CHAPTER 3
Marital/Intimate Partner Rape

LEARNING OBJECTIVES:
♦ Discuss the connection between marital/intimate partner rape and domestic violence.
♦ Understand the legal history of marital rape in this country.
♦ Describe the rape crisis counseling issues, including safety considerations and the need for an escape plan for the survivor.

Rape may occur in the context of any relationship – whether partners are legally married, living together, or dating . . . and regardless of whether they are in heterosexual, gay, or lesbian relationships. In part because of historic legal exemptions from rape prosecution, marital/intimate partner rape is not as well known as other areas of sexual assault. The counselor needs to understand this background, and also the special counseling implications of partner rape, including planning for the survivor’s safety.

Scope of the Problem

The controlling behaviors characteristic of abusive relationships often are accompanied by sexual violence, including rape. The extent of the overlap of domestic violence and sexual assault has been historically unrecognized in the United States – thus helping to perpetuate the myth that rape is an expression of sexuality, rather than an act of violence. The lack of recognition may reflect the discomfort that many feel about rape within the context of intimate relationships. As a result, survivors of sexual abuse by intimate partners can go without appropriate support services, because their special needs have not been incorporated into service provision models.

The term marital rape has been used for a number of years to describe rape which takes place in a marriage. To expand this term to include other types of intimate relationships, partner rape is used in this manual to refer to sexual assault occurring within the context of any intimate relationship. Therefore, where the terms marital rape, husband or wife appear in this text, they are in reference to specific research or court cases that use that terminology.

Sociologists have pointed out that violence can occur in marriage as a means of trying to resolve problems; sexual assault in marriage also occurs.¹ Sexual abuse can occur in any type of long-term relationship, legally sanctioned, or not, including unmarried heterosexual couples as well as gay and lesbian couples. Regardless of legal status, the dynamics are similar.

Speculations about the prevalence of marital rape depend greatly on how the issue is framed. One study differentiated between “lovers” (defined as an unrelated person with whom the
respondent has had intercourse at least once), “boyfriends,” and “dates.” The distinction between dates and boyfriends was left up to the respondent to make. Had these categories been combined, or if one were to determine the percentage of all women who had been raped by a husband or ex-husband, the calculations would have been entirely different. Nevertheless, however this question is trained and analyzed, partner rape is clearly one of the most prevalent types of rape and, by some measures, it is the most prevalent form.2

Studies undoubtedly underestimate the frequency of the problem, for several reasons. Rape in general is underreported as a result of such concerns as shame and fear of being blamed for the assault. In addition, wives may neither consider forced sexual activity in marriage to be rape, nor realize that it is now considered a crime in many states, including Massachusetts. Women who are raped by their husbands are more likely to blame themselves and remain silent about the rape than women who are raped by strangers.3 Research to date also is likely to underestimate the full scope of partner rape because it has been largely confined to studying rape within legally married couples.

According to the Massachusetts Department of Public Health (DPH), in 14% of cases reported by the state rape crisis centers, the perpetrator was an intimate partner – including dates, spouses, and domestic partners. Another DPH project, the Woman Abuse Tracking in Clinics and Hospitals (WATCH), tracks intimate partner violence documented by hospitals and clinics. There is emerging recognition of the interconnection between battering and rape by rape crisis centers, battered women’s programs, public policy makers, and the criminal justice system. The gay and lesbian community has begun to identify this issue as well. Both the Gay Men’s Domestic Violence Project and the Network for Battered Lesbians include sexual assault in their analysis of intimate partner violence.

Legal History

By 1993, marital rape had become a crime in all 50 states, if force or threat of force is used. According to a survey of state laws completed in March, 1996, by the National Clearinghouse on Marital Rape, 33 states (not including Massachusetts) still allowed exemptions where force is not used; under these exemptions, force generally is not necessary to accomplish a rape if the victim is impaired or incapacitated temporarily or permanently, mentally or physically. The historical events in this country related to marital rape law include:

- 1857 – The first American court (Massachusetts) recognized the spousal rape exemption4 so-called because it established a husband’s immunity from prosecution for rape of his wife.

- 1890 – The North Carolina Supreme Court found a husband guilty for his participation in the rape of his wife by a third party, holding that while he could not be guilty of raping his wife, that privilege is a personal one only.5
• 1899 – A Louisiana court held that a husband could be guilty for aiding and abetting the rape of his wife by a third person, but only if the third party was convicted.6

• 1905 – The Texas Court of Appeals overturned the conviction of a husband who assaulted his wife with intent to commit rape where the marriage was not intact. (The wife had unsuccessfully sought a divorce, and she and her husband had separate bedrooms in the same house.)7

• 1978 – New Jersey courts harshly criticized the underlying premises of marital rape exemption, condemning the marital rape laws as discriminatory toward married women.8

• 1978 – National publicity brought the issue of spousal rape to the attention of the public when an Oregon court acquitted a husband charged with raping his wife; Oregon became the third state to criminalize marital rape.9

• 1980 – The Model Penal Code included portions of marital rape exemption: “The problem with abandoning the immunity in many such situations [of rape by force or threat] is that the law of rape, if applied to spouses, would thrust the prospect of criminal sanctions into the ongoing process of adjustment in the marital relationship.” The code further stated that, in cases where serious bodily injury is inflicted, the “evil” of marital rape may be thought qualitatively different from rape committed by another.10

• 1981 – The Massachusetts Supreme Judicial Court affirmed a lower court’s decision to convict a husband for the rape of his wife.11

• 1984 – A Virginia Court denied the applicability of spousal rape exemption because the rape occurred while the couple was separated. The court held that while there was an implied consent to sexual intercourse in marriage, that consent is reversible.12

• 1984 – The New York Court of Appeals held the marital rape exemption statute unconstitutional in violation of the equal protection clause of the 14th Amendment, in that no rational basis existed for distinguishing between marital rape and non-marital rape. The court upheld the prosecution of a husband who raped and sodomized his wife in front of their two-year-old son while he was subject to a family protective order requiring him to remain away from the home.13

• 1985 – A Georgia court indicted a husband for the rape and aggravated sodomy of his wife, determining the implied consent underpinning of the marital rape exemption to be unfounded, reasoning that women do not consent to being raped simply by marrying.14

• 1991 – The Massachusetts Legislature affirmed the 1981 lower court ruling that there is no exemption for sexual crime for any relationship in the Commonwealth. A
husband’s exemption from prosecution for rape was explicitly prohibited by State legislation.

While this time-line does not show every case brought before a court of law, it reflects the major changes in the laws and their judicial interpretations over the years. There is a noticeable gap in activity between the early 1900s and the 1970s. It was not until the 1978 Oregon case that widespread national attention was once again brought to bear on the issue of marital rape.

**Implications for the Rape Crisis Movement**

Rape crisis counselors can learn a great deal from working with survivors of partner rape because many misconceptions about rape can be traced to misinformation about sexual violence in intimate relationships. A closer look at the dynamics of rape in this context demonstrates how it is used as a violent means to gain power and control.

Studies have indicated that sexual assault is used in abusive relationships to help husbands manipulate their wives’ behavior. Historically, rape was an accepted way of acquiring wives, a custom embedded in Christian and Judaic culture. Susan Brownmiller in *Against Our Will* and Florence Rush in *The Best Kept Secret: Sexual Abuse of Children* provide documentation and analysis of this aspect of our history. Anger, though it appears to be part of the descriptions of many wife rapes, appears to be secondary to a husband’s attempt to dominate or control his wife.15

According to Morton Hunt, one of the first people to write about wife rape:

> The typical marital rapist is a man who still believes that husbands are supposed to “rule” their wives. This extends, he feels, to sexual matters: when he wants her, she should be glad, or at least willing; if she isn’t, he has the right to force her. But in forcing her he gains far more than a few minutes of sexual pleasure. He humbles her and reasserts, in the most emotionally powerful way possible, that he is the ruler and she is the subject.16

Another study showed a correlation between rape and assertions by husbands that their wives were sexually frigid. The researcher found the demands for sex and claims of frigidity preceded sexual assault, with husbands viewing their wives’ refusal of intercourse as grounds for abuse.17 Alleged frigidity was used to blame wives for the assault, and at the same time issue an ultimatum: agree to sex or be forced to submit. These are tactics similarly used by batterers to get what they want from their partners. The manipulation is the same whether the goal is sex, money, time, or forms of obedience.

The spousal rape exemption, retained in part by many states, also affects analysis of the dynamics of rape: it defines rape as sex. A wife’s consent to sex in marriage is viewed as consent to be raped. Recent changes in state laws that recognize some form of marital rape permit married women to prosecute their husbands for rape in some circumstances. At the
same time, however, the message given is that rape is sex, as consented to in marriage, unless it is accompanied by other forms of overt physical violence and injury.

Yet, rape survivors and advocates can attest that rape, while always a crime of violence, may not be “violent” in a manner that can be demonstrated in court. Most rape is perpetrated by dates, significant others, acquaintances, or relatives. Coercion, past violence, and implicit threats of harm – rather than actual “violent force” – are often the weapons. Even when force is used, there is not necessarily physical evidence that can be presented in court. Many survivors choose not to fight back, choosing to avoid greater physical injury or death. They may not be believed unless they can point to bruises, weapons, and an appropriately “villainous” perpetrator. Laws such as the partial rape exemptions may serve to reinforce these norms, and discourage the reporting and prosecution of crimes.

Partner rape presents some unique issues for rape crisis counselors. A counselor must be careful not to judge a survivor’s decisions, including a decision to remain with the perpetrator. Someone who is being sexually assaulted in a relationship has conflicting feelings about the perpetrator. While she may hate the abuse, she may also feel love and concern for the abuser. She may be financially dependent on the abuser, believe that her children “need a father,” or fear that she would be in greater danger if she tried to leave.

As you get to know a survivor, ask about other violence within the relationship that may not have been disclosed at the beginning. If your client is speaking of rape, find out if there is other physical or emotional abuse happening. This will give you a better picture of the survivor’s situation and help you provide more comprehensive services. As appropriate, refer the survivor to local battered women’s programs and legal advocacy programs for counseling, shelter, and other forms of support.

Safety Issues and Escape Planning

Since survivors of partner rape may be in an ongoing in battering relationship or may be stalked, there are important safety issues. These considerations need to be kept in mind at all times. Suggestions for the rape crisis counselor include:

- Establish clear guidelines with the survivor for telephone calls. It may not be safe for the client to receive calls from you at home, or it may be safe only at certain times of the day. Do not leave a message on an answering machine unless you have discussed procedures; perhaps you could leave just your first name with no agency, phone number, or reason for the call, if the survivor feels this is safe. Establish with the survivor what you should say or do if someone else answers the phone.

- For your safety as well as the client’s, assess whether the perpetrator knows – or will try to find out – where counseling sessions take place, and whether he or she would attempt to find the survivor there. Do not meet in the survivor’s home or anywhere open to the perpetrator. Be aware of the presence of weapons, and try to ascertain
whether or not the abuser is likely to be physically violent. Know and follow your agency’s safety and ethics protocols.

- Provide assistance, if necessary, in explaining and/or obtaining a restraining order. Massachusetts law extends eligibility to anyone who has been in a substantial dating relationship, living together, or married.

- If the survivor is no longer living with the perpetrator, help the survivor ensure that her or his environment is as safe as possible by reviewing such measures as securing doors and windows, and making certain that police and trustworthy family members, neighbors, and coworkers know about the situation.

- If the survivor is still residing with the abuser, she or he may choose to leave. This may involve a quick departure or escape (such as in anticipation of being raped or just after an assault). Help the survivor devise a plan of action. The Massachusetts Office for Victim Assistance and local battered women’s programs offer information on what to do and not do in the interest of security; their checklist of essential items to take when leaving, when possible, includes:
  - Identification (driver’s license, birth certificate, Social Security card)
  - Financial (money, credit cards, checkbooks, savings account books, securities, current unpaid bills in survivor’s name)
  - Legal (restraining orders, house deeds, rent receipts, passport, marriage license, divorce decree registration, and insurance papers)
  - Keys (house, car, safety deposit box)
  - Other (medications, jewelry, other small valuables, personal photographs, clothing, address/phone book)\(^\text{18}\)

- Remember that for most battered women, the time immediately after leaving is the most dangerous.

- Do not attempt to “rescue” your client. While her situation may seem to you to be unbearable and extreme, you will be ineffective if you try to compel her to leave, or overstep ethical and safety boundaries.

- Finally, get supervision and support (See Chapter 27: Taking Care of Ourselves). Keep in touch with your supervisor, especially if your client is leaving an abusive situation, filing for divorce, attempting to get custody of her children, or other actions that the perpetrator may perceive as a threat to his or her control over the survivor.

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4 Commonwealth versus Fogerty, 8 Gray, 498, 491 (1857).
5 State versus Donnel, 106 N.C. 722, 11 S.E. 525 (1890).
6 State versus Haines, 51 L. Ann 731, 25 So. at 373 (1899).
7 Frazier versus State, 41 Tex Crim. 142, 86 S.W. 754 (1905).
10 Model Penal Code, American Law Institute, commentary to Section 213.1.
15 Russell, op. cit., p. 246.
17 Gelles and Straus, op. cit.
18 Personal Safety Plan for Victims of Domestic Abuse, SAFEPLAN Massachusetts.