

# Evidence - Wife May Be Compelled To Testify against Husband - *Wyatt v. United States*, 362 U.S. 525 (1960)

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as her husband, and husband and wife must be treated as separate entities. The dissent strongly urged that law enforcement in conspiracy must consider the confidential relationship of marriage, and that the rejection of the common-law rule endangers such relationship.<sup>19</sup> The dissenting opinion further charged that only Congress should, if it so desires, dismiss such a well established rule.<sup>20</sup> The majority of the Court stated, on the other hand, that it would be false to imply that Congress intended to retain the common-law doctrine in light of the present status of married women.

Recent English and Canadian decisions have retained the common-law rule. In *Kowbel v. The Queen*,<sup>21</sup> the court held that such a well established rule should not be judicially repealed.<sup>22</sup> The Privy Council, in *Marwji v. The Queen*,<sup>23</sup> simply stated that the common-law rule was still retained. Apparently consideration was not given to the increased rights of women.

The Supreme Court's decision in the *Dege* case has these effects: (1) It settles the conflicting lower federal court decisions; (2) it will be a binding authority on future federal decisions applying federal conspiracy law; and (3) the decision is persuasive authority for the basis of future state decisions. But the ultimate effect of this decision is to increase married women's liabilities by refusing to recognize certain feudal notions concerning coverture and criminal responsibility.

<sup>19</sup> For discussion of the contrary view see Williams, *Legal Unity of Husband and Wife*, 10 MODERN L. REV. 16-21 (1947).

<sup>20</sup> *Accord*, Dawson v. United States, 10 F.2d 106 (9th Cir.), cert. denied, 271 U.S. 687 (1926).

<sup>21</sup> 110 Can. Cr. Cas. 47, 4 D.L.R. 337 (1954).

<sup>22</sup> *Contra*, dissent in the *Kowbel* case, 4 D.L.R. at 344.

<sup>23</sup> 41 Crim. App. R. 69, 1 All E.R. 385 (Privy Council, 1957).

## EVIDENCE—WIFE MAY BE COMPELLED TO TESTIFY AGAINST HUSBAND

The defendant was indicted under the White Slave Traffic Act (more commonly known as the Mann Act),<sup>1</sup> for knowingly transporting his wife in interstate commerce for the purpose of prostitution. Defendant was convicted in the United States District Court for the Middle District of Alabama; the United States Court of Appeals for the Fifth Circuit affirmed the conviction, and the United States Supreme Court, on certiorari, affirmed the appellate court's decision. The Supreme Court

<sup>1</sup> 18 U.S.C.A. § 2421 (Supp. 1959).

held that this case was within the recognized exception that certain kinds of offenses committed by a party against his spouse will prevent the party from exercising the privilege of excluding the spouse's adverse testimony, and that the spouse may be compelled to testify even over her own objection. *Wyatt v. United States*, 362 U.S. 525 (1960).

The common-law rule is that one spouse cannot testify against the other.<sup>2</sup> The courts have recognized an exception to this rule however, as indicated above in the holding of the Supreme Court in *Wyatt*. By this exception if one spouse is injured by the other, he or she may testify against the offending party. This was brought out at least as early as 1631 in *Lord Audley's Case*,<sup>3</sup> where the husband had instigated another to rape his wife, and the court allowed her to testify against him. The federal courts of appeal have almost unanimously held that Mann Act prosecutions, where the wife is the victim, are within this exception.<sup>4</sup> Actually, only one federal court has held contrary,<sup>5</sup> and this decision has been specifically reversed.<sup>6</sup> But it should be noted that in the *Wyatt* case a federal court held for the first time that a wife can be *compelled* to testify against her husband over her objections.<sup>7</sup>

The Court in the *Wyatt* case justified its decision on the basis that the legislative intent underlying the Mann Act was to protect from themselves, the women with whom it sought to deal—*i.e.*, women who had no independent will of their own. In reaching their decision, the Court almost completely ignored the main rationale in *Hawkins v. United States*,<sup>8</sup> where the wife of the defendant was not allowed to testify against her husband in a Mann Act prosecution. Two factual differences

<sup>2</sup> *United States v. Walker*, 176 F. 2d 564 (2d Cir. 1949); *Brunner v. United States*, 168 F. 2d 281 (6th Cir. 1948); *Paul v. United States*, 79 F. 2d 561 (3d Cir. 1935); *Stein v. Bowman*, 38 U.S. (13 Pet.) 209 (1839).

<sup>3</sup> 3 How. St. Tr. 401 (1631).

<sup>4</sup> *Shores v. United States*, 174 F. 2d 838 (8th Cir. 1949); *Hayes v. United States*, 168 F. 2d 996 (10th Cir. 1948); *Levine v. United States*, 163 F. 2d 992 (5th Cir. 1947); *United States v. Mitchell*, 137 F. 2d 1006 (2d Cir. 1943); *Denning v. United States*, 247 Fed. 463 (5th Cir. 1918); *Pappas v. United States*, 241 Fed. 665 (9th Cir. 1917); *Cohen v. United States*, 214 Fed. 23 (9th Cir. 1914).

<sup>5</sup> *Johnson v. United States*, 221 Fed. 250 (8th Cir. 1915).

<sup>6</sup> *Shores v. United States*, 174 F. 2d 838 (8th Cir. 1949).

<sup>7</sup> In the *Shores* case, *supra* note 6, the court did state that a wife may be compelled to testify against her husband; this statement, however, only constituted dictum. The exact words of the court were: "Nor does the fact that appellant's wife stated on the stand that she did not wish to testify against her husband in any way affect the situation. As a matter of fact, she did not refuse to testify, so as to require the court to compel her to do so, but, even if she had, this would have made no difference." *Shores v. United States*, *supra* at 841.

<sup>8</sup> 358 U.S. 74 (1958).

in *Hawkins* should be noted, however; in opposition to the *Wyatt* case: (1) The wife was willing to testify, although she was not allowed to do so; and (2) she was not the victim. But although the factual situations in *Hawkins* and *Wyatt* are not exactly alike, it would still seem that the following rationale of the *Hawkins* Court is applicable to *Wyatt*:

The basic reason the law has refused to pit wife against husband or husband against wife in a trial where life or liberty is at stake was a belief that such a policy was necessary to foster family peace, not only for the benefit of husband, wife and children, but for the benefit of the public as well. Such a belief has never been unreasonable and is not now.<sup>9</sup>

The majority opinion in *Wyatt* barely mentioned the importance of the marriage relationship, but did find that the need for evidence is sufficient to justify compelling a wife to testify against her husband. It would seem that by not discussing the importance of maintaining the conjugal relationship the court was relegating it to a subordinate position in the realm of public policy. If the reasoning of the *Hawkins* case is losing its force, as the *Wyatt* decision would seem to indicate, then the door would now appear to be open for *allowing* one spouse to testify over the other's objections *in all cases*, and even perhaps for *compelling* such testimony.<sup>10</sup>

The reasoning in the *Wyatt* decision appears to be in conformity with the following remark in the comment to rule 215 of the Model Code of Evidence:<sup>11</sup>

It is now generally agreed that these considerations [*i.e.*, the necessity of protecting the family tranquility and safeguarding the confidential relationship between husband and wife] cannot justify the disqualification of a spouse as a witness or a privilege either in the witness-spouse to refuse to testify or in the party-spouse to prevent the other spouse from testifying.<sup>12</sup>

It might also be noted that the American Bar Association has recommended that the privilege protecting husband and wife from being called as witnesses against each other be abolished, in both civil and criminal

<sup>9</sup> *Id.* at 77.

<sup>10</sup> *Yoder v. United States*, 80 F. 2d 665 (10th Cir. 1935), went so far as to hold that a spouse may testify over her husband's objections in a Mann Act prosecution even though she was not the victim; the decision in *Hawkins v. United States*, 358 U.S. 74 (1958), however, negated this result.

<sup>11</sup> MODEL CODE OF EVIDENCE rule 215 (1942). Rule 215 deals with the disclosure of confidential communication between husband and wife, rather than the specific point involved in the *Wyatt* case, but in the abovementioned statement in the comment to the rule, one finds a thought which seems particularly worthy of noting in connection with *Wyatt*.

<sup>12</sup> MODEL CODE OF EVIDENCE rule 215, comment, at 154 (1942).

cases.<sup>13</sup> Another advocate for the abolition of the privilege is Professor Wigmore, who has stated:

This privilege has no longer any good reason for retention. . . . [T]his marital privilege is the merest anachronism, in legal theory, and an indefensible obstruction to truth, in practice.<sup>14</sup>

Thus the *Wyatt* case would seem to follow the view of those who propose a change in the rule of evidence concerning marital testimony.

<sup>13</sup> 63 A.B.A. REP. 594 (1938).

<sup>14</sup> 8 WIGMORE, EVIDENCE § 2228, at 232 (3d ed. 1940).

### FEDERAL PROCEDURE—FEDERAL DISTRICT COURT CAN TRANSFER ACTION UNDER SECTION 1404 (a) ONLY TO DISTRICT WITH STATUTORY VENUE

Respondents Blaski and others were the original plaintiffs in a patent infringement action brought in the United States District Court for the Northern District of Texas against defendants, who were residents of the City of Dallas, where they maintained their only place of business and where the alleged acts of infringement occurred. Defendants moved, under section 1404(a) of the Judicial Code,<sup>1</sup> to transfer the action to the United States District Court for the Northern District of Illinois. They asserted that such transfer would be for the convenience of the parties and witnesses, in the interest of justice, inasmuch as litigation with regard to the same patent was already pending in the Illinois District Court between the same plaintiffs and other alleged infringers. At the time of filing their motion the defendants waived all objections to the venue of the Illinois District Court if their motion to transfer were granted.

The Texas District Court granted the motion over the objection of the plaintiffs who, relying on the specific venue section regarding civil actions for patent infringements,<sup>2</sup> insisted that the Illinois District Court was not a district "where the action might have been brought" within the meaning of section 1404(a). Plaintiffs' motion for leave to file a petition for a writ of mandamus directing the vacation of the transfer order was denied by the United States Court of Appeals for the Fifth Circuit.<sup>3</sup>

<sup>1</sup> 28 U.S.C.A. § 1404 (a) (Supp. 1959). Change of venue—" (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

<sup>2</sup> 28 U.S.C.A. § 1400 (b) (Supp. 1959). Patents and copyrights—" (b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

<sup>3</sup> *Ex parte Blaski*, 245 F. 2d 737 (5th Cir. 1957).