim escaped to neighbors and phoned police when he freed her to feed the baby. Was hospitalized several days for gashes and internal bleeding.
35		33 together	Victim claimed a history of Gonzales forcing her to have 5 way sex with strangers and beating her	their home	3	♂ mexican-am ♀ mexican-am		East Los Angeles, Los Angeles, Co.	wife left house & went to police.
		36 separated married 7 years	Victim beat and raped by estranged husband	her apt.				Fresno, Fresno Co.	

	Name	Arrested	Charges	Arraigned	Bail	Plea	Prelim. Hearing	Trial or Court Plea	Verdict	Sentence	Other disposition
J 28	Anonymous	(no arrest)	Woman reported kidnapping, beating, and rape - husband denied all three, charges never made.								
L 29	Arturo Arroyo #5196	1-29-81	262A - spousal rape	3-3-81	\$3,000	not guilty		case dropped due to wife's wishes.		She said "I don't want to go to court, I don't want to take off any more time from my job and he (the defendant) said he would leave me alone."	
C 28	Victor Burnham #10549	12-17-81	4x 262 - spousal rape 245A - assaulting and threatening with firearm 289 - assault with foreign object (dog) 12020 - possession of machine gun. (ALSO CHARGED SEP. NEARLY FOR LEWD AND LASCIVIOUS ACTS AGAINST A MINOR (14 YEAR OLD GIRL))	3-23-81	\$50,000 reduced to \$25,000 then to \$30,000 judge refused to release Burnham because of previous conviction of same offense and threatened victim.	not guilty	3-12-81 jury trial 5-26-81	not guilty (pled no contest to gun possession charge during trial)	guilty 6-4-81 : 4 counts spousal rape, bestiality, assault with intent to commit great bodily harm (qui change mood to separate trial/sentencing)	Suspended sentence. Sent to California Board of Correction for 90 days observation. 7-22-81. DETERMINED HE SHOULD GO TO THURSDAY (M. MENTAL HOSPITAL) C-13 YES.	Burnham has 3 prior convictions: 1971 - misdemeanor child abuse 1961 - assault and battery 1971 - illegal transportation of lion cub. 2 previous wives testified of under treatment during the marriage to be insane.
PL 29	Marvin Noble #21005	3-20-81	497 - entering residence with intent to commit felony 12020 - possession of a weapon 3x 236 - false imprisonment 262 - spousal rape 417B - exhibiting firearm in a threatening manner	3-26-81	\$5,000	not guilty	4-23-81	5-8-81 guilty - suggesting insanity (had been sent to Napa during incarceration pending trial)	guilty on weapons and false imprisonment charges.	4 years in Alhambra	7/81 - bargained - dropped. Maximum Sentence on charges 5 yrs. SPOUSAL RAPE CHARGES WERE ALLOWED DROPPED BECAUSE OF GEN'S HOSTILITY/REBELLION AGAINST WIFE. SHE IS WHITE. BUT BOTH HUSBAND AND LOVER (WHO SHE WAS PREGNANT BY) ARE BLACK.

Age	Wife's Name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Ended
20		Separated 1 month	kidnapped wife from bar, drove to his apt., beat and raped her	his apt.				Fresno, Fresno Co.	
24	Rose Mary	28 separated 10 months	Victim returned to home with daughter following father's funeral. Arragon forced himself into car and drove to a house where they were forced to remain - at 11:00 AM mother and daughter were to sleep mother awakened to his advances. When she resisted, he beat, bit, and raped her. *(ROSE MARY'S FATHER'S FUNERAL).	home. 404 S. A. St.	2	♂ mexican-am ♀ mexican-am	♂ unemployed (alcoholic) ♀ secretary (Head Suter program)	Madera, Madera Co.	Victim was finally able to make a phone call for help to a friend at 5:00 AM.
35	Rebecca	20 together married 2 1/2 yrs	Victim repeatedly subjected to forced sex with Burnham, other men, and dogs. She reported last incident when he raped, choked her and forced her to have sex with stranger and a dog. all 3 wives testified to having been hit, choked, kicked, raped, bit, threatened w/ death w/ gunshot, and sexually abused (including rape from dog bites). Sexual Assault w/ Inj. Force. (S. 261.5) (S. 261.6) (S. 261.7) (S. 261.8) (S. 261.9) (S. 261.10) (S. 261.11) (S. 261.12) (S. 261.13) (S. 261.14) (S. 261.15) (S. 261.16) (S. 261.17) (S. 261.18) (S. 261.19) (S. 261.20) (S. 261.21) (S. 261.22) (S. 261.23) (S. 261.24) (S. 261.25) (S. 261.26) (S. 261.27) (S. 261.28) (S. 261.29) (S. 261.30) (S. 261.31) (S. 261.32) (S. 261.33) (S. 261.34) (S. 261.35) (S. 261.36) (S. 261.37) (S. 261.38) (S. 261.39) (S. 261.40) (S. 261.41) (S. 261.42) (S. 261.43) (S. 261.44) (S. 261.45) (S. 261.46) (S. 261.47) (S. 261.48) (S. 261.49) (S. 261.50) (S. 261.51) (S. 261.52) (S. 261.53) (S. 261.54) (S. 261.55) (S. 261.56) (S. 261.57) (S. 261.58) (S. 261.59) (S. 261.60) (S. 261.61) (S. 261.62) (S. 261.63) (S. 261.64) (S. 261.65) (S. 261.66) (S. 261.67) (S. 261.68) (S. 261.69) (S. 261.70) (S. 261.71) (S. 261.72) (S. 261.73) (S. 261.74) (S. 261.75) (S. 261.76) (S. 261.77) (S. 261.78) (S. 261.79) (S. 261.80) (S. 261.81) (S. 261.82) (S. 261.83) (S. 261.84) (S. 261.85) (S. 261.86) (S. 261.87) (S. 261.88) (S. 261.89) (S. 261.90) (S. 261.91) (S. 261.92) (S. 261.93) (S. 261.94) (S. 261.95) (S. 261.96) (S. 261.97) (S. 261.98) (S. 261.99) (S. 261.100)	their home	1	♂ white ♀ white	♂ unemployed construction worker ♀ housewife	Merced, Merced Co.	Victim fled to battered women's shelter, then went to Sheriff's department, AFTER BEING BEATEN BY BURNHAM. WIFE TESTIFIED THAT THERE WERE URGENT THREATS AGAINST HER & HER CHILD, CREATING A "P.O.L. SITUATION" (NOTE BY D. A.). CHILD HELD HOSTAGE AT SUNNYPOINT DURING FORCED SEX EPISODES. IN ALL 3 MARRIAGES, ♀ WIVES KEPT COMPLETELY ISOLATED. BURNHAM STATED UNPLEASANT THINGS TO WIVES / BECAUSE OF CULTURE DIFFERENCES. WIFE WAS EXPLAINING A
27	Sophia Pauline	24 separated	broke into wife's home with sawed off shotgun then raped wife. When she escaped he held son as hostage.	her home	2	♂ black ♀ white	♂ railroad worker ♀ housewife	Ukiah, Mendocino Co.	WIFE TESTIFIED BURNHAM'S SEXUAL TOLERANCES BEING LOW HE FAILED TO GET HIS PREGNANT WIFE 2 YRS OF MARRIAGE. SHE TESTIFIED THAT HE FOUL UP HER MARRIAGE A YEAR IN THE MIDDLE THAT THE OTHER MARRIAGE WOULD NOT BE FORSAKEN. BURNHAM THOUGHT THAT IF HIS WIFE WAS PREGNANT THAT HE WOULD NOT BE TOLERATED THIS WAS IN 1967.

	NAME	ARRESTED	CHARGES	ARRIVAL	BAIL	PLEA	TRIAL OR PRE-HEARING	COURT PLAN	VERDICT	SENTENCE	OTHER DISPOSITION	
D 30	KIRK LAYTON #55170	7-1-81	262. SPOUSAL RAPE		\$6,000				CASE DISMISSED BECAUSE WIFE DIDN'T SHOW UP AT TRIAL (LACK OF CORPUS DELICTI). - DEFENDANT IS TO SURRENDER INTO CUSTODY IF WIFE RETURNS AND REFILES.			
D31	ANON. (D.A. LISA FARIA)	7-18-81	262. SPOUSAL RAPE IBBADEAL. COP. E864 Summary		\$14,000	NOT GUILTY	8/6/81		WIFE STATED ON WITNESS STAND THAT SHE DID NOT WANT TO PRESS CHARGES - CHARGES DROPPED FOR LACK OF COMPLAINT BY WITNESS			
D32	JOE CAREERA (D.A. CW. VOHL)	7-1-81	262 SPOUSAL RAPE						CHARGES DISMISSED - BELIEVED WIFE ASKED THAT DA. DROP CHARGES. REASON UNKNOWN.			
C 33	DANIEL HERMICH #CRN 7008		262 SPOUSAL RAPE		0.2.	NOT GUILTY	HEARING 9-16-81		GUILTY	CONVICTED MANDATORY 222	6-14-81 4 YRS PROBATION AND \$2,000.00 FINE	CASE SET FOR JURY! HEARINGS PLEA GUILTY (BEFORE JURY) BEFORE JURY SELECTION
PL 34	FRANK RUSSELL KEMACHEK #A55300 CRV 7183	9-19-81 (MURKIN 9-1-81)	262. SPOUSAL RAPE INFA. ASSAULT WITH A DEADLY WEAPON	9-16-81	\$20,000 (DEFENDANT ASKED FOR 10.0. RELEASE TO WORK THROUGH TO SUNNY BEACH AT CAMP ARDELTON)			PLEA BARGAIN TO 245 ASSAULT			10-20-81 - - LIVE IN PSYCHIATRIC COUNSELING - 4 YEARS PROBATION - 116 DAYS COUNTY COUNTY JAIL (112 DAYS CREDITED DURING TRIAL).	CASE DISMISSED (ADMITTED OFFENSE & SURRENDERED ALREADY DROPPED) - BATTERY WIFE'S SUGGESTION - WIFE'S COUNSELLING BETTER THAN JAIL.
N35	ANON (D.A. D.A. THE MOORE)	INCOMP ON 6-11-81 (NO ARREST)	UNDER INVESTIGATION FOR SPOUSAL RAPE. VICTIM DECLINED TO PRESS CRIMINAL CHARGES						VICTIM DECLINED TO PRESS CRIMINAL COMPLAINT			

AGE	WIFE'S NAME	MARRIAGE STATUS	CRIME	PLACE	CHILDREN	RACE / ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
22	TERRY - 22	SEPARATED	HUSBAND COURT ORDER TO STAY AWAY FROM WIFE ENTERED THROUGH WINDOW OF WIFE'S HOUSE HIT WIFE IN FACE WITH FIST AND SHOE THREW WIFE AND SOLE \$20.00	WIFE'S HOME	none	BORN WHITE	unavailable	FRESNO	HUSBAND LEFT - WIFE CALLED POLICE
28	-25	SEPARATED	HUSBAND UNDER RESTRAINING ORDER TO STAY AWAY FROM WIFE EXCEPT ONE DAY/WEEK TO VISIT DAUGHTER. CRIMED ENTRANCE TO HOUSE ON PRETEXT OF VISITING DAUGHTER. STRUCK WIFE REPEATEDLY WITH HIS FIST. DROPPED HER UPSTAIRS AND THREATENED TO STRANGLE HER WITH TIGHTY HOLE. BARELY CHASED RADING FROM MAY 22, 1981	WIFE'S HOME	1 DAUGHTER			Union City & ALAMEDA - CA (BORN ALAMEDA COUNTY)	WIFE CALLED POLICE
37	-25	SEPARATED	SPONSORAL RAPE	WIFE'S HOME				FRESNO (BORN)	HUSBAND FLED
39	SUZANNE - 39	SEPARATED FILED FOR DIVORCE	RAN WIFE OFF SIDE OF ROAD TOOK HER BACK TO HIS HOUSE. CHOKED HER (UNCONSCIOUS) THREE TIMES, THEN RATED HER.	HUSBAND'S HOME	none	BORN WHITE	♀ - HOME-DRINKING SALES	VISTA, SAN DIEGO (BORN)	HUSBAND APPLICATED, WIFE GRABBED HER CLOTHES AND DROVE TO GAS STATION. CALLED FRIENDS FOR HELP.
31	MALIA - 46	MARRIED 6 MO. (WALKING ON SEPARATION)	THREATENED WIFE WITH PIECE OF GLASS WIFE WALK WITH HUSBAND TO DISCUSS FINANCES TAPPED IN CAR IN FRONT OF HOME.	CAR (ON STREET IN FRONT OF HOME).	2 BY WIFE'S FAVORITE MAGAZINE	BORN WHITE	♂ - MILITARY (MARINE) ♀ - HOUSEWIFE	BORN OCEANSIDE, NORTH SAN DIEGO COUNTY	WIFE CALLED POLICE HUSBAND HAD BEEN JAILED ON ASSAULT BEFORE.
20	SEPARATED	SEPARATED	HUSBAND FORCED WAY INTO WIFE'S APARTMENT. THREATENED WIFE'S FRIEND AND SUBMISSION DROPPED WIFE IN HEAD AND SHOULDER AREAS. THREATENED TO KIDNAP WIFE IF SHE DIDN'T HAVE SEX WITH HIM. RAPE WIFE IN FRONT OF THE BALCONY.	WIFE'S HOME - NORTH				9 WEST PITTSBURGH, CENTER COSTA COUNTY	HUSBAND LEFT AND RETURNED SEVERAL HOURS LATER. TOOK WIFE TO HIS APARTMENT AND BEGGED HER NOT TO LEAVE HIM. VICTIM AND BOYFRIEND (EVIDENTLY THE 'FRIEND' IN THE APARTMENT) ARE LEAVING THE AREA. BOYFRIEND AND NEIGHBORS WERE TOO FRIGHTENED TO CALL THE POLICE - DEFENDANT IS 6'2", 165 lbs. H.A. TRYING TO REMOVE DEFENDANT'S REGISTRATION.

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NAME	ARRESTED	CHARGES	ARRAIGN	BAIL	PLEA	TRIAL OR Preliminary hearing	COURT Plea	VERDICT	SENTENCE	OTHER DIS POSITION
ANDREW JACKSON ARMSTEAD #6119141	7-2-81 (inhouse)	245- ASSAULT w/ A DEADLY WEAPON w/ ENHANCEMENT 1202.55 288A - 2 COUNTS FORCED ORAL COBULATION 262 SPUSAL RAPE WITH 1202.55 NO. 21- RECON w/ GUN 665- FELONY COMMITTED BY SOMEONE WHO STOOD A PERSON SENTENCE	7/6/81 (municipal) 8/20/81 (superior)	None (PAROLE HOLD)	Not Guilty	PRE-Lim - 8/81 HEARING - 10-15-81	Not Guilty (SAID CONSPIRACY)	Guilty on 3 counts (By Jury) 245, 288(A), 262 (felony) Guilty on 2 counts (By Judge) 120.21 and 665	11-8-81 - 13 yrs 11 yrs - forced oral copulation - with gun. (81 shot gun) 2 yrs - 262 spusal rape, felony 1 yr - committing felony after serving prison sentence STAYED SENTENCES ON ASSAULT WITH A DEADLY WEAPON.	APPEN: IS LIKELY (Jury convinced of rape when wife testified to "that feeling" when the gun touched her filling up in her mouth.

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ANDREW RUSS #CR 56386	INCIDENTS: 9-15-81 ARREST: 7-11-81	262- 2 COUNTS OF SPUSAL RAPE	11-23-81	O.R. BY BOTH MUNICIPAL AND SUPERIOR COURT	Not Guilty	HEARING: 2-17-82 (will decide 11 July at THAT TIME) PRE-Lim - 11-12-81 - JURY TRIAL -	not guilty	NOT GUILTY		DA SPOKE TO SEVERAL JAMES. MOST FELT THAT THE RAPE OCCURRED, BUT COULDN'T DETERMINE - BEYOND A REASONABLE DOUBT, PICTURES OF BRUISES/ SCATHES SUBMITTED. NO MEDICAL EXAM, AS WIFE TRESSED CHARGES 1 DAY AFTER RAPE.
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ALFRED CLAUDE HARPER # 146567 (Municipal) # 3957 (Superior)	10-21-81 (two INCIDENTS: 10-17-81 and 10-21-81)	220- Attempted Rape (municipal) changed to 262- 2 counts (1-Attempted 1-completed) in Superior	12-14-81 (Superior) 10-21-81 (municipal)	\$5,000	NOT GUILTY	2-26-82 motion to dismiss evidence 12-1-81- pre-lim 3-26-82- pre-trial 4-21-82- TRIAL	Guilty (FEE- TRIAL)	Pled Guilty ON 1 COUNT ATTEMPTED (262) RAPE (FELONY)	5-11-82 2 YRS PROBATION \$500 FINE 4200 PENALTY ASSIGNMENT \$20 GVT. FEE STARTS PAYMENT JUNE 16, 1982 @ \$75/mo.	
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AGE	WIFE'S NAME - AGE	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
27	DORIS Ann 24	FILED FOR DIVORCE THE DAY BEFORE THE RAPE	ENTERED WIFE'S RESI- DENCE AT 3AM WITH GUN. PLACED GUN IN MOUTH OF WIFE AND THREATENED TO KILL HER IF SHE DIDN'T COMPLY.	THEIR HOME	2 - ONE FROM THIS MARRIAGE ONE HERE FROM PREVIOUS MARRIAGE	BOTH BLACK	♂ - CHEMICALLY UNEMPLOYED 12 MONTHS OUT OF PRISON AT TIME OF INCIDENT	SACRAMENTO (City: Co.)	HUSBAND FELL ASLEEP. WIFE UNPLUGGED BEDROOM TELEPHONE SO HE COULD NOT LISTEN IN. CALLED SISTER, WHO CALLED THEIR MOTHER, WHO CALLED POLICE.
31	SHIRLEY ANN 26	SEPARATED (PETITION OF DissOLUTION 10-22-80) WIFE LEFT IN AUG. 1981 DissOLUTION IS BELIEVED TO HAVE BEEN COMPLETED	PICKED WIFE UP AT HER PLACE OF WORK AND TOOK HER, OVER HER OBJECTIONS, TO HIS HOUSE (HER FORMER RESIDENCE) OVERPOWERED HER AND Raped HER. HOW PERHAPS OF DISCUSSING DIVORCE.	HIS HOME	None	BOTH BLACK	♂ - HAD BEEN UN- EMPLOYED. JUST STARTED A SALES- RELATED JOB RIGHT BEFORE RAPE. ♀ - SECRETARY (LAW- RELATED).	SAN DIEGO (City: Co.)	CONTACTED NEIGHBOR - RAN OUT OF HOUSE AND STARTED KNOCKING ON NEIGHBORS DOORS. SEVERAL WENT HOME. SOMEONE FINALLY LET HER IN. WIFE CALLED FRIEND, WHO PICKED HER UP AND HAD HER. THEN, WIFE CALLED POLICE FROM FRIENDS HOUSE.
48	KATHLEEN 83	SEPARATED (9-28-81)	10-21 - WIFE AWAKE TO FIND HUSBAND ON HER BED. HE MADE BEING ADVANCES WHICH WERE REFUSED BY WIFE. TWO DAUGHTERS WERE AWAKENED AND ENTERED BEDROOM. HUSBAND YELLED AT THEM TO GET UP, THAT HE WAS MAKING LOVE TO THE MOTHER. PENETRATED WIFE WHO THEN STOPPED STRUGGLING TO AVOID BEING Raped. 10-17 - COMPLETED RAPE. HUSBAND ENTERED HALL - BEGAN CREEP OUT OF BED AND PULLED HER BY THE HAIR OF HER HAIR. SHE SAW HIS HANDS ON HER AND SHE WOULD DO WHAT HE TOLD HER. THIS INCIDENT WAS NOT REPORTED AT THE TIME AS WIFE HAD HER PERIOD AND WAS TOO EMBARRASSED TO BE EXAMINED. SHE FELT THAT WITH OUT THIS MEDICAL EVIDENCE THERE WOULDN'T BE ENOUGH EVIDENCE TO BRING THE RAPE CHARGE.	WIFE'S HOUSE	2 daughters (10 & 13)	BOTH WHITE	♂ - SELF-EMPLOYED "ENGINEER" - INVESTOR, REAL ESTATE... ♀ - BETWEEN JOBS @ THE NOW - RECEPTIONIST	BOTH HAYWARD, ALAMEDA COUNTY.	POLICE ARRIVED (APPARENTLY CALLED BY DAUGHTERS?)

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Name	Arrested	Charges	Arraign	Bail	Plea	Trial or Pre-hearing	Court plea	Verdict	Sentence	Other disposition
GREGORY DEAN JACKSON	incident Aug 27, 1981 (also date of arrest & crim. complaint)	262 Spousal Rape (2 counts) felony 288a - Oral Cop.	8-31-81 (municip.) 9-28-81 (superior)	\$5,000	NO CONTEST (11/17/81)	Pre-Lim - 9-14-81		[Plea bargain] TO FELLOW 262 FOR DROPPING 288 ORAL COP. CHARGE	Dec 15, 1981 1 yr. county jail (AS CONDITION OF PROBATION)	JACKSON STATED HE HAD BEEN PLANNING TO MOVE TO ALABAMA, WHERE HE HOPED HIS WIFE WOULD JOIN HIM TO THE JUDGE Plead to no contest in exchange for dropping 288 (oral cop.)
Andrew L. Dawalog	12-9-81	262 - spousal rape 373.5 wife beating	WIFE PROMISED (HUSBAND) NOT TO PROSECUTE	MADE NOT TO PAY TO	DEAL WITH ANNOY WIFE AND PLEA	HUSBAND/D.A. IN EXCHANGE FOR TO A BASE OUT	HUSBAND HAD DROPPED OFF STATE	LEFT STATE AND PENDING THE CHARGES		DIVORCE PROCEEDINGS UNDERWAY.
KENNETH SCOTT ELROD	10-81	262 - 2 counts felony spousal rape 207 - felony kid-napping	11-25-81	\$50,000	NOT GUILTY (11-30-81)	THE TRIAL 1/1/82 PRE-LIM - 1/1/82	NO CO. CONFERENCE NO CONTEST TO 262 (MISDEMEANOR)	[PLEA - BARGAIN]	3-22-82 8 mos. suspended sentence (county jail if violate probation) 18 mos. formal probation counselling w/ psychologist & marriage counsellor	PLEA - BARGAIN - MISDEMEANOR 262 TO DROP 207 & 262; lowered other count 262 to misdemeanor. Wife refused to testify. BELIEVED REASSURED BY FAMILY.

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NAME	ARRESTED	CHARGES	ARRAIGN	BAIL	PLEA	TRIAL OR PRE-HEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
MICHAEL RODRIGUES 38F261 (municip) C10907 (Superior)	12-2-81	262- Spousal Rape 207- Kidnap 664/288A(1)-AT-TEMPTED OERL COP.	1-20-82 (municip)	\$100,000	NOT GUILTY	Pre-Lim - 3-24-82 TRIAL: 4-5-82; 4-7-82	NOT GUILTY	GUILTY - FELONY 262	4-14-82 5 YRS. Formal Probation 1 YR. COUNTY JAIL.	

PC 43

GERALD JOHNSON # 107121	11-28-81	245(a) - 2 counts ASSAULT WITH A DANGEROUS WEAPON 262(a) - Spousal rape 12022.5 - ENHANCEMENT (GUN)	2-8-82 (Sup. Ct.)	\$13,500	NOT GUILTY	Pre-Lim: 3-24-82 TRIAL: 5-27-82		PLEAD GUILTY TO 262 ON 3/21/82 (felony)	4/22/82 3 YEARS STATE PRISON	
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RODRIGIO RYES (AKA LUIS) # 107007	complaint 12/14/81 (warrant issued 11-24-81. Busted 11-30-81) rape occurred 11-6-81	262 - 2 counts Spousal rape 457 - burglary 245(a) - assault w/ 12022.0 enhance. (knife). 288A(2) - 2 counts forced oral cop. 4 enhance. 12022.0 (knife)	1-26-82 (sup.)	released on \$2,500	Not Guilty	pre-trial 4/28/82 continued to pre-trial 4-18-82 MUN TO: PRE TRIAL: 5-6-82 TRIAL: 5-10-82 reset to: pre-trial 6/11/82 TRIAL: 7/12/82 reset to: pre-trial 8-25-82 TRIAL: 8-30-82		changed plea before trial. PLED GUILTY TO 245a. DROPPED 262, 288, 457.	10-4-82 SUSPENDED SENTENCE. 3 YRS. PROBATION	DEFENDANT REQUESTED PLEA BARGAINING, CONDITIONS - ORIGINALLY, LATER, PLEA-BARGAIN ACCEPTED - ASSAULT FOR DROPPING; 262, BURGLARY; FORCED ORAL COP. AS THE TRIAL APPROACHED, THE EVIDENCE WAS GETTING BETTER FOR LUIE. HE HOWEVER WAS GETTING SCARED. OFFERED ONE. PLEA-BARGAIN TO LUCY/DA DA DIDN'T WANT IT, BUT AGREED TO VICTIM'S DESIRES.
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AGE	WIFE'S NAME/AGE	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
35	ADRIA-22	SEPARATED	BROKE DOWN DOOR OF WIFE'S HOUSE (IN FRONT OF 2 CHILDREN (BABYSITTER), SLAPPED WIFE AGAIN AND PULLED HER IN TOWARD TRUCK. TOOK HER TO A ROOM IN A HOUSE WHICH HE RENTED. TOOK OFF HER CLOTHES. THREATENED TO "BLAW YOU AND THE POLICE AWAY IF YOU CALL THEM". RAPED WIFE. WIFE ATTEMPTED TO ESCAPE. PULLED HER BACK INTO ROOM. ATTEMPTED TO FORCE ORAL COIT. HAD WIFE FOR SEVERAL HOURS, THEN HE LEFT IN THE TRUCK.	HUSBAND'S RENTED ROOM	2 Boys (2, 4)	M. Mex-Am. F. WHITE	F. Homemaker	BOTH REDWOOD CITY, SAN MATEO COUNTY	HUSBAND DROVE OFF AFTER RAPE AND TOLD WIFE TO GET OUT OF HIS APARTMENT. WIFE CALLED POLICE A FEW DAYS AFTER INCIDENT. SAID DELAYED CALLING BECAUSE WAS AFRAID HUSBAND WOULD HURT HER.
24	ROSE 24	DEPARTED	HUSBAND WAITING FOR WIFE AT BUS STOP NEAR HER HOUSE. WIFE TRIED TO RUN AWAY. HUSBAND PULLED HAND GUN ON HER AND ORDERED WIFE TO KEEP WALKING. WHEN THEY REACHED A DUNGEON AREA, FORCED WIFE INTO BEHAVIOR AND MADE HER UNDOSS WIFE COMPLIANT, FORCING HER TO GO TO WIFE'S HOME. WIFE WAS THEN RAPED WITH GUN HELD TO HER HEAD. HUSBAND REMOVED SOME ITEMS FROM WIFE'S DRAWER, THEN LEFT.	BURBANK NEAR WIFE'S HOUSE	NONE	BOTH Black		SAN FRANCISCO (CITY; COUNTY).	WIFE WALKED HOME AFTER HUSBAND LEFT AND CALLED POLICE, GIVING EXTENDED HUSBAND'S ADDRESS.
245	LUCY 42 SAMUEZ	SEPARATED (Dissolution Proceedings in process) 27 YEARS MARRIAGE	ENTERED W/KEY, BUT EVIDENTLY DAMAGED LOCK. SHE TRIED TO STOP HIM, BUT HE THREATENED HER W/ A KNIFE. RAPED HER LOCAL COP, ETC.	1112 AVT.	5 (4 ARE OLDER AND NOT LIVING AT HOME) 1, 4yr old son (WIFE CURRENTLY HAS CUSTODY, BUT IS IN DISPUTE)	BOTH Puerto Rican	M employed, but inactive in what P unemployed	both S.F.	HUSBAND LEFT. WIFE CALLED WOMEN INC., WHO TOOK HER TO A SEXUAL TRAUMA CENTER. FROM THERE, SHE CALLED THE POLICE. [VICTIM WAS INTERVIEWED BY BBC ON A NEWS PROGRAM SPECIAL INVESTIGATING THE EXPERIENCE OF "RAPE VICTIMS"]

	Name	Arrested	Charges	Arraign	Bail	Plea	Trial or Pre-hearing	Court plea	Verdict	Sentence	Other disposition
45 PC	Kenneth Barnett	Dec. 10 ¹⁹⁸¹ - date of arrest & occurrence Dec. 29 - crim. complaint. Would have been arrested earlier, but had to opt evidence.	262A (2 counts) Burglary - 459 286C - sodomy 288 a(c) forcible oral copulation	Jan. 7 82	files do not indicate	Not guilty	Pre-lim. March 9 TRIAL - 6-28-82 continued to: November 1, 1982 continued to: Feb 7, 1983	NOT GUILTY - CHANGED TO GUILTY OF 2nd count of 262	GUILTY AS PLED.	DIAGNOSTIC STUDY TO BE DONE BEFORE SENTENCING, 6-9-83	
45 PC	William Cuets OLDHAM # 82777	2-28-82	262 - rape 245 - assault w/ a deadly weapon 236 - False imprisonment 148 - resisting arrest	3-4-82	Denied - held in custody	NOT GUILTY changed to guilty	3-19 pre-hearing (municip.) 3-27 pre-hearing. 5-10 - pre-trial 5-18 - trial - moved to 6-11 - PRETRIAL 6-21 - TRIAL	GUILTY (6-25)	guilty (by plea) to 262 and 245	7-27 MOVED TO 8-25 5 YRS STATE PRISON	PLEA-BARGAIN!! Dropped resisting arrest and false imprisonment charges in exchange for guilty plea.
pc 43	MIGUEL ESQUIVEL # 136815	MAY 4th, 1982	262 - Spousal Rape 136.1 - DISSUADING WIT-NESS 207 - KIDNAPPING 273.5 - BATTERY ON SPOUSE	5-7-81	420,000	NOT GUILTY	Pre-Liminary 5-21-81	NOT GUILTY CHANGED TO NO CONTEST ON 9-2-81	[TRIED GUILTY] felony rape	4-13-82 5 YRS. STATE PRISON (3 for Rape; 2 for gun)	TRUATION DEPT., DIAGNOSTIC CENTER, ATTORNEY, & 2 PSYCHIATRISTS ALL RECOMMENDED TRUATION / DEBAR-ATION. "BASICALLY NON-VIOLENT EXCEPT TOWARDS WIFE"; JUDGE AND D.A. DECIDED VIOLENCE WAS NOT TO BE DISMISSED.

Age	Wife's name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Unfolded
7-23 D-36	Katherine	estranged	He came into house in night thru window - they committed men sex conduct, then intercourse, and sodomy. 1 1/2 hr. between rapes - (262)	in her home	1 - very young	M white (?) (check at logs) F white	M - no idea F - just a house- wife possibly employed - self?	Escorido, San Diego	Medical evidence of sex, some abrasion on chest/neck. He had been physically violent before - so she was fearful... Had to take child to mother's as she didn't want to leave child w/ him - had to get him out of the house - took child to mother's, and self to work. (DA not sure) (?)
31	SUZAN 25	SEPARATED	Raped wife, held her hostage in the bedroom of her home. Fired shot at P's father as he fled house to call police.	in her home	no info available	M - BLACK	M - unemployed F - NOT AVAILABLE	San Jose	1 1/2 HOURS AFT. POLICE ARRIVED AND SURROUNDED HOUSE, ODHAM SURRENDERED.
25	MARY c. 26 w 27	SEPARATED	MIGUEL BEAT INTO WIFE'S HOUSE AT 4AM. FORCUMEN TO WALK AT GUNPOINT 3 BLOCKS TO HIS APARTMENT (THEIR PREVIOUS JOINT RESIDENCE). ORDERED WIFE TO UNDO, HIT HER IN FACE W/ PIST, KNUCKLED HER HEAD INTO THE WALL, AND Raped her.	WIFE'S HIS HOME (PREVIOUS JOINT RESIDENCE)	2 CHILDREN (NOT BY MIGUEL)	BOTH HISPANIC (M. MEXICAN, LEGAL ALIEN FOR 12 YEARS)	M - Bush Dry & various "menial" jobs F - at time, working in small factory currently unemployed	Born: SANTA BARBARA	HUSBAND THREATENED TO HURT HER MORE IF SHE CALLED THE POLICE, THEN DROPPED HER OFF AT HER MOTHER'S, WHERE SHE IMMEDIATELY CALLED THE POLICE.

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NAME	ARRESTED	CHARGES	ARRIGN	BAIL	PLEA	TRIAL OR Pre-Hearing	CRIM. REC.	VERDICT	SENTENCE	OTHER DISPOSITION
48 PL GARY DALE NICHOLS	2-28-82 3-5-82	262A-2 COUNTS CRIMINAL RAPE 245 - BATTERY 459 - BUREGLARY (TRACING INTO HER APP.)	413 82	\$5,000 (APP. 1st ARREST) → 10,000 OR 40,500 (APP. 2nd) RELEASED ON O.R. AFTER PIA. BARGAIN	NOT GUILTY	PRE-LIM. 3-25-82 TRIAL - 6-1-82 NEVER HELD BECAUSE OF CHANGE OF P.I.A.	GUILTY TO ASSAULT W/ A DEADLY WEAPON (HAND) IN EXCHANGE FOR DROPPING 2 RAPE CHARGES & THE BUREGLARY (PIA. BARGAIN) 5-3-82	(PIA. BARGAIN)	6-17-82 36 MONTHS PROBATION 106 DAYS (TIME SERVED)	PIA. BARGAINING AT REQUEST OF WIFE. 202 DROPPED
49 D JIMMY L. NORMAN	5-13-82 (5-17-82 CHARGES FILED)	262A - SIMILAR RAPE 261-2 - RAPE OF CITIZEN THAN WIFE 288A - CRIM. COP	517 82 (MUN.)	45,000	NOT GUILTY	1-17-82 PRE-LIM	CHARGES DROPPED BY D.A. WHEN WIFE REFUSED TO TESTIFY. (AFTER WIFE REFUSED TO TESTIFY, OTHER VICTIM ALSO REFUSED SINCE SHE FELT THE CASE WOULD BE WITNESSED (HIS TESTIMONY DOUBTED) - WIFE IS NOW SAYING SHE LHO AND			D.A. SHELEMAN TALKED HIS WIFE OUT OF TESTIFYING. D.A. TRIED TO TALK TO WIFE AGAIN BUT SHE AVOIDS W/ NORMAN. WOMAN EVIDENTLY FANTASIZED ABOUT MARRIAGE X YEARS, AND APPARENTLY CARRIED OUT HIS BELIEFS. WIFE FEELS NORMAN'S TRAPLUM IS A "RESCUE" OF HIS ALCOHOLISM. SHE WANTED HIM OUT HISLIFE W/ P, BUT JAIL TIME.
50 C DAN LE ROY VON KROGER	9-2-81 CHARGES FILED 9-4-81 (NICKED)	262A - 2 COUNTS CRIMINAL RAPE 288A - CRIM. COP (2) 245 - BATTERY A BATTERY ON A WOMAN 11-15-82 (MUNICIPAL S.C. 14) PRE-PROBATION CRIMINAL TRIAL 288A (NICK)	SUB. CRT. 2-2-82 (10-19-81 in MUN.)	\$21,500	NOT GUILTY	5-3-82 TRIAL 5-10-82 (CRIM. PRE- LIM BEGAN IN 11-81, AND WAS CONTINUED THROUGH MAY 1982)	NOT GUILTY	GUILTY ON 5-10-82 OF 6 COUNTS: 2 sexual rape 2 oral cop 0.52 counts w/ already w/ probation possession of cocaine	6-14-82 19 YEARS FOR BATTERY FOR 200 - 2nd 200 CHARGE ETC. REFERENCE TO BE RE-ARRESTED - 3 yrs. 207. 2nd COUNT SAME SENTENCE TO BE HEARD CONCURRENTLY CHARGES AND BURN SENTENCES TO BE SERVED SIMULTANEOUSLY	Since original charges filed, VON KROGER WAS EVIDENTLY CHARGED W/ FURNISHING WITNESS (CHARGED W/ NON SPEAK THAN 200 COUNTS, ETC. TO PROSECUTE W/ FROM SELLING D.A. WITNESSED TO CUT OFF W/ HER FINGER... AND SELLING OF CRIMINAL (2. CHARGES).

AGE	WIFE'S NAME	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
22	CYNTHIA-22	SEPARATED. 3-4 MOS. (MARRIED 6 MOS.)	HUSBAND AND WIFE STILL SEEING EACH OTHER. FEB. 25th, ON A VISIT, 1st RAPE OCCURRED. WIFE WISHED WHETHER TO REPORT, SO WAITED. SEE CRIME INVESTIGATOR FELT CALL NOT THAT STRANG. (SP. W) WIFE'S RELUCTANCE TO GO THROUGH WITH REPORT/ CHARGE, SO RECOMMENDED CR. THOUGH HUSBAND A TRANSIENT WHO WAS LIVING IN A TRASH DUMP AND UNEMPLOYED. HUSBAND RETURNED ON 4/5. RE- PEATEDLY STRUCK WIFE. RAPE HER, AND HELD HER FOR 14 HOURS.	P's HOME	NONE	BOTH WHITE	M-UNEMPLOYED F-BOOKKEEPER	BOTH ULTRA (SAN DIEGO)	FATHER TALKED CYNTHIA INTO PRESSING CHARGES.
35	ALICE-30	MARRIED & LIVING APART	RAPED WIFE AND HER FRIEND (WHO WAS TEMPORARILY STAYING w/ THEM). THREATENED THEM w/ SHOTGUN.	THEIR HOME	NONE	BOTH WIFE	F-housewife M-unavailable	BOTH DELHI, MERCER CO.	
33		MARRIED 2 YRS. SEPARATED JUNE '61	WIFE WENT OVER TO GETRANDED HUSBAND'S APT. TO DISCUSS INVOICE. HUSBAND HIT HER AROUND FACE/HEAD. THREATENED HER w/ GUN & KNIFE. RAPED HER 2x. ORAL COITULATION. FORCED, 2x. <small>IN KANGAROO DURING DAY. RAN A BARGE OVER HER BODY THINKING IF HE WAS "BIGGER THAN YOUR FRIEND"</small> MADE WIFE TAKE SHOWER "SO THERE'D BE NO EVI- DENCE". THREATENED WIFE w/ KNIFE TO HER CHEST. THREATENED WIFE w/ KNIFE HAIR w/ THE KNIFE.	HIS APT.	NONE	BOTH WHITE	M-MECHANIC/ WILDFIRE F-PART TIME STATIONARY PART TIME WORK AT EQUIPMENT STORE	FRIEND	HUSBAND RELEASED WIFE (AFTER THREATENING HER). WIFE RETURNED HOME. THE DAY AFTER THE INCIDENT, THE WIFE WENT TO THE HOSPITAL BECAUSE OF PAIN IN NECK/HEAD. SHE TOLD STAFF AT HOSP. WHAT HAPPENED & THEY CALLED POLICE. AT THAT TIME, WIFE DECLINED TO PRESS CHARGES, SAYING SHE JUST WANTED HER HUSBAND TO LEAVE HER ALONE. WHEN HUSBAND SHOWED UP AT HER PARENTS' HOUSE (WHERE SHE WAS STAYING), SHE TRIED CHARGE.

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	NAME	ARRESTED	CHARGES	ARRAIGN	BAIL	PLEA	TRIAL OR PREHEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
51 PK	ROGER HAROLD ADAIR #26872	6-9-82	262- (attempted) Spousal rape 459- Burglary 236- False Imprisonment	6-9-82	\$10,000	NOT GUILTY	'pre-plea' - 8-2-82 HEARING: 8-11-82 MOVED: TRIAL: 9-20-82	262 charge dropped. PLEAD GUILTY - 82 TO FALSE IMPRISONMENT AND BURGLARY (CASE EVIDENTLY DROPPED; REFILED UNDER MISDEMEANOR FALSE IMPRISONMENT/BURGLARY)	1 YR. COUNTY Jail. + TIME SERVED. (SENT. MIGHT CAN BE PARTIALLY WORKED OFF BY WORKING ON "TEAM CHALLENGER" PROJECT. (9-15-82) 3 YRS. PROBATION w/ SUPERVISION NOT TO HARASS WIFED.		
52 PK	James P. Jones	7-22-82	262- Spousal Rape 207- Kidnapping	9-2-82	\$10,000	PLEAD GUILTY TO KIDNAPPING (262 DROPPED).	9-2-82			7 YRS. (PROBATION DENIED BECAUSE OF "BE" GUILTY OF CASE. 9-23-82)	PLEA-BARGAINING ALLOWED BECAUSE "IT WAS FEARED THAT THE WIFE MIGHT NOT BE COHERENT ON THE WITNES STAND."
53 C	Albert Castellanos # 83504	4-25-82	262: spousal rape 288(A) - Forcible oral copulation	Sup. Ct 5-24-82	NOT AVAILABLE	guilty to 262	[no trial - PLEA-BARGAINED]	guilty	pledged guilty to 262 (DROPPED 288).	8-20-82 - CHANGED TO 9-10-82 7 YRS PRISON	plea bargain - dropped oral cop. charge in return for guilty plea. Castellanos had been previously convicted of raping another woman while the couple was living together before they were married. They were married while he was in prison for the previous rape. WIFE SUBMITTED NOTES THAT LISTED HER WORK SCHEDULE & HOURS - SAID SHE HAD BEEN TRYING TO MAKE HER. HE SAID HE WAS FOR A "MARRIAGE SETTLEMENT" - SHE HAD BEEN BEING ABUSED BY HIM.

CALIFORNIA

LEGAL CHART

THAT CASTELLANOS WAS IN PRISON

AGE	WIFE'S NAME	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
23	TERESA-35	SEPARATED G-MOS.	HUSBAND BROKE INTO WIFE'S HOME (BURGLARY CHARGE) & ATTEMPTED TO RAPE WIFE. WIFE USED MACE ON HIM. HUSBAND GOT UP, PUT PANTS ON & SAID, "WHY DO YOU CALL THE POLICE I WANT TO GO TO JAIL. WIFE MACE HIM AGAIN.	HER HOUSE		M. CAUCASIAN	unavailable	ANTIOCH, CONTRA COSTA	USED MACE 2 ND . HUSBAND LEFT. WIFE CALLED THE POLICE.
31	Audrey -22 NEWS	separated	Kidnapped wife in Fresno, drove her all the way to the coast. Took her to an isolated wooded area and raped her repeatedly.	isolated wooded area off highway 1.	NONE	BOTH CAUCASIAN	M. TRANSIENT F. TEACHER'S AIDE	Fresno, Fresno Co.	Police spotted car parked off the road and went to investigate. Found wife and husband and arrested husband.
32	Carolyn Rinta -23	married, wife was trying to leave when rape occurred, plans to divorce husb.	Wife got in her car to leave husband. He was waiting for her inside the car. He accused her of having an affair, ordered her to drive home where he told her he was going to "teach her a lesson" and raped her.	their home	one daughter	M. HISPANIC F. CAUCASIAN	M. unemployed wifes helper F. ELECTRONIC ASSEMBLER	San Jose, Santa Clara Co.	Both fell asleep in living room. Victim called police in the morning.
						CALIFORNIA	SOLOGICAL	CHART	

	NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	PLEA	TRIAL OR PREHEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
54 PC	RUBIN TOLLIVER	4-23-82	262 - SPOUSAL RAPE 288a(1) - 5 counts forced oral copulation 273.5(a) - Lewd act with a child 273(d) - Lewd act with a child 261.5 - RAPE	6-7-82	\$50,000	NOT GUILTY	PRE-LIM - 5-28-82 PRE-TRIAL - 7-7-82	11-7-82 - I TO ALL COUNTS EXCEPT 273(d)	LEAD GUILTY	10-8-82 - reset to: 10-22-82; RESET TO: 10-27-82 - FINES STATE PRISON - PROBATION DENIED	PLEA BARGAINED TO DUI & GUILTY TO CHILD CARE
55	ANON.	RAPE: 3-21-82 10:15 pm	262 - spousal rape 207 - Kidnapping	believe	rape charges dropped.	THEFT	CHARGES FILED SEPARATELY AGAINST HUSBAND.	BURGLARY / GRAND			
56 C	JOHN WATKINS	7-26-82	262 rape 288a - forced oral copulation 295 ASSAULT w/ a deadly weapon (All 3 counts w/ 2 juvenile girls)	11-4-82 cont'd to 11-5-82	\$50,000 (not met)	NOT GUILTY	Pre-hearing: 10/10 & 10/24/82 TRIAL: 12-2-82 reset: 12-23-82	Not Guilty	GUILTY BY JURY OF ALL 3 COUNTS 2-20-83	(Maximum sentence 20yrs) 2-24-83 262-A: 3 YEARS + 2 YEARS FOR USE OF DEADLY WEAPON = 5yrs. FORCED ORAL COIT. SENTENCE TO LHM CON- CURRENTLY	(8 YR. OLD BOY TESTIFIED)

AGE	WIFE'S NAME	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
27	SANDRA 35	MARRIED			2	BOTH BLACK	M - SCHOOL CUSTODIAN W - HOME MAKER	Petal Sea TJERE	HUSBAND AND WIFE FELL ASLEEP ON COUCH.
		ESTRANGED	KIDNAPPED WIFE. DROVE HER TO HIS HOUSE. RAPPED HER IN HIS BACK YARD. [SHE WOULD NOT BELIEVE. HUSBAND SEEMED VERY ANGRY. ED FOR WINDOW TO SPEAK TO HER. PLACED INSIDE. PULSED HER OUT, FIRING. HE PUT INTO HIS CAR. DROVE TO HIS ACT.] FICE. USED REPEATED BEATINGS	HUSBAND'S BACK YARD			M - DEAN W - TEACHER	M - OAKLAND W - SAN FRANCISCO	W CALLED HER ATTORNEY AFTER RAPE & WAS TREATED BY KATHLEEN HOOD. RICHARD ON HER ATTORNEY'S ADVICE, WHERE SHE WAS TREATED FOR LOUISIS.
58	DIANA 35	ESTRANGED	HUSBAND ENTERED WIFE'S HOUSE AT NIGHT & WIFE WIFE UP. FORCED HER AT GUNPOINT INTO THEIR CHILDREN'S ROOM WHERE HE THREATENED HIS DAUGHTER, GRACE, AND THEN HIS WIFE. TOLD WIFE HAD TO GO TO A PARTY NEXT MORNING (WIFE FOUND) HUSBAND WIFE ON PHONE. MADE HER SIGN IN 1981 DECLARATION. WIFE CLAIMS HUSBAND INTERFERED (WHICH HE DENIES)	FLOOR IN WIFE'S HOUSE	2	M - WHITE W - ASIAN (CHINESE)	M - usually un-employed. odd jobs on and off. W - CLERK	Both: Dunsmuir, LA County	HUSBAND TRIED TO TALK WIFE INTO dropping THE DIVORCE CASE AND THEN LEFT. PICKED UP FOR DRUNK-DRIVING & CONCEALED WEAPONS. AFTER ARREST, CHARGED w/ RAPE.

CALIFORNIA SOCIOLOGICAL CHART

	NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	PLEA	TRIAL OR PRE-HEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
57 C	JOE DEAN TAYLOR		12 counts: 262 - Spousal rape (1 full, 1 attempted) 288a - Forcible ORAL COPULATION 4 counts 286c - Sodomy 207 - Kidnapping 2 counts 245 - Assault w/ a deadly weapon upon their daughter 3 - counts			Guilty	None - PLEA BAR. GAINED	→	Guilty of ONE COUNT EACH: spousal rape, sodomy, oral cop., kidnapping (of wife) assault w/ a deadly weapon (upon daughter).	Potential: 29 yr. Bus. Received 11 YEARS STATE Prison. Court imposed the aggravated term on all counts, but ran the sentences concurrent to the one charge of oral copulation w/ knife enhancement.	PLEA BARGAINED "IN AN EFFORT TO SPARE THE VICTIMS THE TRAUMA OF A JURY TRIAL AS WELL AS FOR EVIDENTIARY REASONS"
58 PL	MICHAEL ANTHONY DIEHL	rape: 1-10-83 amended criminal complaint 1-24-83	262 - spousal rape 245 - assault w/ a deadly weapon 189 - Burglary 235 - inflicting corporal punishment on a spouse 288(a) forced oral copulation 289 - rape w/ a foreign object 286 - forced sodomy	1-11-83	\$100,000	Pled Guilty to amended charges: assault w/ a deadly weapon; felony wife beating. Charges amended w/ wife's approval			Pled guilty: 245/273.5 ↳ misdemeanor.	1 yr. suspended sentence for county jail. 30 days served. Must complete health program.	No visitation of wife. Limited child visitation rights to be arranged.

AGE	WIFE'S NAME/AGE	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
		ESTRANGED	KIDNAPPED WIFE AND 2 YR. OLD DAUGHTER TO COUNTRYSIDE. THREATENED MOTHER'S CHILD! RAPED MOTHER, ASSAULTED DAUGHTER.	Country Side	1 (2 yr old daughter)				
25	MIKEY 24	ESTRANGED	HUSBAND ENTERED WIFE'S BEDROOM AT 2:30 AM - HE TOOK KNIFE TO HER THROAT. ORDERED WIFE INTO BATHROOM, TOLD HER TO BE QUIET; RAN THE BLADE OF THE KNIFE ACROSS HER THROAT, UNDER HER NOSE! TOWARDS HER EYES.	WIFE'S HOUSE			Unemployed	BOTH: CRENSHAW CITY	Husband left, threatening wife not to call police.

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11. 41. 445(a)

APPENDIX II

State-by-State
Information on Marital Rape
Exemption Laws

by Joanne Schulman
*Staff Attorney with the National Center
on Women and Family Law, Inc.*

A husband's rape of his wife is not a crime in most states. This legal right of wife rape is known as the "marital rape exemption," and is included in most states' rape statutes.

There are many types of marital rape exemptions. The state-by-state summary divides the exemptions into the following categories.

CATEGORY

- 1 *Absolute Exemption.* A husband can never be prosecuted for rape of his wife so long as the parties are married. The exemption still applies even if the parties are separated by court order. The exemption only ends when the parties are divorced; when the man is no longer *legally* the victim's husband.
- 2 *Partial Exemption.* A husband can be prosecuted for rape of his wife in some circumstances. Some states allow prosecution if the rape occurred after one spouse filed papers in court to end the marriage, or when the parties were not living together. The event or circumstance that ends the exemption differs from state to state.
- 3 *Cohabitant Exemption.* A man who is living with a woman that he is not legally married to cannot be prosecuted for raping her. Often this exemption is stated as a "defense," rather than a bar to prosecution. Thus, the district attorney may institute rape charges against the man, but he cannot be convicted of rape if he can prove he was living with the victim.
- 4 *Voluntary Social Companion Exemption.* This exemption may apply to husbands, cohabitants and social companions (i.e., dates). There is no requirement that the rapist live or have lived with the victim. Most states that have this type of exemption require that there have been past voluntary sexual relations between the defendant and victim in order for the exemption to apply. However, West Virginia does not require any past sexual activity.

CATEGORY	
5	<i>Silent Statute.</i> The law does not mention whether husbands may or may not be prosecuted for rape of their wives. It has been assumed, until recently, that husbands could <i>not</i> be prosecuted because of Hale's alleged "common law" marital rape exemption. However, recent lawsuits in New Jersey, Massachusetts and Florida have held that no "common law" exemption exists. Thus, it is not clear if husbands can be prosecuted for marital rape in these "silent" states. Whether marital rape is a crime in these states will depend on future judicial decision, or legislative interpretation of the statutes.
<i>No Exemption</i>	The marital rape exemption has been abolished; husbands can be charged with rape of their wives in all or most cases.
<i>Rape Degrees</i>	In some states, there are different "types" of rape, murder, assault, etc. In most states, the criminal laws punish rape more or less severely depending on the circumstances of the rape (e.g., whether a weapon was used; age, mental and/or physical condition of the victim; whether the assault involved illegal sexual penetration, conduct, contact or use of a foreign object). These differences in the law are called "degrees." It is not possible to give a uniform definition for each "degree" as each state bases its rape degrees on different factors. (The fact that the marital rape exemption may apply in some rape degrees and not others has political and practical significance. The law is saying that it will tolerate certain violence by husbands against their wives that it will not tolerate between strangers. Practically, the different application of the exemption, based on the degree of rape charged, may decide whether marital rape cases will ever be prosecuted or what, if any, penalty will be imposed.)
<i>Gender-Neutral Statutes</i>	Traditionally, the law defined rape as a crime only men could commit. Thus, only husbands were granted the "immunity" or protection of the marital rape exemption. Today, many states have rewritten their laws in gender-neutral terms. Under these new rape laws, women can also be prosecuted for rape and the immunity granted under the marital rape exemption is extended to both spouses. The following chart does not incorporate these gender-neutral changes since it is intended to reflect reality rather than pure "legalese."

These categories are general, and states may fall into more than one category. In addition, considerable legislation and litigation has been occurring over the last two years, and therefore the following chart only reflects the law as of July 1, 1981.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Alabama	1, 3	Husbands and cohabitators can <i>never</i> be charged with rape of mate.	Title 13A-6-60(4), 13A-6-61
Alaska	2	Husband can only be charged with rape of wife if parties were living apart or he caused	Stat § 11.41.445(a)

*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW severe physical injury (besides the rape).	CITATIONS*
Arizona	2	Husband cannot be charged with wife rape while parties are living together.	R.S. § 13-1404-06
Arkansas	5	Statute only exempts husbands in statutory rape cases. Whether marital rape is a crime will depend on judicial decision or legislative interpretation of "common law" exemption.	Stat. § 41-1803, <i>et seq.</i>
California	<i>No Exemption</i>	Husband can be charged with crime of "spousal rape." Thirty-day reporting requirement.	Pen. C. § 262
Colorado	2	Husband cannot be charged with rape of wife while parties live together.	R.S. § 18-3-409
Connecticut	<i>No Exemption to First-Degree Rape; 1, 3</i>	Spouse/cohabitators can be charged with first degree rape; marital and cohabitor exemption for all other sexual assaults.	Pen. Code § 53a-67(b), as amended by H.B. 5247
Delaware	3, 4	"Voluntary social companion" of victim cannot be charged with first degree rape; this may exempt husbands, cohabitators and "dates." Cohabitators (and spouses living together) cannot be charged with rape of mate.	D.C.A. §§ 761-764, 772(b)
District of Columbia	5	Not known if "common law" exemption applies, making marital rape legal.	R.S.D.C. § 22-2801
Florida	<i>No Exemption</i>	Husbands can be charged with rape of wife, the same as a stranger. (<i>State v. Larry Smith</i>)	S.A. § 794.011
Georgia	5	Statute only exempts husbands in statutory rape cases. Marital rape may be legal under "common law" exemption; will	C.A. § 26.2001, 2018

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
		depend on judicial decision or legislative interpretation of statute.	
Hawaii	4, 2	"Voluntary social companion" of victim cannot be charged with forcible (first degree) rape; this may exempt husbands, cohabitators and "dates." Husbands cannot be charged with "lesser" sexual assault of wife while parties are living together.	R.S. § 707-730 to 732
Idaho	2	Husbands cannot be charged with rape of wife <i>unless</i> parties have been living apart at least 180 days or legal action for divorce or separation started (petition filed).	C. § 18-6107
Illinois	1	Husband can <i>never</i> be charged with rape of wife.	A.S. Ch. 38 § 11-1
Indiana	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	S.A. § 35-42-4-1(b)
Iowa	<i>No Exemption to First- and Second-Degree Rape; 3</i>	Husbands <i>can</i> be charged with first and second degree rape of wife. Husbands and cohabitators <i>cannot</i> be charged with third degree sexual abuse of mate.	C.A. § 709.2 to 709.4
Kansas	1	Husband can <i>never</i> be charged with rape of wife.	S.A. § 21-3502
Kentucky	2	Husbands and cohabitators cannot be charged with rape of spouse <i>unless</i> court order of separation.	R.S. § 510.010 (3)
Louisiana	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	R.S.A. § 14.41

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Maine	2, 3	Husbands and cohabitants cannot be charged with rape of mate while parties living together.	R.S.A. Title 17A § 251, 252
Maryland	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.C. § 27-464D
Massachusetts	<i>No Exemptions</i>	Husbands can be charged with rape of wife same as a stranger (no exemption). (<i>Commonwealth v. Chretien</i>)	A.L. Ch. 265 § 22; Ch. 277 § 39
Michigan	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	M.S.R.C.C. Ch. 23 § 2340
Minnesota	<i>No Exemption</i>	Husbands can be charged with rape of wife under most circumstances.	S. S. § 609.349
Mississippi	2, 5	Husband cannot be charged with "sexual battery" of wife <i>unless</i> parties living apart. Separate "rape" statute does <i>not</i> exempt husbands; unknown if marital rape is a crime.	MCA § 97-3-95 to 103, (Supp. 1980)
Missouri	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.S. § 566.010.2
Montana	2, 3	Husbands/cohabitants cannot be charged with rape of mate while parties are living together.	R.C. § 45-5-506
Nebraska	<i>No Exemption</i>	Husband can be charged with rape of wife the same as a stranger.	R.S. § 28-319, 320
Nevada	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	R.S. § 200.373

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
New Hampshire	No Exemption	Husband <i>can</i> be charged with rape of wife under most circumstances.	RSA 632-A:5 (H.B. 516, effective 8/81)
New Jersey	No Exemption	Husbands <i>can</i> be charged with rape of wife, same as a stranger (no exemption).	S.A. § 2C:14-5(b)
New Mexico	2, 3	Husbands/cohabitants cannot be charged with rape of their mates <i>unless</i> parties living apart or legal action for divorce or separation started (petition filed).	Stat. § 30-9-10, 11
New York	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Pen. L. § 130.00
North Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation or spouses living apart pursuant to written agreement.	G.S. § 14-27.8
North Dakota	2	Husbands cannot be charged with rape of wife <i>unless</i> court order of separation.	C.A. § 12.1-20-01, 02, 03
Ohio	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action started (petition filed) or written separation agreement entered into.	ORC § 2907.01, 02
Oklahoma	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 21 § 1111
Oregon	No Exemption	Husbands can be charged with rape of wife same as a stranger.	R.S. § 163.305
Pennsylvania	2, 3	Husbands/cohabitants cannot be charged with rape of mates <i>unless</i> parties living apart or written separation agreement entered into.	S.A. Title 18 § 3103

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Rhode Island	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	G.L. § 11-37-1
South Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	C. § 16-3-658
South Dakota	1	Husband can <i>never</i> be charged with rape of wife.	C.L.A. § 22-22-1
Tennessee	2	Husband cannot be charged with rape <i>unless</i> court action for divorce or separation started (petition filed).	C.A. § 39-3702
Texas	1, 3	Husbands and cohabitor can <i>never</i> be charged with rape of wife/mate.	§ 21-02(a) § 21-12
Utah	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Crim. C.A. § 76-5-402, 407
Vermont	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 13 § 3252
Virginia	5	Unknown if marital rape is a crime.	Code 18.2-61, <i>et seq.</i> (effective 7/1/81)
Washington	1	Husband can <i>never</i> be charged with rape of wife.	R.C.A. Ch. 9A.44.010, <i>et seq.</i> (Supp., 1979)
West Virginia	1, 3, 4	Husbands and cohabitants can <i>never</i> be charged with rape of mate. "Voluntary social companion" cannot be charged with 1st degree sexual assault (date-rape exemption).	Code § 61-8B-1
Wisconsin	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action for divorce or separation started (petition filed).	S.A. § 940.225(6)
Wyoming	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	S.A. § 6-4-307

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