

# Marital Torts: Issues, Trends, and Practical Concerns in Pursuing Claims

ROBERT J. DURST, II  
BETH G. BALDINGER

Lawrenceville, New Jersey

Recent statistics prove that the most dangerous place for a woman in America today is her own home. Since at least 1988, more women are injured as a result of domestic violence than from heart attacks, cancer, strokes, car crashes, muggings, and rapes combined.

- In 1993, nearly 1,400 women were killed by their male partners. This means that every day four to five women die in the United States due to domestic violence.
- Every 16 seconds, a woman is beaten by her male partner.
- 95 percent of all domestic violence victims are women.<sup>1</sup>

Domestic violence is a pattern of coercive interaction that inevitably changes the dynamics of the intimate relationship within which it occurs. Once the pattern of coercive control is established, both parties understand the meaning of specific actions and words within the context of their continually changing relationship. It is similar to what occurs when we come to understand the meaning of seemingly innocuous behaviors within our families: the "silent treatment," a glaring look, or a critical tone.<sup>2</sup>

Domestic violence is learned behavior that gains reinforcement through power, control, and fear. Domestic violence or abuse takes many forms: physical, verbal, mental, psychological, and sexual.

Physical abuse may include punching, slapping, pushing, choking, and throwing objects. Sexual abuse may include forcing unwanted sex acts and forcing engagement in sexual activity. Psychological abuse includes creating a fear of safety for one's self or children, humiliation, constant degradation, isolation from family and friends, denial, intimidation and blaming, financial control and dependence, and stalking.

There is no stereotype of either the victim or the perpetrator; domestic violence occurs in 50 to 60 percent of American families, with the woman most commonly the victim.<sup>3</sup> Abuse occurs across every race, ethnic background, educational level, and socioeconomic group.<sup>4</sup>

The most common question of outsiders to this problem is, "Why doesn't she just leave?" The

---

*Robert J. Durst, II is a shareholder with the law firm of Stark & Stark in Lawrenceville, New Jersey, where he manages the family law department. He has been selected as one of the top 15 divorce lawyers in New Jersey, and he serves as president of the New Jersey chapter of the American Academy of Matrimonial Lawyers and as chairperson of the American Bar Association Family Law Section's national committee on marital torts.*

*Beth G. Baldinger is a shareholder with Stark & Stark and practices in the family law department and the personal injury field, with an emphasis in representing crime victims in civil cases. She is the state delegate of Trial Lawyers for Public Justice and has received numerous awards for her work on behalf of victims, including those of domestic violence.*

answer lies in the fact that leaving does not stop the violence or solve the problem. Most men who batter are terrified of separation because it constitutes a loss of what they control. It has been found that a battered woman's life may be in greater jeopardy when she attempts to leave the abuser.<sup>5</sup>

---

*In addition to tort claims, victims of domestic violence may bring gender-based claims.*

---

Battered women's syndrome (BWS) is a psychological condition that explains why women stay in abusive relationships. BWS encompasses a series of common characteristics that appear in women who are abused physically and/or psychologically over an extended period of time by the dominant male figure in their lives. In psychology, BWS is a subcategory of post-traumatic stress disorder described in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV), published in 1994 by the American Psychiatric Association.<sup>6</sup>

BWS results from domestic abuse that is cyclical and consists of three phases. The first phase, the "tension-building stage," is characterized by minor battering incidents and verbal abuse while the woman, who may be fearful, attempts to placate her abuser to stop more serious violence. The second phase, the "acute battering incident," is characterized by more severe battering due to either a triggering event in the abuser's life or the woman's inability to control the anger or fear she experienced during the first phase. The third phase is generally characterized by peaceful, loving behavior and remorse from the abuser, including promises that it will never happen again. This period of calm and normalcy ends when the cycle begins again.

It is estimated that domestic abuse costs this country \$5 billion to \$10 billion a year in health care, criminal justice, and social expenses.<sup>7</sup> Since the 1970s, increased recognition of the problem of domestic violence has triggered responses in all sectors of society, with the common goal being to break the cycle of violence.

## HISTORICAL PERSPECTIVE

The history of how domestic violence has been treated goes a long way toward explaining how the cycle of violence developed to epidemic levels. Until the 20th century, the laws in this country

actually condoned domestic violence, following the early common law "rule of thumb" that allowed a husband to physically and forcefully strike, restrain, and confine his wife using any reasonable instrument up to a rod, so long as it was no thicker than the man's thumb.<sup>8</sup>

There was no civil or criminal action for domestic violence, for under common law husband and wife were considered a single person for purposes of property, contract, and most legal rights. The first changes in American jurisprudence acknowledging the wrongfulness of beating one's wife occurred in the criminal arena, and by the 1870s, courts finally started to acknowledge that assaulting one's wife was a crime.<sup>9</sup>

The right of a wife to file a civil claim for assault against her husband significantly lagged behind progress in the criminal forum. As of 1920, the majority of states still did not permit assertion of spousal assault claims.<sup>10</sup> One of the earliest successful civil cases arose in Alabama, wherein the court upheld a wife's suit against her husband for assault, finding it was proper under a state statute, the Married Women's Act, which allowed married women the rights of contract, property ownership, and filing of suits in their own names.<sup>11</sup>

## MARITAL TORT CLAIMS

Today, with the abolishment of interspousal immunity either partially or totally in all states (except Hawaii) and greater understanding of domestic violence, a variety of tort actions have been brought against spouses around the country. The legal theories supporting marital tort claims are diversified based on the particular incidents of domestic violence: assault and battery;<sup>12</sup> false imprisonment;<sup>13</sup> intentional or reckless infliction of emotional distress;<sup>14</sup> intentional interference with child custody or visitation;<sup>15</sup> wrongful death;<sup>16</sup> defamation, libel, and slander;<sup>17</sup> tortious transmission of a sexual disease;<sup>18</sup> invasion of privacy by illegal wiretap;<sup>19</sup> abuse of process;<sup>20</sup> malicious prosecution;<sup>21</sup> negligence;<sup>22</sup> negligence per se;<sup>23</sup> and battered women's syndrome.<sup>24</sup>

In addition to tort claims, victims of domestic violence may bring gender-based claims. The Violence Against Women Act (VAWA) creates a federal civil rights cause of action in either federal or state court for all persons who are victims of gender-based violence.<sup>25</sup> A "crime of violence" is an act that is serious enough to constitute a felony, which generally is a crime punishable by imprisonment,

usually for more than one year.<sup>26</sup> The term "motivated by gender" means the act of violence was "committed because of gender or on the basis of gender and due, at least in part, to an animus based on the victim's gender."<sup>27</sup>

There are four basic elements to a VAWA claim: (1) the act of violence was committed "because of" the victim's gender; (2) the violent act was motivated, at least in part, by gender-based animus; (3) the act or series of acts amount to a felony under either federal or state law; and (4) damages. The remedies available include compensatory and punitive damages, injunctive relief, and attorney fees.

VAWA has been asserted in a number of cases with varying results. In the divorce suit of *Seaton v. Seaton*,<sup>28</sup> the wife also sued her husband for "controlling, deceitful and abusing behavior," asserting she was "the victim of conspiracy, fraud, physical and sexual abuse and emotional suffering" and seeking damages under state tort laws and VAWA. The husband moved to dismiss, arguing VAWA was an unconstitutional exercise of power under the commerce clause and 14th Amendment, which claims were rejected when the district court affirmed the constitutionality of VAWA.

Pursuing marital tort claims should be an endeavor to achieve justice. Employing traditional legal principles and fashioning rights and remedies to fit the facts presented will expand the options for civil redress.

## PRACTICAL CONCERNS

### Mandatory or Permissive Joinder of Tort Actions with Divorce Proceedings

Each jurisdiction has addressed the issue as to whether a tort action between spouses can or must be joined with an action for dissolution of the marriage. Jurisdictions vary with regard to their rules, regulations, constitutional provisions, or legislative enactments governing joinder of actions and claims.

In an increasing number of jurisdictions, courts have addressed the issue of permissible joinder, whether a tort action brought by one spouse against the other may be joined with the divorce proceeding and whether and under what circumstances the two actions should be combined or severed for trial. The related issue is whether failure to join a tort claim with a divorce action results in the tort claim being barred on the grounds of either issue preclusion or merger and bar.

Some jurisdictions prohibit joinder of marital tort claims with marital dissolution proceedings. In the case of *Ward v. Ward*,<sup>29</sup> the Vermont Supreme Court held that even though the state's general rule on joinder allows a party to join as many legal and equitable claims as that party has against an opposing party, it is not permissible to join an interspousal tort claim with a divorce proceeding. In *Simmons v. Simmons*,<sup>30</sup> the Colorado Court of Appeals held that neither permissive nor compulsory joinder of interspousal tort claims with dissolution-of-marriage proceedings is permitted.

---

*One of the critical barriers to address at the outset in considering a marital tort claim is what is the applicable statute of limitations in the jurisdiction where the abuse occurred.*

---

Other jurisdictions mandate joinder of the marital tort claims with dissolution proceedings. In *Tevis v. Tevis*,<sup>31</sup> the New Jersey Supreme Court ruled that where a marital tort occurs prior to the institution of a divorce action, then a spouse has an obligation to join it with the divorce proceedings or the claim will be barred by the entire controversy doctrine.<sup>32</sup> If the tort occurs after separation, then there may be equitable grounds and compelling reasons to allow a later, separate claim. Some courts have held that while joinder may be allowed, it is not compulsory.<sup>33</sup> Other jurisdictions hold joinder of the claims is compulsory.<sup>34</sup>

The rationale in favor of joining these two claims is that it avoids duplicative litigation on the same facts and settles all disputes or matters existing between the parties. However, it is important that courts avoid awarding double recovery; one spouse should not be allowed to recover tort damages as well as a disproportionate division of community property or marital assets based on the same conduct.<sup>35</sup>

Assessing the status of the joinder rule on this issue and advising the client of his or her rights and remedies is essential to formulating the strategy of the claims to be asserted.

### Statute of Limitations

One of the critical barriers to address at the outset in considering a marital tort claim is what is the applicable statute of limitations in the jurisdiction where the abuse occurred. An analysis should be conducted as to when the various acts of abuse

occurred, when the statute of limitations technically expires or expired, and whether there are any statutory or judicial provisions for tolling the time periods such as insanity, duress, or estoppel. The rationale supporting application of tolling provisions is that survivors of domestic abuse often are incapable of taking action to stop the abuse while in the relationship—and much less capable of taking any type of legal action against their abusers.

---

*The argument that has been most successfully asserted is that BWS is a continuous tort that evolves from a continuous cycle of domestic violence.*

---

Recently, courts have embraced public recognition of the great extent and seriousness of domestic violence and, in appropriate cases, have carved out exceptions to a strict application of statute-of-limitations provisions such as the *continuous tort doctrine*. The continuous tort doctrine provides that where

no single incident in a continuous chain of tortious activity can fairly or realistically be identified as the cause of significant harm, it is proper to regard the cumulative effect if the conduct is actionable. Under this doctrine, the Statute of Limitations does not start to run until the plaintiff knows or should have known of the defendant's wrongful conduct.<sup>36</sup>

In such cases, the cause of action is deemed to have accrued, commencing the running of the statute of limitations, at the time the tortious conduct ceases.<sup>37</sup>

As the continuing tort doctrine has long been applied to a variety of actions such as medical malpractice cases, professional malpractice cases, and trespass and nuisance suits, it has recently been applied to claims for intentional infliction of emotional distress, particularly in the field of domestic violence. The argument that has been most successfully asserted is that BWS is a continuous tort that evolves from a continuous cycle of domestic violence.

The psychological components of BWS, such as "learned helplessness," present compelling reasons to toll the statute of limitations. It has been found that a battered woman suffers from distortions in perception, believing that her batterer is omnipotent and that no one can help her. Thus, she limits the number of responses she feels are possible or safe to make.<sup>38</sup> Moreover, the third phase of the cycle of

violence, "the honeymoon phase," provides positive reinforcement for the woman to stay in the relationship. Alternatively, the batterer will not permit the woman to leave and in many cases threatens homicide or suicide or becomes more violent and dangerous if the woman attempts to leave.<sup>39</sup>

In recent years, the recognition of domestic violence, its psychological aftermath, and society's need to provide redress and justice to the victims to break the cycle of violence have all provided the basis for courts to embrace BWS as a continuing tort to toll the statute of limitations.<sup>40</sup> Presenting expert psychological testimony as to a victim's suffering from BWS is essential proof to convince a court to toll the statute of limitations.

### Order and Proof of Damages in a Marital Tort Claim Trial

Damages in a domestic violence tort case embrace both compensatory and punitive damages. Pursuing claims for domestic violence victims poses several unique challenges. First, in many cases, the incidents of physical abuse were not documented with health care providers and not reported to the authorities. Viewing this absence of evidence in the context of BWS provides a plausible explanation for the lack of such documentation. When victims of domestic violence seek medical treatment, they often do not report the true cause of their injuries or illnesses to their physicians; instead, it is common for them to make up explanations for the cause of their injuries. This type of conduct is commonly due to the victim's shame, humiliation, sense of helplessness, or fear of retaliation if the truth is disclosed. Thus, it is common to find victims with medical treatment for a variety of injuries or ailments, including nervous and stress-induced conditions, but with no particular cause being identified. However, the stress in the home environment or the incidents of violence usually are the cause for these injuries or ailments.

Second, it is common for the abuser to inflict injuries in a manner that will not be readily discovered by others, which leads to an absence of other witnesses to the abuse. For example, physical blows or other abuses that might leave marks are often inflicted on areas of the body that are commonly clothed, and thus the injuries are not seen or questioned by others. Also, many types of abuse, such as various forms of coerced sexual acts, do not leave visible signs of injury.

### *Proof of Physical Trauma*

It is advisable to gather all medical treatment records of the victim. After a thorough review, have the victim meet with the doctor(s) and explain the circumstances under which the injury or ailment arose. Most doctors will be willing to find that the patient's disclosure of abuse, albeit after the fact, was the cause of the condition or injury for which treatment was rendered. The forensic psychologist can be used to explain the absence of documented medical proofs or the cover-up explanations previously provided.

### *Proof of Psychological Trauma*

Another daunting component to proving damages in domestic violence cases is the presentation and proof of psychological trauma. In comparison to physical or catastrophic injuries, psychological trauma claims are among the most difficult to present. To succeed in presenting psychological damage claims, attorneys must understand the trauma and have a sound strategy for presenting it. Psychological trauma is aptly described by Dr. Judith Lewis Herman:

Psychological trauma is an affliction of the powerless. At the moment of trauma, the victim is rendered helpless by overwhelming force. When the force is that of nature, we speak of disasters. When the force is that of other human beings we speak of atrocities. . . . [T]raumatic events are extraordinary, not because they occur rarely, but rather because they overwhelm the ordinary human adaptations to life. Unlike common place misfortunes, traumatic events generally involve threats to life or bodily integrity, or a close personal encounter with violence and death. They confront human beings with extremities of helplessness and terror and evoke the responses of catastrophe.<sup>41</sup>

Many victims of domestic violence suffer from post-traumatic stress disorder (PTSD), which results from experiencing a markedly distressing event that includes actual injury or the threat of harm to oneself or someone close to the PTSD sufferer.<sup>42</sup> There are three major groups of measurable symptoms of PTSD. One group involves persistent intrusive and distressing recollections of the traumatic event, such as dreams or flashbacks. Another group involves persistent avoidance of stimuli associated with the trauma, which includes feelings of detachment or estrangement from others. The third group involves persistent symptoms

of increased arousal, for example, sleep disorders, irritability, outbursts of anger, difficulties in concentrating, hypervigilance, or exaggerated startled responses.<sup>43</sup> Victims of domestic violence have been found to suffer from one or more combinations of these measurable groups of symptoms.

### *Assessing Psychological Harm*

The nature and extent of psychological harm that the victim experiences is strongly related to the character of the traumatic event. The degree of harm also is influenced by the interplay of personal and situational factors.<sup>44</sup> Four primary factors can be used to describe the victim's emotional injury to a judge or jury. These are (1) the nature and extent of physical violence; (2) the victim's relationship with the assailant; (3) the location of the crime; and (4) the victim's emotional condition before the crimes occurred.

With regard to the nature and extent of physical violence, it should be noted that the degree of bodily violation or the victim's perception of it are often leading factors in communicating the emotional impact of the crime. Brutality can be extremely destructive to a victim's sense of competence, self-image, personal safety, and physical integrity. To understand the effect of physical intrusion on a victim, consider how an unexpected physical gesture within one's "personal space" (usually 1½ to 2 feet) can evoke feelings of encroachment and uneasiness. Now imagine the sense of violation a woman feels when she is trapped and being severely beaten or raped.

With regard to the victim's relationship with the assailant, it should be noted that violence perpetrated by someone the victim knows can be experienced more intensely than violence committed by a stranger. When victims are violated by people they trust, respect, or love, the betrayal has an impact in addition to the violation itself. Understand that in cases of domestic violence, underlying these outbursts was a relationship of trust and love that is devastatingly altered by the betrayal in the form of violence.

With regard to the location of the crime, understand that victims often "re-relate" to their victimization where the crimes occurred. For example, if a woman is victimized at her workplace, she may not be able to return to that same work area, or even the same employer. People violated in their own homes by strangers often move to new residences. Translating those experiences to incidents of domestic violence, it is easy to see that

women and children often are literally prisoners in their own homes, unable to escape the violence or the intrusive recollections or reminders presented within their homes where the abuse occurred.

The victim's prior emotional condition and susceptibility to harm are extremely important elements. People who generally are dependent on others who victimize them are more likely to suffer severe psychological injuries from violence. A significant factor in a victim's ability to cope with the aftermath of a crime is his or her sense of control over events. Those who have little control over their daily activities before being victimized are likely to be more susceptible to psychological injury.<sup>45</sup>

---

*Keep in mind that abnormal behavior is normal when it arises from abnormal circumstances such as domestic violence.*

---

Developing your proofs for presenting psychological trauma claims in domestic violence cases requires patience, understanding, and sensitivity. It is extremely important that a detailed prerelationship, relationship, and postrelationship history of the victim be developed. The preincident history should include information about the victim's family, school, occupation, social and recreational activities, medical and psychological treatment, and accidents or other forms of trauma. It is advisable to obtain all relevant records pertaining to these areas of inquiry.

A detailed history of the battering incidents, including details about all three stages in the violence cycle, should be gathered. The horrific details can provide compelling evidence to allow a finder of fact to appreciate the victim's emotional and psychological trauma.

One must also thoroughly communicate with the victim as well as the victim's support network. Unfortunately, it is common to learn that a victim has engaged in some form of self-destructive or anesthetizing behavior such as alcohol or drug abuse, suicide attempts, self-infliction of injuries, or eating disorders. This is consistent with the trauma from the victimization, and such negatives should be turned into positives in terms of presenting the damage claims in court. Keep in mind that abnormal behavior is normal when it arises from abnormal circumstances such as domestic violence.

It is advisable that a forensic psychologist be retained to conduct a full evaluation of the victim. The forensic expert will need all prior and ongoing

medical and psychological counseling records and reports. An expert psychologist will be able to communicate the full scope of psychological trauma with appropriate testimony on causal relation to the abuse to sustain an appropriate verdict. It is also helpful to use lay witnesses such as friends, relatives, or neighbors. Their testimony is often most effective in portraying the hidden scars of the victim's psychological trauma that are difficult for a fact finder to see and evaluate.

### **Trial Procedures and Collectability of a Judgment**

A critical component in evaluating and strategizing a marital tort claim is the issue of collectability of a judgment for damages. If the marital tort claim is joined with the dissolution claim, either by mandatory or permissive joinder, then the victim's counsel will have a relatively easy task in ascertaining what assets, if any, may be used to satisfy a potential damage award for the marital torts.

A marital tort claim brought in the context of a marital dissolution suit raises several concerns. For example, if the victim is seeking both alimony and child support, as well as a judgment for damages sustained as a result of marital torts, consideration should be given as to how such judgment will impact on child support and alimony awards. A related issue, which could prove to be most significant, is whether the marital tort claim gets tried before or after the dissolution proceeding in which marital assets are divided. Further consideration must be given to whether a marital tort victim has the right to a jury trial or whether the marital tort claim will be heard in connection with the matrimonial proceeding before a judge. Each of these potential scenarios has significant implications, both financial and personal, for the parties and their dependents that should be fully evaluated.

These issues were raised before the New Jersey Supreme Court in the matter of *Brennan v. Orban*.<sup>46</sup> In *Brennan*, the supreme court affirmed the policy that when society's interest in vindicating a marital tort through the jury process is the dominant interest in the matter, then the court may order that the marital tort be tried by a jury as long as a jury trial is requested by the litigant. However, the court qualified that ruling by holding that when issues of child welfare, child support, and parenting are intertwined with dissolution of the marriage and the necessary resolution of the marital tort, then the family court may conclude that the marital tort action should be resolved in conjunction with the



divorce action as part of the overall dispute between the parties. While this holding seems to qualify a domestic tort victim's right to a jury trial, it also seeks to strike a balance with the children's interest in the outcome of the litigation.

In addition, the debate remains as to whether the marital tort should be tried before or after the dissolution proceeding. Proponents of the position that the marital tort claim be tried before the dissolution action argue that such an approach would allow the judge to consider the tort award when rendering a decision regarding equitable distribution of property, child support, alimony, and the parties' methods of payment. The disadvantage of such a procedure is that it may delay the divorce proceeding, which may have negative psychological impacts on the parties by prolonging the uncertainty of their marital status.

---

*With regard to collectability of judgments, the defendant's financial assets should be considered as the source for judgment collection.*

---

Proponents of the procedure in which the marital tort action is conducted after the dissolution proceeding believe that to prove punitive damages, one must have complete knowledge of the defendant's financial position. Thus, equitable distribution of the assets in divorce proceedings must be made to know the defendant's financial position, upon which an award of punitive damages can be based.

While there is no straight and fast hard-line rule for the presentation and trial of marital tort claims, knowing the issues and rationale of the respective positions will aid in framing them for judicial resolution.

With regard to collectability of judgments, the defendant's financial assets should be considered as the source for judgment collection. Regardless of whether the acts of domestic violence are pleaded as a negligent tort and/or intentional tort, most homeowner's policies, either by language or by public policy, will seek to exclude these claims from their coverage. Most homeowner's insurance policies are written with various exclusions to coverage. These include intentional act exclusions, violations of penal or criminal statute exclusions, and/or resident relative exclusions.

A recent case, *Merrimack Mutual Fire Ins. Co. v. Coppola*,<sup>47</sup> addressed the issue of homeowner's coverage for marital tort claims. The wife filed for

divorce on the grounds of extreme cruelty and demanded compensatory and punitive damages for physical and emotional abuse. In response, the husband made a claim against his homeowner's insurance company for satisfaction of these claims, which in turn denied coverage and filed a declaratory judgment action. The evidence at trial established the husband had physically assaulted his wife on several occasions. While he admitted to several altercations he claimed he never intended to hurt his wife. While the policy at issue afforded coverage for accidental bodily injury, it specifically excluded "bodily injury . . . which is expected or intended by the insured."

In *Merrimack*, the court of appeals held that it is the intent to injure rather than the intent to commit the act that is important. Even looking at the subjective intent of the actor to determine such intent, the court found that "where, as here, the plaintiff claims no more than the type of injuries that are inherently probable from such conduct, there is no need to inquire into the defendant's subjective intent." Thus, the court was satisfied that no coverage was afforded to the husband as a matter of law for physical assault that occurred during the policy period. However, the court specifically found that an abused spouse's claims may be compensated by a greater share of the marital assets in the divorce action.

## BREAKING THE VIOLENCE CYCLE: MAXIMIZING THE ODDS OF SUCCESS

Presenting marital tort claims poses many procedural and substantive issues. Thorough evaluation of these issues and strategizing the claims presented will maximize the odds of successfully presenting and resolving these tort claims. Hopefully, each and every marital tort claim will serve the needs of the victim and society to break the vicious cycle of domestic violence.

## ENDNOTES

<sup>1</sup>Statistics cited were compiled from the following sources: Bureau of Justice Statistics, Report to the Nation of Crime and Justice: The Data (Washington, D.C., Office of Justice Program, Oct. 1983); Harris Meyer, *The Billion-Dollar Epidemic*, Am. Med. News, Jan. 6, 1992; Nancy Kathleen Sugg & Thomas Inui, *Primary Care Physicians' Response to Domestic Violence: Opening Pandora's Box*, 267 JAMA 3157 (1992).

<sup>2</sup>M.S. Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 58(9) Fla. B.J. 24 (1994).

<sup>3</sup>R. Gelles, *The Violent Home: A Study of Physical Aggression Between Husbands and Wives* (1972).

<sup>4</sup>Lenore Walker, *Understanding Battered Women's Syndrome*, 31(1) Trial 30-37 (1995).

<sup>5</sup>Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes and Policy Implementation*, 49 Am. Psychologist 1077, 1080 (1993). See also Barbara Hart, National Coalition Against Domestic Violence (1988) (women who leave their batterers are at a 75 percent greater risk of being killed by their batterers than those who stay).

<sup>6</sup>Walker, *supra* note 4. See also *Giovine v. Giovine*, 284 N.J. Super. 3 (App. Div. 1995) (BWS is an independent tort for a battered woman who has gone through the cycle at least twice).

<sup>7</sup>Meyer, *supra* note 1.

<sup>8</sup>William Blackstone, 1 Blackstone's Commentaries 444-45; *Bradley v. State*, 2 Miss. 156 (1824).

<sup>9</sup>*Gorman v. State*, 42 Tex. 221 (1875) (unlawful use of a horse whip on wife); *Commonwealth v. McAfee*, 108 Mass. 458 (1871) (striking and kicking wife's head and body).

<sup>10</sup>See Annotation, *Husband and Wife—Right to Sue for Assault*, 6 A.L.R. 1038-48.

<sup>11</sup>*Johnson v. Johnson*, 77 So. 335 (Ala. 1917). But see *Thompson v. Thompson*, 218 U.S. 611 (1910) (state law that granted wives the right to sue separately without joining their husbands did not permit wife to sue husband for assault, as statute was not designed to abrogate traditional immunities inherent in the marital relationship).

<sup>12</sup>*Aubert v. Aubert*, 529 A.2d 909 (N.H. 1987); *Cater v. Cater*, 866 S.W.2d 173 (Ark. 1993); *DeLeon v. Hernandez*, 814 S.W.2d 531 (Tex. Ct. App. 1991); *Waite v. Waite*, 593 So. 2d 222 (Fla. Dist. Ct. App. 1991), *aff'd*, 618 So. 2d 1360 (Fla. 1993).

<sup>13</sup>*Lorange v. Hays*, 209 P.2d 733 (Ind. 1949); *Catlett v. Catlett*, 388 S.E.2d 14 (Ga. Ct. App. 1989).

<sup>14</sup>*Ruprecht v. Ruprecht*, 252 N.J. Super. (Ch. Div. 1991); *Murphy v. Murphy*, 486 N.Y.S.2d 457 (1985); *Massey v. Massey*, 807 S.W.2d 391 (Tex. Ct. App. 1991); *Hakkila v. Hakkila*, 812 P.2d 1320 (N.M. Ct. App. 1991); *Henriksen v. Cameron*, 622 A.2d 1135 (Me. 1993); *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

<sup>15</sup>*Pankratz v. Willis*, 744 P.2d 8 (Ariz. 1987).

<sup>16</sup>*Herget Nat'l Bank v. Berardi*, 356 N.E.2d 529 (Ill. 1976).

<sup>17</sup>*Nogueira v. Nogueira*, 444 N.E.2d 940 (Mass. 1983).

<sup>18</sup>*G.L. v. M.L.*, 228 N.J. Super. 556 (Sup. Ct. Ch. Div. 1988); *Doe v. Roe*, 267 Cal. Rptr. 564 (1990); *Meany v. Meany*, 631 So. 2d 14 (La. Ct. App. 1993), *cert. granted*, 635 So. 2d 238 (La. 1994), and *rev'd.*, 639 So. 2d 229 (La. 1994).

<sup>19</sup>*Pritchard v. Pritchard*, 732 F.2d 372 (4th Cir. 1984).

<sup>20</sup>*Tedards v. Auty*, 232 N.J. Super. 541 (App. Div. 1989).

<sup>21</sup>*Chauncey v. Niems*, 227 Cal. Rptr. 718 (1986).

<sup>22</sup>*Maharam v. Maharam*, 510 N.Y.S.2d 104 (1986).

<sup>23</sup>*Mammo v. State*, 675 P.2d 1347 (Ariz. Ct. App. 1983).

<sup>24</sup>*Cusseaux v. Pickett*, 279 N.J. Super. 335 (Law Div. 1994);

*Giovine v. Giovine*, 284 N.J. Super. 3 (App. Div. 1995).

<sup>25</sup>42 U.S.C. § 13981.

<sup>26</sup>42 U.S.C. § 13981(d)(2).

<sup>27</sup>42 U.S.C. § 13981(d)(1).

<sup>28</sup>1997 WL 391601 (E.D. Tenn. 1997).

<sup>29</sup>583 A.2d 577 (Vt. 1990).

<sup>30</sup>773 P.2d 602 (Col. Ct. App. 1988).

<sup>31</sup>400 A.2d 1189 (N.J. 1979).

<sup>32</sup>Other cases holding that interspousal tort action may be joined with divorce proceedings: *Gubin v. Lodisev*, 494 N.W.2d 782, *app. den.* (Mich. 1992); *Pirodsky v. Pirodsky*, 579 N.Y.S.2d 524 (N.Y. 4th Dept. 1992).

<sup>33</sup>*Cater v. Cater*, 846 S.W.2d 173 (Ark. 1993).

<sup>34</sup>*Tweedley v. Tweedley*, 649 A.2d 630 (N.J. Ch. Div. 1994).

<sup>35</sup>*Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993). See also generally Steven J. Gaynor, J.D., *Joinder of Tort Actions Between Spouses with Proceeding for Dissolution of Marriage*, 4 A.L.R. 5th 972.

<sup>36</sup>*Paige v. United States*, 729 F.2d 818, 821-23 (D.C. Cir. 1984).

<sup>37</sup>*Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-81 (1982).

<sup>38</sup>Lenore E. Walker, Robert K. Thyfult, & Angela Brown, *Beyond the Juror's Ken: Battered Women Syndrome* (Symposium: Family Violence in America), 7 Vt. L. Rev. 1 (Spring 1982).

<sup>39</sup>*Id.*

<sup>40</sup>See *Giovine v. Giovine*, 284 N.J. Super. 3 (App. Div. 1995); *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993); *Cusseaux v. Pickett*, 279 N.J. Super. 335 (Law Div. 1994).

<sup>41</sup>Dr. Judith L. Herman, *Trauma and Recovery* 33 (1992).

<sup>42</sup>American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* (1994).

<sup>43</sup>*Id.* at 209, 210.

<sup>44</sup>Herman, *supra* note 41, at 57.

<sup>45</sup>*Id.* at 60.

<sup>46</sup>678 A.2d 667 (N.J. 1996).

<sup>47</sup>690 A.2d 1059 (N.J. Super. Ct. App. Div. 1997).