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COMMITTEE REPORT
SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

5074

6/2/83

LEGISLATURE

Senate panel OKs sexual abuse bill

Associated Press

Juneau — A measure to crack down on those who sexually abuse minors cleared the Senate Judiciary Committee Wednesday.

The bill aims to incorporate and strengthen existing laws against sexual offenses as well as create new laws banning activities not now barred by statute. The House also is working on a bill to tighten sexual abuse laws.

Sen. Fritz Pettyjohn, R-Anchorage, who drafted the measure, said "If we can get this bill through the legislature, we will have accomplished something of major importance for this state." He said current law is seriously deficit in the area of sexual assault.

Caren Robinson, executive director of AWARE (Aiding Women in Abuse and Rape Emergencies) told the committee that many sexual abuse cases "are going nowhere" because of weaknesses in current law.

Among other things, the measure would make sexual contact between a parent and child a felony. Currently sexual contact between a parent and child is a felony only if the parent threatens the child in order to engage in the conduct. Under the measure, the sexual contact need only occur to be a felony. If the victim is under 13, it would be a crime punishable by up to 10 years in prison. If he or she is between 13 and 18, it would be punishable by up to five

years.

Robinson said the problem with the current law is that it fails to deter the first stages of incest, when sexual activity between parent and child often occurs without force because the child is unaware that the behavior is not normal.

The proposed bill also would add new provisions to control what prosecutors say is a serious problem in Alaska — juvenile babysitters sexually abusing

their charges. It would make such abuse a class A misdemeanor, providing the authorities the means to take offenders into custody and provide counseling.

The measure also would increase penalties across the board for sexual abuse of a minor. The penalties — within the felony range — would vary depending on the ages of the victim and the perpetrator.

SAME AS 5/26

5/30

(Accept title

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BY THE JUDICIARY
COMMITTEE

1 IN THE SENATE

CS for SENATE BILL NO. 74 (Judiciary)

2 IN THE LEGISLATURE OF THE STATE OF ALASKA

3 THIRTEENTH LEGISLATURE - FIRST SESSION

4 A BILL

5 For an Act entitled: "An Act revising the laws relating to sexual abuse of
6 a minor, sexual assault, and indecent exposure;
7 extending the time limitation for prosecution of
8 sexual offenses; and ^{allowing the use of masculine or feminine} ~~amending AS 01.05.031(c) and~~
9 ~~Sec. 4, ch. 58, SLA 1982.~~ ^{Repealed in Title 11 and 12.} "

0 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

1 * Sec. 1. AS 11.41.420 is repealed and reenacted to read:

2 Sec. AS 11.41.420. SEXUAL ASSAULT IN THE SECOND DEGREE. (a) A
3 person commits the crime of sexual assault in the second degree if he
4 engages in

5 (1) sexual contact with another person without consent of
6 that person; or

7 (2) sexual penetration with a person who he knows

8 (A) is suffering from a mental disorder or defect
9 which renders the person incapable of appraising the nature of
10 the conduct under circumstances in which a person who is capable
11 of appraising the nature of the conduct would not engage in
12 sexual penetration; or

13 (B) is incapacitated.

14 (b) Sexual assault in the second degree is a class B felony.

15 * Sec. 2. AS 11.41 is amended by adding new sections to read:

16 Sec. 11.41.432. SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE

17 (a) A person commits the crime of sexual abuse of a minor in the
18 first degree if
19

1 (1) being 16 years of age or older, he engages in sexual
2 penetration with a person who is under 10 years of age or aids, in-
3 duces, causes, or encourages a person who is under 10 years of age to
4 engage in sexual penetration with another person; or

5 (2) being 18 years of age or older, he engages in sexual
6 penetration with a person who is under ¹³10 years of age and who

7 (A) is entrusted to his care by authority of law; or

8 (B) is his son or daughter, including an illegitimate
9 or adopted child, or a stepchild.

10 (b) Sexual abuse of a minor in the first degree is an unclassi-
11 fied felony and is punishable as provided in AS 12.55.

12 Sec. AS 11.41.434. SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE.

13 (a) A person commits the crime of sexual abuse of a minor in the
14 second degree if

15 (1) being ~~16~~ 17 years of age or older, he engages in sexual
16 penetration with a person who is 10, 11, or 12 years of age or aids,
17 induces, causes, or encourages a person who is 10, 11, or 12 years of
18 age to engage in sexual penetration with another person; or

19 (2) being 18 years of age or older, he engages in sexual
20 penetration with a person who is under 18 years of age but ¹³10 years of
21 age or older and who

22 (A) is entrusted to his care by authority of law; or

23 (B) is his son or daughter, including an illegitimate
24 or adopted child, or a stepchild.

25 (b) Sexual abuse of a minor in the second degree is a class A
26 felony.

27 Sec. 11.41.436. SEXUAL ABUSE OF A MINOR IN THE THIRD DEGREE.

28 (a) A person commits the crime of sexual abuse of a minor in the
29 third degree if

1 (1) being 16 years of age or older, he engages in sexual
2 penetration with a person who is 13, 14, or 15 years of age and at
3 least four years younger than he, or aids, induces, causes or encour-
4 ages a person who is 13, 14, or 15 years of age and at least four
5 years younger than he to engage in sexual penetration with another
6 person;

7 (2) being 16 years of age or older, he engages in sexual
8 contact with a person who is under 13 years of age or aids, induces,
9 causes, or encourages a person under 13 years of age to engage in
0 sexual contact with another person;

11 (3) being 18 years of age or older, he engages in sexual
12 contact with a person who is under 18 years of age and who

13 (A) is entrusted to his care by authority of law; or

14 (B) is his son or daughter, including an illegitimate
15 or adopted child, or a stepchild; or

16 (4) being 16 years of age or older, he aids, induces,
17 causes, or encourages a person who is under 16 years of age to engage
18 in conduct described in AS 11.41.455(a)(2) -- (6).

19 (b) Sexual abuse of a minor in the third degree is a class B
20 felony.

21 Sec. 11.41.438. SEXUAL ABUSE OF A MINOR IN THE FOURTH DEGREE.

22 (a) A person commits sexual abuse of a minor in the fourth degree if,
23 being 16 years of age or older, he engages in sexual contact with a
24 person who is 13, 14, or 15 years of age and at least four years
25 younger than he.

26 (b) Sexual abuse of a minor in the fourth degree is a class C
27 felony.

28 * Sec. 3. AS 11.41.440 is repealed and reenacted to read:

29 Sec. 11.41.440. SEXUAL ABUSE OF A MINOR IN THE FIFTH DEGREE.

1 (a) A person commits sexual abuse of a minor in the fifth degree if,
2 being under 16 years of age, he engages in sexual penetration or
3 sexual contact with a person who is under 13 years of age and at least
4 three years younger than he.

5 (b) Sexual abuse of a minor in the fifth degree is a class A
6 misdemeanor.

7 * Sec. 4. AS 11.41 is amended by adding a new section to read:

8 Sec. 11.41.460. INDECENT EXPOSURE. (a) A person commits the
9 crime of indecent exposure if he intentionally exposes his genitals,
0 buttock or anus to another person with reckless disregard for the
1 offensive, insulting, or frightening effect the act may have on that
2 person.

3 (b) Indecent exposure before a person under 16 years of age is a
4 class A misdemeanor. Indecent exposure before a person 16 years of
5 age or older is a class B misdemeanor.

6 * Sec. 5. AS 11.41.470 is amended to read:

7 Sec. 11.41.470. DEFINITIONS. For purposes of AS 11.41.410 --
8 11.41.470, unless the context requires otherwise,

9 (1) "incapacitated" means that a person is temporarily
10 incapable of appraising the nature of his conduct and is physi-
11 cally unable to express unwillingness to act;

12 (2) "victim" means the person alleged to have been subject-
13 ed to sexual assault in any degree or sexual abuse of a minor in
14 any degree;

15 (3) "without consent" means that a person

16 (A) with or without resisting, is coerced by the use
17 of force against a person or property, or by the express or
18 implied threat of [IMMINENT] death, imminent physical in-
19 jury, or [IMMINENT] kidnapping to be inflicted on anyone; or

1 (B) is incapacitated as a result of an act of the
2 defendant.

3 * Sec. 6. AS 12.10.020 is amended to add a new subsection to read:

4 (c) Even if the general time limitation has expired, a
5 prosecution under AS 11.41.410 -- 11.41.455 for an offense committed
6 against a person under the age of 16 may be commenced within one year
7 after the crime is reported to a peace officer or the person reaches
8 the age of 16, whichever occurs first. In no case does this provision
9 extend the period of limitation by more than 5 years.

0 * Sec. 7. AS 12.55.125(i) is amended to read:

1 (i) A defendant convicted of sexual assault in the first degree
2 or sexual abuse of a minor in the first degree may be sentenced to a
3 definite term of imprisonment of not more than 30 years, and shall be
4 sentenced to the following presumptive terms, subject to adjustment as
5 provided in AS 12.55.155 -- 12.55.175:

6 (1) if the offense is a first felony conviction and does
7 not involve circumstances described in (2) of this subsection, eight
8 years;

9 (2) if the offense is a first felony conviction, and the
10 defendant possessed a firearm, used a dangerous instrument, or caused
11 serious physical injury during the commission of the offense, 10
12 years;

13 (3) if the offense is a second felony conviction, 15 years;

14 (4) if the offense is a third felony conviction, 25 years.

15 * Sec. 8. AS 01.05.031(c) is amended to read:

16 (c) Except in AS 11 and 12, the [The] revisor shall edit and
17 revise the laws as they are enacted by the legislature, without chang-
18 ing the meaning of any law, so as to avoid the use of pronouns denot-
19 ing masculine or feminine gender.

1 * Sec. 9. Section 4, ch. 58, SLA 1982 is amended to read:

2 Sec. 4. Except in AS 11 and 12, the [The] revisor of statutes is
3 directed to avoid the use of pronouns denoting masculine or feminine
4 gender in the printed pamphlets of the Alaska Statutes as they are
5 scheduled for reprinting.

6 * Sec. 10. AS 18.66.900(6) is amended to read:

7 (6) "sexual assault" means a crime specified in
8 AS 11.41.410 -- 11.41.455 [11.41.450 OR AS 11.51.130(a)(4)];

9 * Sec 11. AS 11.41.410(a)(3) and (4), AS 11.41.430, AS 11.51.130(a)(4),
10 and AS 11.61.110(a)(7) are repealed.

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Eliminating Alaska's "marital exemption" from the crime of rape

Testimony of Susan R. Clark, 16 May 1983, Senate HESS Committee

No one should be presumed to be incapable of committing a crime simply because he is legally married to the victim. Rape is a crime of violence, one in which severe bodily injury can result. It is intended to invoke in the victim fear, degradation, and humiliation. Rape can be a brutal, hostile, revengeful, hateful, and terrorist act, no matter when or by whom or to whom it occurs. Rape in marriage is no less a crime than murder in marriage or battering in marriage or child abuse in marriage.

Sixteen states have realized this and no longer exempt spouses from prosecution when such traumatic violence occurs. Other states, Alaska among them, grants greater protection to the violent husband than to his victim. No one consents to violence by marrying.

We no longer think of a wife as her husband's property, yet we have continued to grant him ownership of her by force and against her will as sexual property, and we grant her no legal recourse, because it is "just a family affair", a domestic quarrel. Emotions do run high when people live together or are related, but so does real physical danger. Almost 40% of all Alaskan murders involve relatives. In fact only 7-10% of all murders involve strangers, but murder is no less a crime against the state because it occurs between family members, and may often be the outcome of family violence left unchecked. The terror of a violent rape should not be ignored by the law simply because it occurs between spouses. Studies have documented that when a woman threatens to or tries to leave home, an abusive man tends to become particularly dangerous.

Every crime, including rape, must undergo scrutiny by a legal system that has built in mechanisms to determine the merits of the complaint. Police investigations, prosecutor discretion, and jury deliberations are employed to determine the truth or falsity of allegations. The victim must undergo serious public self-exposure and trauma, and in states that have criminalized marital rape only the most extremely brutal and horrifying cases have been reported. No other crime has been decriminalized simply because it is difficult to prove or occurs between spouses. No other crime has been decriminalized simply because the perpetrator might sometimes be acquitted. Yet we allow men who terrorize their wives our permission to continue.

No one should be presumed to be incapable of committing a crime simply because he is legally married to the victim. No one consents to violence when they sign a marriage license.



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May 9, 1983

May 12 1983

Honorable Vic Fischer
Vice Chairman
Senate Committee on Health
and Social Services
Pouch V
Juneau, Alaska 99801

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.

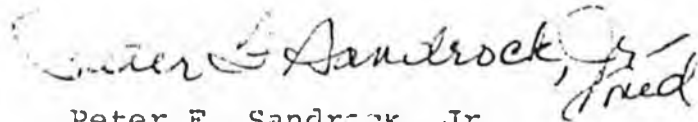
A frequently expressed concern is that spousal rape cases would not be provable. The same difficulty of proof exists, however, in virtually every rape by an acquaintance of the victim. About half of

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

Marital Rape: What Happens When Women Fight Back? ①

By Teresa Pryor

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 Alaska, 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 Newberger 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 attorney 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 charged 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 Woman 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 15% 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 *The Sociology of an International Journal*, vol. 20--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 mixture 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.

"It 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 Bob 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 CSC 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 his 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 Feminists 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 confessed 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 Ms., 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 shooting death of her husband, James Carnutt, 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, & 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 males." (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 for 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 OOB, 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 Lewin 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 Storres, 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 journalist 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

\$ 2.00

New Women's times
May 81

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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 (1977)

*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. §§13-1401.4, 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 §52.2 (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 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). Clearinghouse 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)

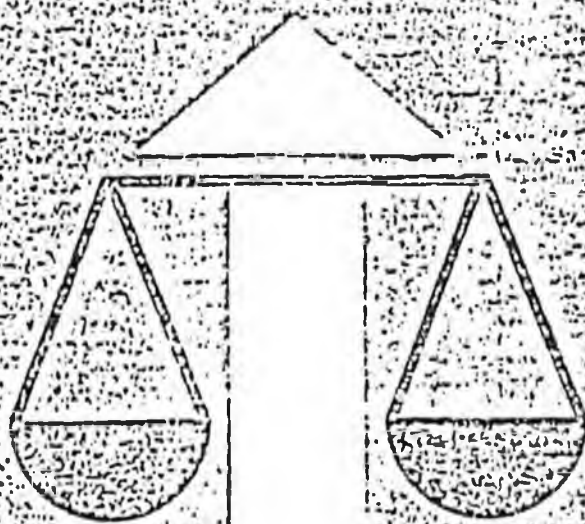
* (a) Massachusetts Supreme Court unanimous opinion (20 pages, written by Chief Justice Hennessey), holding that the legislature's revision of the rape statutes in 1974 eliminated any "common law" spousal exemption. The court analyzes the history and bases for the alleged common law doctrine. The court 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. Clearinhouse No. 31,712.

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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 14th 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 reasoning 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 650, at 3-4, May 29, 1950];

...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 Mica, Winter Park, Fla., Transcript of Floor Debate on House Bill 650, at 6, May 29, 1950].

...But if you can't rape your wife, who can you rape? [California 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 §§28-403.03 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 13 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. §45-5-50(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 §§53a-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 common-law 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. 4953-84, 85 (Essex County Superior Court, Mass.; Sept. 1979); People v. Finley, No. CHC 82-877 (Criminal Division, Pinellas County Circuit Court, Flor. 3d, Apr. 1980).

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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 in cognito.

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.

part ("palimony"), division of the couple's property, or civil orders of protection. In those 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. *S. v. Del. Code Ann. §76-4(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.

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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. §402(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. California, Unsettled, 188 F.R.D. 100 (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 bewildering 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*, 94 S.Ct. 812, 814, 815 (1974).

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

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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

NATIONAL CLEARINGHOUSE ON MARITAL RAPE
© WOMEN'S HISTORY RESEARCH CENTER
2325 OAK STREET
BERKELEY, CA 94708

\$5.00

April 1983

Name	Arrested	Charges	Arrested	Bail	Plea	Prelim	Trial or Hearing	Court	Flea	Verdict	Sentence	Other disposition
pr 1 Kevin Green - 644170	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	Jury trial. 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 Waldingham # 74060	11-5-79	207 - kidnapping 288 - oral 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 one probation period. work thruoughly recommended	
pr 3 Lupe Garcia Penalado # 26586	12-19-79	207 - kidnapping 211 - robbery 205 - 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 by reason of insanity 4-31-80 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 spouse rape because the crime happened before the law was passed.

Code: pr - pre-trial
C - conviction
P - Plea bargain
L - guilty of lesser charges
D - case dropped
N - No Arrest
M - MISC. MURDERED
AQ - Acquittal
A - ATTEMPTED RAPE

Age	Wife's Name	Marital Status	Crime	Race	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.	Whit. rpt.	none	♂ white	♂ marine ♀ house wife	Trotting 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. Used her wrist belt, raped her-overcame her when she tried escaping, raped her two more times.	van in Santa Cruz mountains	1	♂ white	♂ courier ♀ -unavail-able	San Jose, Santa Clara Co.	Willingham eventually charged 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, forced 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 buried her hands	cornfield	not known	♂ Mexican-am.	both born workers	Yuba City, Sutter Co.	A rancher discovered her in the field the next morning.

CALIFORNIA SEXOLOGICAL CLINIC
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	Name	Arrested	Charges	Arraigned Bail	Plea	Helim. Hearing	Trial or Court Prog	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	1-24-80 July trial	not guilty	guilty - misdemeanor assault 2-10, theft 11/8	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 was convicted on 262. 220 ASSAULT CHARGE APPLIES ONLY TO ASSAULT TO COMMIT FELONY SINCE MISE. WAS NO LONGER A FEW CHARGE, THE 220 WAS LEASED TO A MISE-DEMEANOR ASSAULT (THE 210 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 July trial 8-8-80	not guilty	guilty 9-2-80 - 13 counts including spousal rape (see charges) by jury	11-12-80 16 years in state prison, \$1000 fine for marital rape charges	THE MARITAL RAPE AND STRANGER RAPE (STRANGER) WERE TRIED TOGETHER. THE STRANGER RAPE/ADULTERY CRIME WERE USED AS THE PRIMARY CHARGE SINCE MARITAL RAPE CARRIES A STRIKER PENALTY THAN MARITAL RAPE. THE MARITAL RAPE CHARGE ACCOUNTED FOR APPROXIMATELY 6 OF THE 16 YEARS. 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 DECKED - HE WAS RELEASED. CASE DROPPED BECAUSE OF LACK OF EVIDENCE. THOUGH WIFE HAD PREVIOUSLY SAID SHE HATED RECONCILIATION, APPARENTLY COUPLE REUNITED AFTER HUSBAND'S RELEASE
pc 8	Albert Bellan #126267	3-10-80	220 - assault 236 - false imprisonment 207 - kidnapping 262 - spousal rape	4-22-80 \$5,000	guilty	5-6-80 hearing	plea bargained (dropped 220, 207 charges)		6-10-80 30 days county jail, 3 years probation, work for 1 year.	case plea bargained without request judge not to imprison Bellan 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 ♀ unemployed	Chico, Butte Co.	Police in area heard her screaming & 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 of the woman sales agent abducted for 10 hrs. and raped 4 times by Martinez.	stolen van	none	♂ Mexican am ♀ Mexican am.	♂ unemployed laborer ♀ Factory worker	Pomona, 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 beds her several times all kinds of counseling, with husband desires for husband 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.	their 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 from divorce 1-20-79 to 1-20-80	Belltran kidnapped her at home from shopping center, drove to rural road, threatened to kill her, raped her.	country-side in car	none	♂ white ♀ Mex am.	♂ member of Brasserie Union ♀ sales clerk	Hayward, Alameda Co	Belltran 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 Hearing Court	Verdict	Sentence	Other disposition
pc 9	Hughlen 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 warrantless 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 Carler # 2555	4-23-80	262 - spousal rape 236 - false imprison- ment	5-19-80 \$15,000 reduced to 5,000	not guilty	5-5-80			case was dropped because DA didn't think victim's testi- mony was believable she was a heavy drug user - no criminal record - she tried to take child, by impersonating an authority, then by threatening with gun a witness at apt. also claimed no rap: occurred,
c 11	John A. Chiarpulli # 20980	4-27-80	207 - kidnaping 262 - spousal rape	4/28/81 \$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 pro- bation, psychiatric counseling, 25 day comm. volunteer work.	trial had been set for jury, then Chiarpulli plead no contest before the Judge.

Name	Arrested	Charges	Arraignment Bail	Plea	Trial or Prelim. Hearing	Court Dates	Verdict	Sentence	Other Disposition	
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. C. HARTERTON'S DECISION SHOWED HE DID NOT TAKE THE CASE SERIOUSLY.	
13 Peter Edelbacher	5-28-80 1-8-82 (murder)	262 - spousal rape 259 - murder	muni. 1-25-82 (murder) held w/o bail superior arraignment (murder) 5-24-82 - moved to 6-1-82	not guilty (rape) not guilty (murder)	jury hearing 2-25-81 (murder) pre-lim 2/1/82 and 3/1/82 - (change dates rescheduled) trial: 9-7-82 - reset to 9-16-82		not guilty not guilty	2-26-81	not guilty	WIFE WAS MURDERED. HUSBAND BEING CHARGED WITH MURDER
14 Philip Ramirez	6-10-80	261 (-24.3) - rape	6-11-80	not guilty	D.A. dropped case 11-26-80 when wife stated she did not wish charges pursued - SP1 ROL 12/8/00				REASON UNKNOWN. WIFE STATED WOULD PREFER BATTERY CHARGES, BUT NEVER SIGNED A NEW COMPLAINT. JUDGE STATED "TRADITIONALLY WOMEN HAVE AVOIDED THIS ISSUE BY TAKING A HEADACHE!" (DURING PRE-LIM HEARING)	
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 held Miranda rights and police entered home without a warrant.	

	Name	Arrested	Charges	Arraigned	Bail	Plea	Trial or Prelim. Hearing	Court Plea	Verdict	Sentence	Other disposition	
16	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 wait. - murder to prevent testimony. 459 - burglary 451 - arson.				CHARGES DROPPED BECAUSE OF WIFE'S MURDER - AFTER WIFE WAS RAPED, THERE WAS A MAN-HUNT FOR THE HUSBAND FOR 3 WEEKS. WIFE WAS THEN MURDERED IN PRESENCE OF HER FAMILY, SHOT THROUGH THE HEART - STANLEY IS NOW ON TRIAL FOR MURDER-THE RAPE CHARGE WILL BE BROUGHT IN AS EVIDENCE, THOUGH RAPE CHARGE DROPPED SINCE PRINCIPAL WITNESS (WIFE) DEAD. TRIAL OUTLINE AS OF 1/10/82.					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. BURNED DOWN HOUSE (4th WIFE). BEGLIN FILED SUIT AGAINST COUNTY FOR fabricating evidence (dis-missed) plea-bargained.
17	John Beglin #C-45590	9-12-80	262 - spousal rape	\$2,500	not guilty	jury trial 2-17-81 jury trial 5-11-81 acquitted	not guilty	deadlock	not guilty			
18	Timothy Hebert #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		
19	Emil Gabriel #10573-C	10-29-90	262A - spousal rape 1667 245 - assault with deadly weapon 273.5 - assault	12-9-80	O.R. not guilty	waived hearing 3-26-81 To 262 (misdemeanor)	no contest			5-5-81 5 years suspended sentence, 3 years probation, psychiatric counseling.	Plea bargained out of all guilt with deadly weapon, corporal punishment & criminal confinement of court order (on wife) insisting that it was not the child abuse (was in-terrupt) and she felt sorry for him.	
20	Maximilian Eddie Vargas #A.M 20242	11-23-80	262 - spousal rape 242 misdemeanor battery	12-8-80 \$2,000	not guilty	1-2-81	Case dismissed, D.A. HEADED WIFE'S DESIRE THAT PROSECUTION SHOULD NOT CONTINUE (REASON UNKNOWN FOR HER DECISION)					

	Name	Arrested	Charges	Arraignment	Bail	Men	Trial or Prelim. Hearing	Court/Verdict	Sentence	Other Information
21 PC	Thor Hawkfell 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 hearings. The plea bargaining brought his felony down to a misdemeanor.	3-26-81 2 years with summary print probation, 30 days minimum in jail.	Plea-bargain from felony to misde- meanor.
22 PC	Paul Norman Munday #4-3113	11-24-80	2+286A - oral copulation 262 - spousal rape 207 - kidnapping	11-26-80	no bail	not guilty	2-17-81 hearing 3-5-81	no contest to 242 - misdemeanor battery	6 months suspended to court probation and counseling	Plea bargained - 21 preliminary charges changed to 288A felony, and 262 dropped to 242. At hearing plead no contest to 242 if other charge dropped. (misd- emeanor assault) with probation - 6 months. As per prosecution and trial court.
D 23	William Shacklett C-8132899	12-30-80	209 - rape with a foreign object 215A - assault with a deadly weapon	1-19-81	\$13,000	not guilty	2-11-81	case dismissed; wife did not want prosecution to continue. When the case got to court, she refused to testify. It was not taken past the prelim. hearing. Wife described by D.A. as strong-willed. Wife embarrassed & uncomfortable 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? Embod
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. Arroyo forced himself into car and drove to a house where they were forced to remain - at 11:00 AM mother and daughter went to sleep. mother awakened to his advances. When she resisted, he beat, bit, and raped her. *(Rose Mary's father's funeral).	home. 401 S 28th	2	♂ Mexican-am ♀ Mexican-am	♂ unemployed Malera, (alcoholic) ♀ secretary (Heat Seeker program)	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, pinned, whipped, bit, threatened w/ a knife, and sexually abused (including rape) on 2 occasions. Sexual assault on 1st wife, forced marriage of 2nd, forced sexual intercourse w/ stranger(s)). Burnham testified his unusual lifestyle "DURING THE PERIOD OF A STRAIGHT SEXUAL MARRIAGE OF 1 YEAR AND 1 MONTH (SEE PAGE 10) HIS WIFE WAS BEATING HIM."	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 CHOKING THREATS AGAINST HER & HER CHILD, CREATING A "P.O.D. SITUATION" (P.O.D. BY D. 3). CHILD HELD HOSTAGE AT GUNPOINT DURING FORCED SEX EPISODES. IN ALL 3 MARRIAGES, 9 WIVES KEPT COMPLETELY HIDDEN. BURNHAM STATED WIFE KEPT HIMSELF IN A "MARRIAGE OF 1 YEAR AND 1 MONTH" (SEE PAGE 10) HIS WIFE WAS BEATING HIM. WIFE WIFE WIFE BEATING HIM OUT OF HOUSE, RAN INTO LIVE-IN WIFE, WHO WAS RETURNING FROM WORK, LOAR CALLED POLICE ON HIS C-B RADIO
27	Sophia Pauline	24 separated	broke into wife's home with sword of sholgun then raped wife. When she escaped he held son as hos' eye.	her home	2	♂ black ♀ white	♂ railroad worker ♀ housewife	Ukiah, Mendocino Co.	

AGE	WIFE'S NAME	MARRIAGE STATUS	CRIME	PLACE	CHILDREN	RACE / ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
22	TERRY - 22	SEPARATED	WASA UNDER COURT ORDER TO STAY AWAY FROM WIFE ENTERED THROUGH WINDOW OF WIFE'S HOUSE HIT WIFE IN FACE WITH FIST AND SHOE RAN TO WIFE AND STOLE \$20.00	WIFE'S HOME	none	BOTH WHITE	unavailable	FRESNO	HUSBAND LEFT - WIFE CALLED POLICE
28	-25	SEPARATED	HUSBAND UNDER RESTRAINING ORDER TO STAY AWAY FROM WIFE EXCEPT ONE TIME/ WEEK TO VISIT CHILDREN. GAINED ENTRANCE TO HOUSE BY THROUGH OF VISITING TEACHER. STRUCK WIFE REPEATEDLY WITH HIS FIST. DRAGGED HER UPSTAIRS AND THREATENED TO STRANGLE HER WITH TIGHT ROPE. BATTERY CHARGE ARISING FROM MAY 21, 1971	WIFE'S HOME	1 DAUGHTER			Union City & ALAMIDA - CA (Both Alameda County)	WIFE CALLED POLICE
37	-25	SEPARATED	SPOUSAL RABE	WIFE'S HOME				FRESNO (Both)	HUSBAND FLEED
37	SUZANNE - 37	SEPARATED FILED FOR DIVORCE	RAN WIFE OFF SIDE OF ROAD TOOK HER BACK TO HIS HOME. CHOKED HER (NECK SLITS) TWICE, THEN EATED HER.	HUSBAND'S HOME	none	BOTH WHITE	1. HUSBAND - DR. LAWYER	WINTER, SAN DIEGO (Both)	HUSBAND FUGITIVE. WIFE CALLED POLICE. SHE RAN TO HER HOME AND DROVE TO GAS STATION. CALLED FRIENDS FOR HELP.
31	MARIA - 46	MARRIED 6 MOS. (MARRIAGE ON SEPARATION)	THREATENED WIFE WITH PIECE OF GLASS WIFE WENT WITH HUSBAND TO DISCUSS PROBLEMS RAN IN CAR IN FRONT OF HOME.	CAR (ON STREET IN FRONT OF HOME).	1 BY WIFE'S PREVIOUS MARRIAGE	BOTH WHITE	1. MILITARY (MARINE) 2. HUSBAND	Both OCEANSIDE, NORTH SAN DIEGO COUNTY	WIFE CALLED POLICE HUSBAND HAD BEEN JAILED ON ASSAULT BEFORE.
	20	SEPARATED	HUSBAND FORCED WAY INTO WIFE'S APARTMENT. STRUCK WIFE'S FRIEND AND SUBMISSION DROPPED WIFE IN MUD AND SHOUTED ABUSE. THREATENED TO KIDNAP WIFE IF SHE DIDN'T HAVE SEX WITH HIM. RAN TO WIFE IN FRONT OF HOME FRIENDS.	WIFE'S APARTMENT				9 WEST PITTSBURG, CENTER COBYA COUNTY	HUSBAND LEFT AND RETURNED SEVERAL HOURS LATER. TOOK WIFE TO MOTEL (APARTMENT) AND TOLD HER NOT TO LEAVE HIM. WIFE AND FRIENDS (EVIDENTLY THE FRIENDS IN THE APARTMENT) ARE LEAVING THE AREA. FRIENDS AND NEIGHBORS WERE TOO FRIGHTENED TO CALL THE POLICE - DEFENDANT IS 6'2", 165 lbs. DR. TRYING TO REMOVE DEFENDANT'S NITRATION.

CALIFORNIA SOCIOLOGICAL CHART

AGE	WIFE'S NAME - AGE	MINIMUM STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	ACCUSATIONS	RESIDENCE	HOW INCIDENT ENDED
27	DORIS ANN 24	FILED FOR DIVORCE THE DAY BEFORE THE RAPE	ENTERED WIFE'S RESIDENCE 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 FROM PREVIOUS MARRIAGE	BORN BLACK	♂ - CHEMICALLY UNEMPLOYED 2 MONTHS OUT OF THIS JOB AT TIME OF INCIDENT	SACRAMENTO (CALIF. CO.)	HUSBAND FELL ASLEEP. WIFE UNPLUGGED BEDROOM TELEPHONE SO HE COULD NOT LISTEN IN. CALLED SISTER, WHO CALLED THEIR MOTHER, WHO CALLED POLICE.
31	BIBBELY ANN 26	SEPARATED (PETITION FOR DISSOLUTION 10-22-80) WIFE LEFT IN AUG. 1981 DISSOLUTION IS BELIEVED TO HAVE BEEN COMPLETED	PLEADED WIFE UP AT HIS HER PLACE OF WORK AND TOOK HER. OVER HER OBJECTIONS, TO HIS HOUSE (HIS FORMER TENEMENT) OVERPOWERED HER AND RAPE HER TWICE. NOW PENDING OF DISCUSSING DIVORCE.	HIS HOME	None	BORN BLACK	♂ - HAD BEEN UNEMPLOYED. JUST SIGNED A GUN-RELATED JOB TRAIT BEFORE RAPE. ♀ - SECRETARY (LAW-RELATED).	SAN DIEGO (CALIF. CO.)	CONTACTED NEIGHBOR - RAN OUT OF HOUSE AND STARTED KNOCKING ON NEIGHBORS DOORS. SEVERAL WEEPAT HOME. SOMEONE FINALLY LET HER IN. WIFE CALLED FRIEND, WHO PICKED HER UP AND HID HER. FIANCÉ, WHO CALLED POLICE FROM FRIENDS HOUSE.
48	KATHLEEN 53	SEPARATED (9-26-81)	10-21. WIFE AWOKE TO FIND HUSBAND ON HER BED. HE MADE SEXUAL ADVANCES WHICH WERE REFUSED BY WIFE. THE DAUGHTERS WERE AWAKENED AND ENTERED BEDROOM. HUSBAND YELLED AT THEM TO GET OUT, THAT HE WAS MAKING LOVE TO THEIR MOTHER. TWO THIRDS WIFE WHO THEN WOULD SUGGEST TO AVOID BEING HURT. 11-17. COMPLETE RAPE. HUSBAND ENTERED HALL, BEGLED HER OUT OF BED AND PULLED HER BY THE HAIR BY HER HAIR. SAID SHE WAS HIS DOP. ONLY SHE WOULD BE WHAT IS TOLD HER. THIS INCIDENT WAS NOT REPORTED AT THE TIME AS WIFE HAD HER PERIOD ALLOWED TO BE EXAMINED. SHE FELT THAT WITHOUT THIS MEDICAL EVIDENCE THERE WOULDN'T BE SUFFICIENT EVIDENCE TO BACK THE RAPE CHARGE.	WIFE'S HOUSE	2 daughters (10 & 13)	BORN WHITE	♂ - SELF-EMPLOYED "ENGINEER" - INVESTOR, REAL ESTATE. ♀ - RETURN JOBS @ THE TIME NOW - RECEIPIST	BORN HAYWARD, ALAMEDA COUNTY.	POLICE ARRIVED (APPARENTLY CALLED BY DAUGHTERS)

CALIFORNIA SOCIOLOGICAL CHART

AGE	WIFE'S NAME/AGE	MARITAL STATUS	CRIME	RACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
35	ADRIAN - 22	SEPARATED	ENTRANCE FROM LINE OF WIFE'S HOUSE (IN FRONT OF 2 CHILDREN'S PLAY AREA). SCREAMED WIFE ARMED AND SHOT HER BY HAND WHO TRUCK. TOOK HER TO A ROOM IN A HOUSE WHICH HE OWNED. TOOK OFF HER CLOTHES. THREATENED TO KILL YOU AND THE POLICE IF YOU CALL THEM. RAN WIFE WIFE ARMED BY FACED. TOOK HER BACK INTO ROOM. ATTEMPTED TO GET CAP. BATH WIFE FOR GENERAL HOUSE, THEN HE LEFT IN THE TRUCK.	HUSBAND'S RENTED ROOM	2 Boys (2, 4)	M - Mex. Am. F - WHITE	? Homemaker	BOTH REDWOOD CITY, SAN MATEO COUNTY	HUSBAND DROVE OFF AFTER RAN 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.
74	ANNE 29	DEPARTED	HUSBAND WHITING FOR WIFE AT THIS TIME WENT HER HOUSE. WIFE TRIED TO RUN AWAY BUT HUSBAND PULLED HAND. GUN CALLED AND ORDERED WIFE TO STOP WALKING. WHEN THEY WENT TO A TRUCK, HUSBAND FORCED WIFE INTO HOUSE AND SHE WAS FORCED WIFE COMPLETED FEARING THE GUN CALLED WIFE. WIFE THEN RAN INTO GUN SHOT TO HER HEAD. HUSBAND RETURNED SOME ITEMS FROM WIFE TRUCK, THEN LEFT.	WIFE'S HOUSE	NONE	BOTH BLACK		SAN FRANCISCO (CITY/COUNTY)	WIFE WALKED HOME AFTER HUSBAND LEFT AND CALLED POLICE, GIVING EXTENDED HUSBAND'S ADDRESS.
045	Lucy 42 SANCHEZ	SEPARATED (Dissolution Proceedings in process) 3 years marriage	ENTERED WIFE, BUT QUICKLY DAMAGED LEG. SHE TRIED TO RUN HIM, BUT HE THREATENED HER W/ A KNIFE. RAN HER LOCAL COP, ETC.	1110 AVE.	5 (4 ARE UNDER AGE AND LIVE AT HOME) 1, the ex-D son (wife currently HAS custody, but is in the process)	Both Puerto Rican	is employed, but unsure in what 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 NBC ON A NEWS PROGRAM SPECIAL INVESTIGATING THE PHENOMENON OF "FACE VICTIMS"]

CALIFORNIA SOCIOLOGICAL CHART

Age	Wife's name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Uncovered
23 2-36	Katharine	Extorted	He came into house in night thru window - they came to see then sex contact, then intercourse, and sodomy. 1/2 hr. between rapes - (262)	In her home	1 - very young	♂ white (?) (check all 9) ♀ white	♂ - no idea ♀ - "just a housewife" possibly employed - self?	Escondido, 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 RAN HOME TO CALL POLICE.	in her home	NO INFO AVAILABLE	♂ - BLACK	♂ unemployed ♀ NOT AVAILABLE	San Jose	1/2 HOURS AFT. POLICE ARRIVED AND SURROUNDED HOUSE, OOHAM BURNED.
25	MARY C. 26 M 27	SEPARATED	MIGUEL BECAME INTO WIFE'S HOUSE AT 4AM. FORCED HER TO WALK AT GUNPOINT 3 BLOCKS TO HIS APARTMENT (THEIR PREVIOUS JOINT RESIDENCE). ORDERED WIFE TO UNDOOR, HIT HER IN FACE W/ FIST, KNOCKED HER HEAD INTO THE WALL, AND Raped HER.	WIFE'S HIS HOME (PREVIOUS JOINT RESIDENCE)	2 CHILDREN (NOT BY MIGUEL)	PATRI HISPANIC (♂ - MEXICAN, LEGAL ALIEN FOR 12 YEARS)	♂ - PUSH TRY & VARIOUS "MENIAL" JOBS ♀ - AT TIME WORKING IN SMALL FACTORY CURRENTLY UNEMPLOYED	EMMA 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.

CALIFORNIA SOCIOLOGICAL CHART

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AGE	WIFE'S NAME	MARRITAL 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. 20th, ON A VISIT, 1st RAPE OCCURRED. WIFE UNSURE WHETHER TO REPORT, SO WAITED. 3rd CRIME INVESTIGATOR FELT CASE NOT THAT SERIOUS. (SP. W) WIFE'S RELUCTANCE TO GO THROUGH WITH REPORT! CHARLES SO RECOMMENDED DR. THOUGH HUSBAND A TRANSIENT WAS LIVING IN A TRASH DUMP AND UNEMPLOYED. HUSBAND RETURNED ON 4-5. RE- FRATROLY STRUCK WIFE, RAPPED HER, AND HELD HER FOR 19 HOURS.	FS HOME	NONE	BOTH WHITE	M-UNEMPLOYED F-BOOKKEEPER	BOTH UCLA (SAN DIEGO)	FATHER TALKED CYNTHIA INTO PRESSING CHARGES.
35	ALICE-30	MARRIED & LIVING TOGETHER	BIOWIFE AND HER FRIEND (WHO WAS TEMPORARILY STAYING W/ THEM). THREATENED THEM W/ SHOTGUN.	THEIR HOME	NONE	BOTH WHITE	F-housewife M-unavailable.	BOTH DELHI, MERCEN CO.	
33		MARRIED 2 yrs. SEPARATED JUNE 01	WIFE WENT OVER TO STRANGERS HUSBAND'S APT. TO DISCUSS INCIDENT. HUSBAND HIT HER AROUND FACE/HEAD THREATENED HER W/ GUN & KNIFE. RAPPED HER 2x, ORAL COPULATION, FORCED, 2cc. MADE WIFE TAKE GUN "SO I WENT TO NO EVID." THREATENED WIFE W/ KNIFE TO HER STERNOID. THREATENED TO CUT HAIR W/ THE KNIFE.	HIS APT.	NONE	BOTH WHITE	M-MECHANIC/ WILDFIRE F-PART TIME STUDENT TAGE TIME LIVING AT LUMBER STORE	FRESNO	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 USED STAFF AT HOME. WHAT HAPPENED & THEY CALLED POLICE. AT THAT TIME, WIFE DECLINED TO TALK CHARLES, SAYING SHE JUST WANTED HER HUSBAND TO LEAVE HER ALONE. WHEN HUSBAND SHOWED UP AT HER PARENTS HOUSE (WHERE SHE WAS STAYING), SHE TALKED CHARLES.

CALIFORNIA SOCIOLOGICAL CHART

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	NAME	ARRESTED	CHARGES	ARRAIGN.	BAIL	PLEA	TRIAL or PREHEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
51 FL	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 JURY: 8-20-82	262 charge dropped. PLEAD GUILTY TO FALSE IMPRISONMENT AND BURGLARY (CASE EVIDENTLY DROPPED; REFUSED UNDER MIDDLEMAN'S FALSE IMPRISONMENT/BURGLARY)	1 yr. County Jail. + TIME SERVED. (SENTENCE CAN BE PARTIALLY WORKED OFF BY WORKING ON "TRIM CRUISE" PROJECT. (9-15-82) 3 YRS. PROBATION w/ RESOLUTION NOT TO HARASS VICTIM.		
52 PL	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 EXTENDED BECAUSE OF "BENIGNITY" OF CASE. 7-23-82)	PLEA-BARGAINING ALLOWED BECAUSE "MUMS FEARED THAT THE WIFE MIGHT NOT BE COOPERATIVE ON THE WITNESS STAND."	
53 C	Albert Castellanos # 85501	4-26-82	262- spousal rape 288(a) - Sexual Coercion	Sup. Ct 5-24-82	NOT AVAILABLE	guilty to 262	End trial - Plea-Bargained)	guilty	pleaded guilty to 262 (dropped 288).	8-20-82 - CHANGED TO 9-10-82 7 YRS PRISON	plea bargain - dropped sexual coercion 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 ADMITS SHE SAID THAT SHE HAD BEEN BATTERED & ABUSED - SAID SHE HAD BEEN FORCED TO HAVE SEX WITH HIM WHILE HE WAS IN PRISON FOR THE PREVIOUS RAPE.

AL CASTELLANOS (PARTIAL)

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NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	FLEA	TRIAL OR PREHEARING	COURT Flea	VERDICT	SENTENCE	OTHER DISPOSITION
RUBIN TOLLIVER	4-23-82	262- SPOUSAL RAPE 288a(1)-5 counts forced oral copulation 273.5(a)-Carriage injury with a weapon 273(A) Carriage 211D-RAPE	6-7-82	50,000	NOT GUILTY	PRELIM- 5-28-82 PRELIM- 4-7-82	4-7-82- 10 A. 273(A)	PLEAD GUILTY TO ALL COUNTS EXCEPT 273(A)	10-8-82 - reset for 10-22-82; Reset for: 10-27-82 - FILES STATE PRISON - VOCATION DENIED	PLEA BARGAINED TO DRUG CHARGE TO CHILD CHARGE
ANON.	RAPE: 1-21-82 10:15pm	262 - spousal rape 207 - Kidnapping	believe TRIED	rape charges dropped. CHARGE FILED SEPARATELY		BURGLARY / GRAND AGAINST HUSBAND.				
JOHN WATKINS	7-26-82	262 rape 208a- FORCED ORAL COPULATION 295 ASSAULT w/ a deadly weapon (ALL BEHAVIORS w/ GUN/KNIFE MISSES)	11-4-82 cont'd to 11-5-82	150,000 (not met)	not guilty	Preliminary: 10/20 & 10/24/82 TRIAL: 12-2-82 reset: 12-23/82	Not Guilty	GUILTY BY JURY OF ALL 3 COUNTS 2-20-83	(maximal sentence 20yrs) 2-24-83 262-A: 3yrs + 2 YEARS FOR USE OF DEADLY WEAPON = 5yrs. FORCED ORAL COP. SENTENCE TO RUN CON- CURRENTLY	(61 yr. old was certified)

	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 - FORCED ORAL COPULATION 4 COUNTS 286c - Sodomomy 207 - KIDNAPPING 2 COUNTS 245 - Assault w/ a deadly weapon (upon their daughter) 3 - COUNTS			Guilty	None - PLEA ARR. GAINED	→	Guilty of ONE COUNT Each: spousal rape, Sodomomy, oral cop., 'kidnapping (of wife) assault w/ a deadly weapon (upon daughter).	Potential: 29 yr. Bu. 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 1-2-83	262 - spousal rape 245 - assault w/ a deadly weapon 189 - Burglary 282.5 inflicting corporal punishment on a spouse 288(a) forced oral copulation 289 - rape w/ a foreign object 286 - forced Sodomomy	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 mental 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	KIDNAPED WIFE AND 2 YR OLD DAUGHTER TO COUNTRYSIDE. THREATENED MOTHER'S CHILD! KILLED MOTHER, ASSAULTED DAUGHTER.	county side	1 (2 yr old daughter)				
25	MARY 24	ESTRANGED	HUSBAND ENTERED WIFE'S BEDROOM AT 2:30 AM - HE TOOK KNIFE TO HER THREAT. OFFERED 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	Born in CRESENT CITY	Husband left, threatening wife not to call police.

CALIFORNIA SOCIOLOGICAL CHART

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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.

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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

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

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 assaults of wife while parties are living together.	R.S. § 707-730 to 732
Idaho	2	Husband 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	No Exemption to First- and Second-Degree Rape; 3	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

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

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	No Exemptions	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	No Exemption	Husbands can be charged with rape of wife under most circumstances.	S.A. § 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	No Exemption	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

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

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
New Hampshire	<i>No Exemption</i>	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	<i>No Exemption</i>	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	<i>No Exemption</i>	Husbands can be charged with rape of wife same as a stranger.	R.S. § 163.303
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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 2, 1983

SUBJECT: Single subject rule
(CSSB 74 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

I have prepared the committee substitute to SB 74 as requested. In my opinion this committee substitute creates a probable violation of the single subject rule.

The single subject rule is contained in section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly stated:

"Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject we agree with the statement:

Senator Bill Ray
Page 2
June 2, 1983

'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

I can see no relationship between sex crimes and the exception to sex-neutral pronouns in AS 11 and AS 12 which are logically or in popular understanding so connected or related to each other as to be part of one general subject.

Basically, this constitutional deficiency would jeopardize prosecution of any crime set out in this bill because the enactment of the bill would be invalid.

KBL:ljb
23/008

COMMENTARY AND SECTIONAL ANALYSIS
FOR CSSB 74 (JUDICIARY)

Section 1. AS 11.41.420, Sexual Assault in the Second Degree.

This section does two things. It amends the current Sexual Assault in the Second Degree statute to define the crime as "sexual contact with another person without consent of that person." The amended language is consistent with that used in the Sexual Assault in the First Degree statute, which prohibits sexual penetration without consent. Under the current Sexual Assault in the Second Degree law the prosecutor must prove that the victim was "coerced" to submit to the sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping. Technically, if a defendant physically forces a person to have sexual contact with him, rather than coercing the victim through the use of threats, the defendant has not committed Sexual Assault in the Second Degree. The amended language establishes that any sexual contact with a person without that person's consent is a class B felony.

The second change which this section makes is to raise the current class C felony offense of Sexual Assault in the Third Degree, penetration with a person who is suffering from a mental defect or is incapacitated, to Sexual Assault in the Second Degree, a class B felony (punishable by up to ten years in prison). The language describing the crime has not been altered.

Section 2. This section adds three new statutes to the Criminal Code, as described below.

AS 11.41.434, Sexual Abuse of a Minor In the First Degree.

This section creates a new classification of offense, Sexual Abuse of a Minor in the First Degree. The section prohibits a person 16 years of age or older from engaging in sexual penetration with a person who is under the age of 13. It also prohibits a person 18 years of age or older from engaging in sexual penetration with a person under 18 who is entrusted to the adult's care by authority of law or is his son or daughter, including illegitimate or adopted children and step-children.

Basically, this provision takes conduct which is currently labelled Sexual Assault in the First Degree (subsections (a)(3) and (a)(4) of present AS 11.41.410) and moves it to a new section entitled Sexual Abuse of a Minor in the First Degree. The conduct is re-classified from an unclassified to a class A felony level; it carries a maximum sentence of up to 20

one
exception

currently

years in prison, and a presumptive term of five years upon conviction for a first offense. Forcible sexual penetration of any person, including a child, would continue to be punishable as Sexual Assault in the First Degree, an unclassified felony.

AS 11.41.436, Sexual Abuse of a Minor in the Second Degree.

This section creates a new classification of crime, Sexual Abuse of a Minor in the Second Degree. It includes all three types of conduct now prohibited in the Sexual Abuse of a Minor statute (AS 11.41.440), but raises the classification of the crime from a C to a B felony level. In subsection (a)(1) the requirement that the defendant be at least three years older than the victim has been added. This language would exempt from prosecution those teenagers who have consensual sexual relations with other teens near their own age (a 17-year-old boy and his 15-year-old girlfriend, for example).

Paragraph 3 creates a new offense to address an omission in existing law. Under current law, sexual contact by a parent or guardian with his own child is a crime only if the child is under 13 (a class C felony) or under 16 (a class A misdemeanor). Fondling of a child's genitals or breasts by a parent is a serious violation of the trust and authority relationships within a family, and is often the precursor of a more serious assault. Existing law in this area is not sufficiently serious nor comprehensive. This provision extends the protection of the law to all children under age 18, and raises the classification of the conduct to a B felony level, punishable by up to ten years in prison.

AS 11.41.438, Sexual Abuse of a Minor in the Third Degree.

This section creates a new classification of offense entitled Sexual Abuse of a Minor in the Third Degree. Basically, this is the current Contributing to the Delinquency of a Minor statute (AS 11.51.130(a)(4)) raised from its present classification as an A misdemeanor to a class C felony level. Class C felonies are punishable by up to five years in prison.

The contributing statute now applies to defendants who are 19 years of age or older. The threshold age in this provision has been dropped to 16 to be consistent with the other sexual abuse provisions, but the requirement that there be at least a three year age difference between the defendant and the victim excludes consensual sexual contact between teenagers of approximately the same age.

Section 3. AS 11.41.440, Sexual Abuse of a Minor in the Fourth Degree.

This section creates a new provision to address a problem which has arisen under the present sexual assault laws. Virtually all of the statutes which deal with sexual offenses against children require that the actor be 16 years of age or older. Unfortunately, prosecutors and social workers have discovered numerous instances where an older child has sexually mistreated a much younger child, often while "babysitting" the younger child. This section prohibits all sexual contact or penetration between a child under 16 and another child who is three or more years younger, and makes such contact a class A misdemeanor.

The three year age difference requirement is included to ensure that a child who engages in sexual play with another child of approximately the same age may not be charged with a crime. Such behavior may, in some circumstances, be cause for parental concern, but it is not generally considered appropriate or useful to classify it as a crime. The purpose of making it a misdemeanor for a child to prey upon a much younger child is to establish the violation of a law which would allow intervention by the juvenile courts or social service workers. This intervention could be important; studies of adult sexual offenders indicate that many convicted offenders began to commit sexual assaults in their early teen years. Early identification and treatment of juvenile sexual offenders may ultimately decrease the number of adult offenders.

Section 4. AS 11.41.460, Indecent Exposure.

This section creates a new crime entitled Indecent Exposure, which is the intentional exposure of a person's genitals, buttock, anus or female breast to another person with reckless disregard for the offensive, insulting or frightening effect that the exposure that might have on the other person. Under current law this conduct is Disorderly Conduct, a class B misdemeanor offense with a maximum penalty of ten days in jail.

Some recent studies indicate that it is not uncommon for sex offenders to begin their assaultive behavior by exposing themselves to young children, and to gradually increase the seriousness of their conduct to sexual contact or penetration. Current law treats sexual exposure, especially to young children, much too leniently. This section raises the classification of Indecent Exposure to an A misdemeanor level (maximum sentence of one year) if the object of the exposure is a child under the age of 16. The offense remains a B misdemeanor (maximum sentence of 90 days in jail) if the witness to the exposure is an adult.

Section 5. AS 11.41.470, Definitions.

This section amends the definition of "without consent" to remove the requirement that the death or kidnapping with which the defendant threatens the victim be "imminent". Threats to inflict harm of this magnitude are inherently coercive, and the prosecution should not have to prove exactly when the defendant intended to cause the death or kidnapping. A threatened physical injury must still be "imminent" to fit within the definition.

Section 6. AS 12.10.020, Specific Time Limitation.

This section creates an exception to the general five year statute of limitations for prosecution for a crime (AS 12.10.010). If the five year limitation period has expired, this provision would allow prosecution for a sexual offense against a child to be commenced within one year after the child reaches the age of 16, or reports the crime to a law enforcement officer, whichever occurs first. In no case will the period of limitation be extended by more than five years, however.

This change is necessary because sexual offenses against young children (especially intrafamilial abuse) are frequently not discovered until the child reaches sufficient maturity to realize the wrongfulness of the conduct and to identify those adults to whom the conduct may safely be reported. A child of 12, 13 or 14 will often report for the first time sexual abuse which has been occurring since he or she was 4 or 5 years old. While the most recent assaults may be prosecuted, these offenses may be classified as less serious than the earlier ones, because of the child's older age. In those situations where the sexual abuse has been a continuing course of conduct which spans several years of a child's life the trier of fact should be entitled to reach and consider all aspects of the adult's conduct.

Sections 7 and 8. AS 01.05.031(c), Use of Personal Pronouns.

In 1982 the legislature passed ch. 58, SLA 1982, which required the revisor of statutes to alter the language of statutes to avoid the use of personal pronouns denoting masculine or feminine gender. These changes are to be made both when new laws are enacted, and when the printed pamphlets of statutes are scheduled for reprinting. This directive, as it applies to the criminal code, is merely a matter of form, as all criminal laws, including those relating to sexual assault and sexual abuse of a minor, are "sex neutral." See AS 01.10.-050 and the Legislative Commentary to the Criminal Code.

In many criminal statutes, including some amended in this bill, the complete elimination of the use of personal pronouns cannot be accomplished without rewriting the statutes. This rewriting raises the potential for unintentional alteration of the meaning of a provision and a change in the way the law is interpreted by a court. There is a well established rule of statutory interpretation (called the "rule of lenity") which establishes that any ambiguity in a criminal statute must be construed against the state and in favor of the defendant. Criminal statutes are also subject to constitutional challenge of the statutory language is vague, or fails to give clear notice of what conduct is prohibited.

Because the elimination of personal pronouns accomplishes no substantive purpose (the code is already sex neutral), and may cause obscurity or ambiguity in the statutory language which could hamper the effective enforcement of the laws, sections 7 and 8 of the bill amend the law to allow the continued use of personal pronouns in Titles 11 and 12, the Criminal Law and Criminal Procedure Codes.

Section 9. AS 18.66.900(6), Definitions

This section amends the definition of "sexual assault" as used in the violent crimes compensation law to include the crime of Unlawful Exploitation of a Minor (making child pornography). It also deletes a reference to AS 11.51.-130(a)(4), which is repealed by this bill. The content of that statute has been included in the new AS 11.41.438.

Section 10. Repealed sections.

This section repeals those statutes whose content has been incorporated into the provisions discussed above.

§ AS 11.41.432 is new.

Conforming changes have
been made in §§ AS

11.41.434, 436, 438, &

440. "Female breast"

deleted from § 4, &

§ 7 has been added.

Please call if you have
any questions:

Payle

-3428

COMMENTARY AND SECTIONAL ANALYSIS
FOR CSSB 74 (JUDICIARY)

Section 1. AS 11.41.420, Sexual Assault in the Second Degree.

This section does two things. It amends the current Sexual Assault in the Second Degree statute to define the crime as "sexual contact with another person without consent of that person." The amended language is consistent with that used in the Sexual Assault in the First Degree statute, which prohibits sexual penetration without consent. Under the current Sexual Assault in the Second Degree law the prosecutor must prove that the victim was "coerced" to submit to the sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping. Technically, if a defendant physically forces a person to have sexual contact with him, rather than coercing the victim through the use of threats, the defendant has not committed Sexual Assault in the Second Degree. The amended language establishes that any sexual contact with a person without that person's consent is a class B felony.

The second change which this section makes is to raise the current class C felony offense of Sexual Assault in the Third Degree, penetration with a person who is suffering from a mental defect or is incapacitated, to Sexual Assault in the Second Degree, a class B felony (punishable by up to ten years in prison). The language describing the crime has not been altered.

Section 2. This section adds four new statutes to the Criminal Code, as described below.

AS 11.41.432, Sexual Abuse of a Minor in the First Degree.

This section creates a new classification of offense, Sexual Abuse of a Minor in the First Degree. The section prohibits a person 16 years of age or older from engaging in sexual penetration with a person who is under the age of 10. It also prohibits a person 18 years of age or older from engaging in sexual penetration with a person under 10 who is entrusted to the adult's care by authority of law or is his son or daughter, including illegitimate or adopted children and stepchildren.

Under current law, sexual penetration of a child under age 13 (or under age 18 if the adult is the child's parent or guardian) is called Sexual Assault in the First Degree, and is an unclassified felony. (See present AS 11.41.410(a)(3) and (4).) This bill divides this conduct

into two offenses entitled Sexual Abuse of a Minor in the First or Second Degree. The classification of the offense depends upon whether the victim is under 10 years of age, or is age 10 through 12. Sexual Abuse of a Minor in the First Degree (victim under age 10) is an unclassified felony. It carries a maximum sentence of up to 30 years in prison and a presumptive term of eight years upon conviction for a first offense.

AS 11.41.434, Sexual Abuse of a Minor In the Second Degree.

As discussed above, this section creates a new classification of offense, Sexual Abuse of a Minor in the Second Degree. The section prohibits a person 16 years of age or older from engaging in sexual penetration with a person who is age 10, 11 or 12. It also prohibits a person 18 years of age or older from engaging in sexual penetration with a person age 10-18 who is entrusted to the adult's care by authority of law or is his son or daughter, including illegitimate or adopted children and stepchildren.

Basically, this provision takes a portion of the conduct which is currently labelled Sexual Assault in the First Degree (present AS 11.41.410(a)(3) and (4)) and moves it to this new section entitled Sexual Abuse of a Minor in the Second Degree. The conduct is re-classified from an unclassified to a class A felony level; it carries a maximum sentence of up to 20 years in prison, and a presumptive term of five years upon conviction for a first offense.

It is important to remember that the forcible sexual penetration of any person, including a child, would continue to be punishable as Sexual Assault in the First Degree, an unclassified felony.

AS 11.41.436, Sexual Abuse of a Minor in the Third Degree.

This section creates a new classification of crime, Sexual Abuse of a Minor in the Third Degree. It includes all three types of conduct now prohibited in the Sexual Abuse of a Minor statute (AS 11.41.440), but raises the classification of the crime from a C to a B felony level. In subsection (a)(1) the requirement that the defendant be at least four years older than the victim has been added. This language would exempt from prosecution those teenagers who have consensual sexual relations with other teens near their own age (a 17-year-old boy and his 15-year-old girlfriend, for example).

Paragraph 3 creates a new offense to address an omission in existing law. Under current law, sexual contact by a parent or guardian with his own child is a crime only if the

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02-002 (Rev. 2/80)

5/26 - I gave this to Sen. Ray + Bettyjohn for review -