

2012

Same Violence, Same Sex, Different Standard: An Examination of Same-Sex Domestic Violence and the Use of Expert Testimony on Battered Woman's Syndrome in Same-Sex Domestic Violence Cases

Leonard D. Pertnoy
St. Thomas University College of Law

Follow this and additional works at: <https://scholarship.stu.edu/stlr>



Part of the [Litigation Commons](#)

Recommended Citation

Leonard D. Pertnoy, *Same Violence, Same Sex, Different Standard: An Examination of Same-Sex Domestic Violence and the Use of Expert Testimony on Battered Woman's Syndrome in Same-Sex Domestic Violence Cases*, 24 ST. THOMAS L. REV. 544 (2012).

Available at: <https://scholarship.stu.edu/stlr/vol24/iss3/7>

This Article is brought to you for free and open access by the STU Law Journals at STU Scholarly Works. It has been accepted for inclusion in St. Thomas Law Review by an authorized editor of STU Scholarly Works. For more information, please contact jacob@stu.edu.

**SAME VIOLENCE, SAME SEX, DIFFERENT
STANDARD:
AN EXAMINATION OF SAME-SEX DOMESTIC
VIOLENCE AND THE USE OF EXPERT
TESTIMONY ON BATTERED WOMAN'S
SYNDROME IN SAME-SEX DOMESTIC
VIOLENCE CASES**

BY: LEONARD D. PERTNOY¹

I. INTRODUCTION

1971 marked the genesis of the Battered Women's Movement and, since then, remarkable strides have been made to address and combat domestic violence.² Today, for example, a myriad of domestic abuse agencies offer an array of services, including: 24-hour hotlines; counseling; safe houses; transitional living; children's services; life skills education; professional training; batterers' intervention; and legal assistance³ These strides, however, cannot extirpate two ugly truths: domestic violence still pervades our society,⁴ and it afflicts more than those in heterosexual relationships.⁵

1. Professor of Law, St. Thomas University School of Law. A.B. 1964, University of Vienna; B.A. 1966, University of Louisville; J.D. 1969, University of Miami School of Law. I would like to extend special thanks to my research assistant and son, Mason Pertnoy, for all his excellent work in preparing this article.

2. See generally Kathleen J. Tierney, *The Battered Women Movement and the Creation of the Wife Beating Problem*, 29 SOC. PROBS. 207 (1982); *History of Battered Women's Movement*, ST. MARTHA'S HALL (2007), http://www.saintmarthas.org/womens_movement.html.

3. E.g., BATTERED WOMEN'S SUPPORT SERVS., *Services for Women*, <http://www.bwss.org/services/> (last visited Oct. 15, 2012); JERSEY BATTERED WOMEN'S SERV. INC., <http://www.jbws.org> (last visited Oct. 15, 2012).

4. See, e.g., Press Release, 24-7 Press Release, Domestic and Family Violence - Still Prevalent and Taboo in 2009 (Mar. 23, 2009), <http://www.24-7pressrelease.com/press-release/domestic-and-family-violence-still-prevalent-and-taboo-in-2009-ai-red-on-social-radio-network-blogtalkradio-93019.php>; see also ENOUGH (Columbia Pictures 2002); SLEEPING WITH THE ENEMY (20th Century Fox 1991).

5. See NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2000, at 1 (Preliminary ed. 2001) [hereinafter NCAVP LGBT REPORT]; cf. Carrie Brown, *Gender-Role Implications on Same-Sex Intimate Partner Abuse*, 23 J. FAM. VIOLENCE 457, 457 (2008) ("Recent research suggests that the [domestic]

Anecdotal evidence and a growing body of literature indicate that domestic abuse is not unique to heterosexuals, but occurs in lesbian, gay, bisexual, and transgender (“LGBT”) relationships, as well.⁶ While it is true that heterosexual women are most often likely to experience intimate violence from their male partners,⁷ empirical data now suggests that those in same-sex relationships are proportionally as likely to experience violence in their relationships.⁸ Moreover, the patterns, modes, and effects of same-sex domestic violence appear to be virtually identical to heterosexual domestic violence.⁹ The following stories reflect these similarities. In fact, by replacing the abuser’s name with the letter “X,” one becomes pressed in determining the contours of the abusive relationship:

We started fighting a lot. X got mad at ridiculous things and then I discovered that X was cheating on me. I confronted X and asked X to leave. Instead of leaving, X hit me and said, ‘Don’t you ever tell me to leave this house!’ The next day, X apologized and promised [to] never hit me again. For the next two years, X beat me up on several occasions and finally broke my jaw. A week later, X knocked me into the wall so hard that I needed stitches in my head. I got a restraining order against X the following day. X called to apologize three days after it had been served. X was being so nice that I let X back into the house and, as soon as X was

abuse epidemic pertains to more than just women and heterosexual couples.”).

6. See NCAVP LGBT REPORT, *supra* note 5, at 1 (noting that, in 2000, the NCAVP agencies reported 4,048 incidents of domestic violence affecting LGBT individuals); Brown, *supra* note 5, at 457; Krisana M. Hodges, Comment, *Trouble in Paradise: Barriers to Addressing Domestic Violence in Lesbian Relationships*, 9 LAW & SEX. 311, 312–13 (1999-2000).

Between the cracks, same-sex domestic violence has thrived, as intimate violence infects many lesbian relationships. The National Coalition of Anti-Violence Programs (“NCAVP”) reports that twenty-five percent to thirty-three percent of same-sex couples experience violence in their relationships. These numbers are consistent with estimates of abuse in heterosexual relationships. The NCAVP documented 2,574 cases of same-sex domestic violence in 1998. Women accounted for forty-eight percent of cases, forty-nine percent were men, three percent were transgendered M-F, and less than one percent transgendered F-M. Such high numbers demand the attention of feminist theorists and gay and lesbian activists. While recognizing same-sex domestic violence has the potential to disrupt existing theories of abuse, continuing to avoid the complicated issues that are inherent to same-sex domestic violence jeopardizes the safety of countless people in gay and lesbian relationships.

Hodges, *supra*.

7. Denise Bricker, Note, *Fatal Defense: Analysis of Battered Women’s Syndrome Expert Testimony for Gay Men and Lesbians Who Kill Abusive Partners*, 58 BROOK. L. REV. 1379, 1383 (1993); see also ANGELA BROWNE, WHEN BATTERED WOMEN KILL 8 (1987) (citing a number of studies that report between ninety-four and ninety-five percent of all partner assaults are women victimized by men).

8. See *infra* notes 42–65 and accompanying text (discussing the prevalence of same-sex domestic violence, and comparing it to the prevalence of domestic violence in heterosexual domestic violence).

9. See *infra* notes 41–42.

inside, X became abusive again.¹⁰

.....

X and I were living together maybe three days when we were in the bedroom and X became angry and hit me. . . . X smashed my guitar. X kicked and stomped my dog out the door. X would rip off my clothes. X would kick and punch me. I often got black and blue. I could never understand what triggered it. Every little frustration or problem seemed to immediately explode into an exaggerated fit of temper. . . . These episodes could go anywhere from one hour to four hours, depending upon how much energy X had.¹¹

Admittedly, these stories sound like the all too familiar accounts of domestic abuse inflicted upon women by men; but, surprisingly, both of these stories are told by gay and lesbian domestic violence survivors, respectively. Part II of this Article examines domestic violence in same-sex relationships,¹² its prevalence, similarities, and differences to domestic violence in heterosexual relationships,¹³ and the issues that those affected by same-sex domestic violence face.¹⁴ Part III focuses on Battered Woman's Syndrome expert testimony and its role in same-sex domestic violence cases.¹⁵ Finally, Part IV suggests that expert testimony must adapt to today's self-defense cases involving victims of same sex violence.¹⁶

II. DOMESTIC VIOLENCE

A. DOMESTIC VIOLENCE DEFINED

There is a wide variation of terms used to describe violence within intimate relationships.¹⁷ Perhaps the most common term is "domestic

10. NCAVP LGBT REPORT, *supra* note 5, at 10. See Conference, *Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence*, 29 FORDHAM URB. LJ. 121 (2001), for additional same-sex domestic violence narratives.

11. Cory Dziggel, *The Perfect Couple*, in NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 62, 63 (Kerry Lobel ed., 1986).

12. See *infra* Part II.

13. See *infra* Part IIB.

14. See *infra* Part IIC.

15. See *infra* Part III.

16. See *infra* Part IV.

17. A. Boyle et al., *Domestic Violence in Emergency Patients*, 21 J. EMERGENCY MED. 9, 9 (2004); see Brown, *supra* note 5, at 457 (providing the legal definition of "intimate partner abuse"); Andrew Richards et al., *Social Inclusion & Diversity Paper No. 5: Research Into Practice* 5 (2003), http://www.broken-rainbow.org.uk/research/Violence_and_Abuse.pdf (providing a number of definitions for "domestic abuse").

violence,” but other oft-used terms include “intimate partner abuse,” “intrapersonal abuse,” “wife beating,” “spousal abuse,” and “dating violence.”¹⁸ For purposes of this Article, the term “domestic violence” is used, because it accurately denotes that men and women both receive and inflict violence, and that violence occurs in a wide range of relationships.¹⁹ As aptly noted by the National Coalition of Anti-Violence Programs (“NCAVP”),²⁰ a leading LGBT social justice task force, the term domestic violence implies nothing specific about “marital status, sexual orientation, gender or gender identity, cohabitation, sexual behavior or other attributes of the partners and/or their relationship.”²¹ In disregarding these variables, the NCAVP eschews the age-old—and incorrect—notation that domestic violence is limited to heterosexual male-to-female violence.²² Instead, the NCAVP subscribes to the view that domestic violence is an inclusive term, meaning: “a set of behaviors used by one person in a relationship to control

18. See NETWORK/LA RED, OPEN MINDS, OPEN DOORS: TRANSFORMING DOMESTIC VIOLENCE PROGRAMS TO INCLUDE LGBTQ SURVIVORS 5 (2010) (noting many terms exist, and “[e]ach has its own connotation”).

19. See *id.* But see NETWORK/LA RED, *supra* note 18, at 5.

At The Network/La Red we prefer the term partner abuse because the focus is on abuse rather than just physical violence. The term partner abuse is also inclusive of relationships other than marriage and co-habitation. Because it contains the term partner, it is also more inclusive of LGBTQ relationships. However, the term does have its limitations, especially when working with youth, because not everyone labels the person they are dating a “partner.” In this manual we primarily use the term partner abuse, but also include the term domestic violence since it is the term most widely recognized by providers who are relying on this manual to make their programs more LGBTQ-inclusive.

Id.

20. See NAT’L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER QUEER AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE 2010, at 5 (Preliminary ed. 2001) [hereinafter NCAVP IPV REPORT].

The National Coalition of Anti-Violence Programs (NCAVP) works to prevent, respond to, and end all forms of violence against and within lesbian, gay, bisexual, transgender, queer and HIV-affected (LGBTQH) communities. NCAVP is a national coalition of local member programs, affiliate organizations, and individuals who create systemic and social change. We strive to increase power, safety, and resources through data analysis, policy advocacy, education, and technical assistance.

Id.

21. NCAVP LGBT REPORT, *supra* note 5, at 4.

22. *Id.* But see Kathleen Finley Duthu, *Why Doesn’t Anyone Talk About Gay And Lesbian Domestic Violence?*, 18 THOMAS JEFFERSON L. REV. 23, 30–31 (1996) (“Domestic violence is generally referred to synonymously as spousal abuse or wife abuse and victims are often called battered wives or battered women. These types of references have placed the focus of domestic violence on heterosexual marital relationships, and inaccurately imply that domestic violence does not apply to gay and lesbian relationships.”); Hodges, *supra* note 6, at 325–26 (“The paradigm of domestic violence is that men abuse women. That men victimize the women they love fits easily into stereotypical and socially-enforced gender dichotomies where female is passive and weak and male is aggressive and strong.”).

the other,”²³ and which “can occur in short or long-term relationships and affect[] all communities,” that is, the heterosexual *as well as* the LGBT communities.²⁴

The Network/La Red, another “social justice organization that works to end partner abuse” in the LGBT community,²⁵ likewise defines domestic violence broadly as “a systemic pattern of behaviors where one person tries to control the thoughts, beliefs, and/or actions of their partner, someone they are dating, or someone they had an intimate relationship with.”²⁶ These definitions more accurately describe domestic violence, because, despite there being “no accepted definition of domestic violence in the medical literature,”²⁷ it is widely accepted that the central element of domestic violence is not the type of relationship, but *power*. In fact, a cursory review of the empirical data on domestic violence makes clear that “the goal of the batterer is to maintain his or her domination and control over the victim.”²⁸

The data also reveals that batterers will resort to physical violence, psychological or emotional abuse, or material or property destruction to maintain control over their victims.²⁹ Physical violence is the “most obvious form of control and coercion an abuser uses to maintain the power balance,” as it is “easy to recognize black eyes, bleeding gashes, and large bruises as signs of domestic violence.”³⁰ Forms of physical violence include pushing, grabbing, slapping, punching, kicking, pulling hair,

23. NCAVP LGBT REPORT, *supra* note 5, at 4; *cf.* Carla M. Da Luz, *A Legal and Social Comparison of Heterosexual and Same-Sex Violence: Similar Inadequacies in Legal Recognition and Response*, 4 S. CA. REV. L. & WOMEN’S STUD. 251, 256 (1994-1995) (defining domestic violence as “the willful infliction of physical or mental injury on a spouse, cohabitant or adult person in a prior or ongoing intimate relationship, including attacking, striking, threatening, sexually abusing, battering or harassing the other party”) (quoting CAL. COMM’N ON THE STATUS OF WOMEN, REPORT ON VIOLENCE 10 (1993)); *cf.* Julia Silva, *Battered & Bruised, Ten Percent*, Oct. 1994, at 8 (defining partner abuse as “a pattern of intimidation, coercion, terrorism, violence, the sum of all past acts of violence and the promise of future violence that achieves enhanced power and control for the perpetrator over his or her partner”) (quoting the definition of partner abuse used by anti-violence activists and gay and lesbian service groups).

24. NCAVP LGBT REPORT, *supra* note 5, at 4.

25. NETWORK/LA RED, *supra* note 18, at 2.

26. *Id.* at 5, 25 (using the terms “partner abuse and “domestic violence” interchangeably).

27. Boyle et al., *supra* note 17, at 9.

28. Da Luz, *supra* note 23, at 256; *cf. id.* (“Battering is about control.”); Duthu, *supra* note 22, at 26 (“[T]he central element [in domestic violence] is power because the batterer deliberately uses various forms of abuse and violence to maintain power and control over the victim.”); NCAVP IPV REPORT, *supra* note 20, at 11 (“Power and control is the central dynamic of IPV . . .”).

29. See Richards et al., *supra* note 17, at 7–8 (listing various forms of abuse).

30. Duthu, *supra* note 22, at 27.

throwing objects, raping, strangulating, stabbing, and shooting.³¹ The latter examples tragically reveal that not all victims survive the corporeal abuse inflicted upon them.³²

Significantly, physical harm is not necessarily the most ubiquitous or harrowing form of violence in all relationships. Some abusers choose to psychologically torment and debase their victims through continual ridicule, humiliation, and threats of physical violence. The abuser may tactically employ a less-obvious mode of abuse, either alone or in combination with physical abuse; namely, he or she may choose to psychologically torment and debase the victim through “continual ridicule, humiliation, and threats of physical violence.”³³ This form of abuse has been variously characterized as “the use of verbal and nonverbal acts which symbolically hurt the other or the use of threats to hurt the other”; “behaviors that can be used to terrorize the victim . . . that do not involve the use of physical force”; the “direct infliction of mental harm” and “threats or limits to the victim’s well-being,” and “an ongoing process in which one individual systematically diminishes and destroys the inner self of another. The essential ideas, feelings, perceptions, and personality characteristics of the victim are constantly belittled.”³⁴

Not surprisingly, “many [victims] report that [psychological abuse] is as harmful or worse than physical abuse they suffer”³⁵ This is particularly true for victims who are emotionally vulnerable, as it can further rupture their sense of self and foster feelings of low self-esteem, self-blame, guilt, rejection, and depression.³⁶

31. See Richards et al., *supra* note 17, at 7.

32. See, e.g., NETWORK/LA RED, *supra* note 18, at 7 (“LGBTQ people have been killed and seriously injured by their partners”); NCAVP IPV REPORT, *supra* note 20, at 6 (noting six documented same-sex domestic violence homicides in 2010, as well as another six same-sex domestic violence homicides in 2009); *Get the Facts: The Facts on Domestic, Dating and Sexual Violence*, FUTURES WITHOUT VIOLENCE, http://www.futureswithoutviolence.org/content/action_center/detail/754 (last visited May 10, 2012) (“On average more than three women a day are murdered by their husbands or boyfriends in the United States. In 2005, 1,181 women were murdered by an intimate partner.”); see also NAT’L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited May 10, 2012) (discussing facts relating to domestic violence homicide and injury); see also Bricker, *supra* note 7, at 1437 (“Intimate violence, especially of the kind that is so severe and frequent as to end in the death of one partner, does not appear to discriminate between heterosexual and same-sex partners.”).

33. Duthu, *supra* note 22, at 27.

34. Vera E. Mouradian, *Abuse in Intimate Relationships: Defining the Multiple Dimensions and Terms* (2000), available at <http://www.musc.edu/vawprevention/research/defining.shtml>.

35. *Id.*

36. See *id.*

Moreover, abusers may willfully destroy, steal, or sell their victim's real or personal property.³⁷ Common examples of this abuse are punching holes in the wall, breaking dishes, slashing tires, tossing clothing and personal effects out of the home, defacing pictures, withdrawing funds, and disposing of precious keepsakes.³⁸ As one victim poignantly recounted: "I returned home from work to find my apartment destroyed; all of my clothes slashed to ribbons, my piano seriously damaged, precious items destroyed or stolen, plants massacred."³⁹ Even more virulent undertakings involve setting fire to the victim's dwelling, discarding the victim's medicine or medical aids, and abducting, injuring, or killing the victim's beloved pet.⁴⁰ These actions can beget the most acute anguish, because the victim's recovery of irreplaceable property is downright impossible. While some victims are eventually able to flee their abusers, others become entrapped in a cycle of violence that can involve each of the aforementioned modes of violence.

B. SIMILARITIES BETWEEN HOMOSEXUAL AND HETEROSEXUAL DOMESTIC VIOLENCE

Domestic violence afflicts the heterosexual and homosexual communities equally in many regards.⁴¹ Ample evidence—both empirical and anecdotal—indicates that the violence itself, its cycle, its effects, and its prevalence appear to be virtually identical in both classes of victims.⁴² This is compelling because, by recognizing these similarities, same-sex domestic violence can be recognized as a valid public health concern equally deserving of attention and resolve.⁴³

37. See Barbara Hart, *Lesbian Battering: An Examination*, in NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 173, 188 (Kerry Lobel ed., 1986) (describing various forms of property damage).

38. See *id.*

39. Bricker, *supra* note 7, at 1393.

40. Cf. Hart, *supra* note 37, at 188; NETWORK/LARED, *supra* note 18, at 27.

41. See Duthu, *supra* note 22, at 30–31.

42. Bricker, *supra* note 7, at 1387; Duthu, *supra* note 22, at 23–24 ("[T]he prevalence and dynamics [of battering in same-sex relationships] are very similar to those of heterosexual battering.").

43. Duthu, *supra* note 22, at 24 ("Like heterosexual domestic violence, society must recognize gay and lesbian domestic violence as an important public concern rather than just a private matter, homosexual issue, or relationship problem."); Duthu, *supra* note 22 at 39 ("Gay and lesbian domestic violence is not a new problem. Rather, it is a newly discovered one that deserves increased attention, research and resources."); see Linda M. Peterman & Charlotte G. Dixon, *Domestic Violence Between Same-Sex Partners: Implications for Counseling*, 81 J. COUNSELING & DEV. 40, 40 (2003) ("In 1992, the U.S. Surgeon General declared domestic violence [the] nation's number one health problem."); cf. *id.* ("Domestic violence is a major

1. The Cyclic Fashion, Forms, and Effects of Domestic Violence

In an overwhelming number of cases, abusive partners repeat a pattern of controlling behavior “when there is a challenge to his or her sense of control.”⁴⁴ This pattern, coined the “cycle of violence” by Lenore Walker in her book, *The Battered Woman*,⁴⁵ applies equally to heterosexual and same-sex couples.⁴⁶ This cycle “has three distinctive and repetitive steps,” beginning with “the tension building stage.”⁴⁷ During this phase, the victim will typically experience minor battering incidents and verbal and psychological abuse.⁴⁸ “Fear and tension set in as the victim attempts to be passive and pleasing to relieve anger and to prevent future incidents.”⁴⁹ “The victim will usually try to control the batterer’s anger by trying to anticipate his or her every whim” and avoid any attempts of confrontation.⁵⁰ Phase two is “the acute battering state” in which some incident inflames the abuser to act in a manner of severe violence.⁵¹ In phase three, dubbed the “honeymoon stage,” the abusive partner appears devoted and affectionate and asks for forgiveness in exchange for promises to end the violence.⁵²

The following story, told by Ana, a twenty-five-year-old transgender female, depicts the cycle of violence with precision:

social and health problem in the United States that affects the family, society, and the future.”); NETWORK/LA RED, *supra* note 18, at 7 (“Partner abuse in LGBTQ [Lesbian, Gay, Bisexual, Transgender and Queer] communities is a serious public health and community issue . . .”). *But see* Da Luz, *supra* note 23, at 268 (“[G]ay men and lesbians refuse to accept that violence occurs within their relationships.”); Duthu, *supra* note 22, at 24 (“Even the gay and lesbian communities have been very reluctant to recognize and talk about same sex domestic violence.”).

44. Da Luz, *supra* note 23, at 257. See Peterman & Dixon, *supra* note 43, at 42, for a thorough discussion of the “cycle of violence.”

45. LENORE E. WALKER, *THE BATTERED WOMAN* (1980).

46. See Suzana Rose, *Lesbian Partner Violence Fact Sheet*, <http://www.musc.edu/vawprevention/lesbianrx/factsheet.shtml> (last visited May 10, 2012) (noting “the cycle of violence occurs in both types of relationships,” gay and straight); *cf. Issues: Domestic Violence*, NAT’L COALITION OF ANTI-VIOLENCE PROGRAMS, <http://ncavp.org/issues/DomesticViolence.aspx> (last visited May 10, 2012) [hereinafter *Issues*] (“[T]he patterns of abusive behavior observed in many types of relationships, including those in which partners share the same gender, very often exhibit the same dynamics as those present in abusive intimate heterosexual relationship.”); Da Luz, *supra* note 23, at 272 (“Gay and lesbian victims of partner abuse may experience the same cycles of violence . . .”).

47. Da Luz, *supra* note 23, at 257.

48. *Id.*

49. *Id.* “The intensity of the violence, and possibly its frequency, will generally increase over time.” *Id.* (citing LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 26 (1984)).

50. Duthu, *supra* note 22, at 30.

51. Da Luz, *supra* note 23, at 257.

52. *Id.*

[When] I started dating Tom . . . [h]e was very gentle and loving and told me, “I will always love you for the woman you are.” He was also very supportive of my educational goals and offered to help with my tuition costs. A month after we’d known each other, I moved in with him. That’s when the violence began. Tom told me that I cared more about my classes and homework than I did about him and that I would quit school if I really loved him. I stayed in school and he began calling me [names]. He also said that he would tell others that I was born male if I ever tried to break up with him. I was frightened of how my classmates and supervisor at work would treat me if they knew I was transgender. I told Tom that I would try harder to be a better girlfriend. I began to clean the house, make all of the meals, and give my paychecks to him. I also began to skip classes to keep Tom pacified. I never thought he would physically hurt me. One evening, however, I came home to find Tom drunk and playing with a gun. He pointed the gun at me, yelled and berated me, and told me that he was going to kill me. I tried to leave the apartment but Tom chased me to the door, locked it, grabbed and choked me. I passed out. When I gained consciousness, he was raping me. He called me names then beat me unconscious. The next morning, Tom apologized and told me he loved me so much that he couldn’t help himself. He promised he’d never hurt me again.⁵³

While this story depicts the “cycle of violence” in a same-sex relationship, heterosexual victims have near identical tales of this cyclic pattern of abuse, as well.⁵⁴

In addition, domestic violence survivor stories reveal that the typical forms of abuse in same-sex relationships are strikingly similar to the modes of violence employed in heterosexual relationships.⁵⁵ Victims in both groups have reported physical assaults,⁵⁶ including rape and sex on

53. NCAVP LGBT REPORT, *supra* note 5, at 7–8.

54. E.g., BROKEN TO BEAUTIFUL, *Stories*, <http://broken-to-beautiful.org/domestic-violence-stories.php/> (last visited May 10, 2012).

55. See COUNCIL ON CRIME & JUST., <http://www.crimeandjustice.org/councilinfo.cfm?plD=60> (last visited May 10, 2012) (“The levels of violence are just as severe and detrimental in same-sex relationships as in heterosexual relationships. Power, coercion, sexual and/or physical assault, economic control, psychological abuse, threats, and emotional abuse are all components of same-sex domestic violence as they are heterosexual domestic violence.”); Da Luz, *supra* note 23, at 272 (“Gay and lesbian victims of partner abuse may experience . . . the same forms of violence—physical and emotional abuse and property destruction—as heterosexual victims.”) (footnotes omitted); see also Brown, *supra* note 5, at 458 (“[T]he abuse inflicted in GLBT couples can be just as invasive as that experienced by heterosexual couples.”); *infra* notes 56–59.

56. Hart, *supra* note 37, at 188. Lesbians report being bitten, scratched, kicked, punched, stomped, slapped, thrown down stairs, locked in closets and deprived of heat or food. *Id.* They

demand;⁵⁷ property damage;⁵⁸ and psychological abuse, such as isolation from friends and family.⁵⁹ Like heterosexual victims, homosexual victims of domestic violence “may encounter one, some or all of these acts of violence.”⁶⁰ Moreover, power/control remains the central element in domestic abuse, irrespective of the contours of the relationships; indeed, the abusive partner in a same-sex relationship relies heavily on the use of violence—physical, emotional, or otherwise—“as an effective means of attaining power and control in the relationship.”⁶¹ As a result, the abusive partner progressively limits the victim’s autonomy, and thus strengthens his or her control over the victim.⁶²

As for the effects of (and reactions to) domestic violence, this, too, is similar in both heterosexual and same-sex relationships.⁶³ As one author noted:

The physical and psychological reactions of gay or lesbian victims are . . . similar to heterosexual victims. Some victims: leave and return a number of times; blame themselves for the violence; experience a sense of low self-esteem; remain emotionally attached to the batterer despite the violence; or use force in self-defense. As in heterosexual relationships, some victims react in all or a few of these ways.⁶⁴

also report being assaulted with “guns, knives, whips, tire irons, cars, tent poles, high-heeled shoes, chair legs, broken bottles, pillows, cigarettes and poison.” *Id.*

57. *Id.* (“Sexual assaults included rape; sex on demand . . . weapons utilized or threatened; forced sex with others; involuntary prostitution . . . [and] sexually degrading language.”).

58. *Id.* Property damage includes “arson; slashing of car tires, clothing, and furniture; pet abuse or destruction; stealing and destruction of property; breaking and entering; pulling out telephones; [and] breaking household items.” *Id.*

59. *Id.* at 189.

60. Bricker, *supra* note 7, at 1391; see NCAVP IPV REPORT, *supra* note 20, at 29 (“[A]n abusive partner may use multiple combined tactics over time to maintain control”). *But see* Brown, *supra* note 5, at 458 (noting that, when compared to heterosexual couples, “both gay and lesbian couples reported experiencing greater instances of emotional abuse”).

61. Da Luz, *supra* note 23, at 272.

62. *Id.*

63. Brown, *supra* note 5, at 458 (“The responses of the abused partner are often manifested in the same way regardless of sexual orientation.”); *cf.* Duthu, *supra* note 22, at 31 (“The victim responds with increasing hopelessness, fear, minimization, denial, and learned helplessness as he or she struggles to rationalize and cope with the partner’s violent behavior.”).

64. Bricker, *supra* note 7, at 1393–94 (footnotes omitted); *cf.* COUNCIL ON CRIME & JUST., <http://www.crimeandjustice.org/councilinfo.cfm?PID=60> (last visited May 10, 2012) (“Reasons why same-sex victims of intimate partner violence remain in abusive relationships mirror the reasons why heterosexual victims stay: fear, isolation, lack of resources, coercion, feelings of guilt, and promises of reform.”); *see also* Da Luz, *supra* note 23, at 273 (“Lesbians may face even deeper guilt than gay men because some lesbians believe that they are not predisposed to violence because of their gender and enlightened lesbianism. As a result, lesbian victims may blame themselves for causing their partners to resort to male-like violence.”).

Another author revealed:

Like heterosexual victims, same-sex domestic violence victims feel responsible for the violent outbreaks and believe that their only options are to try to change and to please their abusive partners. The abuse, however, is not caused by the victims' failings. Any occurrence can result in an outbreak of violence. Therefore, the violence will continue despite the victims' best effort to prevent further violence. Continued abuse serves to convince the victims that they are worthless and helpless.⁶⁵

2. The Prevalence of Heterosexual and Same-Sex Domestic Violence

Another similarity between domestic violence in homosexual and heterosexual relationships is its prevalence, for "it is generally accepted that domestic violence [in heterosexual relationships] occurs in at least the same proportion in homosexual relationships."⁶⁶ Various reports and scholarly articles corroborate this,⁶⁷ and "domestic violence researchers and service practitioners [subscribe to the] view that domestic violence in LGBT relationships is just as widespread as domestic violence in relationships between heterosexual couples."⁶⁸ A NCAVP report, for instance, indicates that domestic violence prevalence ranges from 20-35% among homosexual couples,⁶⁹ while another source notes that it hovers

65. Da Luz, *supra* note 23, at 273.

66. Duthu, *supra* note 22, at 24 (footnotes omitted); see COUNCIL ON CRIME & JUST., <http://www.crimeandjustice.org/councilinfo.cfm?plD=60> (last visited May 10, 2012) ("[S]ame-sex [domestic] violence . . . occurs at the same frequency among same-sex couples as it does among heterosexual couples"); see also *Issues*, *supra* note 46 (noting domestic violence occurs not only in the LGBT community, but also "to LGBT people of every race, ethnicity, class, age, ability or disability, education level, and religion").

67. E.g., NCAVP LGBT REPORT, *supra* note 5, at 5 ("[D]omestic violence in LGBT relationships is just as widespread as domestic violence in relationships between heterosexual couples."); NETWORK/LA RED, *supra* note 18, at 25 ("Partner abuse occurs at a comparable rate in LGBTQ communities as it does in heterosexual relationships."); *Domestic Violence in Gay and Lesbian Relationships*, AARDVARC.ORG, <http://www.aardvarc.org/dv/gay.shtml> (last visited May 10, 2012) ("The rates of domestic violence in same-gender relationships is roughly the same as domestic violence against heterosexual women."); *Domestic Violence in the LGBT Community: A Fact Sheet*, AMERICANPROGRESS.ORG (June 14, 2011), http://www.americanprogress.org/issues/2011/06/lgbt_domestic_violence.html [hereinafter *Fact Sheet*] ("Research indicates that domestic violence among same-sex couples occurs at similar rates as domestic violence among straight couples."); Peterman & Dixon, *supra* note 43, at 40 ("Domestic violence is also prevalent in the gay and lesbian communities, occurring with the same or even greater frequency than in heterosexual communities.") (emphasis added).

68. NCAVP LGBT REPORT, *supra* note 5, at 5.

69. *Id.* (citing Lundy S., *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 NEW ENG. L. REV. 273 (1993)); cf. Jeffrey L. Williams, Jr., *Gay Domestic Violence: The Hidden Epidemic—One Reason Why It is So Hard to Find Out How Many Gay Men are Battered by Their Mates is That We'd Rather Not Know About*

around 21% among heterosexual couples.⁷⁰

As for same-sex domestic violence specifically, another NCAVP report on domestic violence within the LGBT community reports 5,052 incidents of domestic violence in 2010, “an increase of 38.1% from 2009 (3,658 reports).”⁷¹ Given these numbers (as well as the percentage increase of incidents), “[p]artner abuse is a serious problem in gay and lesbian communities,”⁷² and is often deemed the “third most severe health problem facing gay men today,” following both HIV/AIDS and substance abuse.⁷³ Among lesbians, one study reports that domestic violence “occurs in one of four lesbian relationships.”⁷⁴ This is on par with domestic violence in heterosexual relationships, because 25% to 30% of heterosexual women will experience violence by a spouse or boyfriend in her lifetime.⁷⁵

It, N.Y. BLADE (Mar. 18, 2005), <http://www.ncdsv.org/images/GayDVTheHiddenEpidemic.pdf> (“[A]t least 33 percent of people in homosexual relationships are, in fact, abused - a rate comparable to heterosexual relationships.”); *Domestic Violence in Gay Relationships*, GAYCOUNSELLING.ORG, <http://www.gaycounseling.org/domestic-violence.php> (last visited May 10, 2012) (“1 in 4 LGBT people experience domestic violence.”).

70. BROWNE, *supra* note 7, at 5; cf. Karin V. Rhodes et al., *Intimate Partner Violence Identification and Response: Time for a Change in Strategy*, 26 J. GEN. INTERNAL MED. 894, 894 (2011) (noting women in general suffer a lifetime prevalence rate of 22%).

71. NCAVP IPV REPORT, *supra* note 20, at 8, 15.

72. Da Luz, *supra* note 23, at 267–68 (noting domestic violence abuse in same-sex couples is as high as 50%, but more conservative estimates hover around 20%).

73. NCAVP IPV REPORT, *supra* note 20, at 8 (citing DAVID ISLAND & PATRICK LETELLIER, MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE 27 (1991)); see also *Issues*, *supra* note 46 (referencing a study which indicated “that gay and bisexual men experience abuse in intimate partner relationships at a rate of 2 in 5, one comparable to that of [domestic violence] experienced by heterosexual women”); cf. J. Michael Cruz, *Gay Male Domestic Violence & Reasons Victims Stay*, 11 J. MEN’S STUD. 309, 309 (“The basic estimation is that one in five gay men experience domestic violence or abuse.”); Duthu, *supra* note 22, at 28 (“Some researchers even postulate that gay men’s domestic violence may occur at a greater rate than in the heterosexual community and affect an estimated 500,000 victims each year.”).

According to a one study, domestic violence occurs just as often among gay couples as it does among heterosexuals. In fact, according to the research funded in part by the National Institutes of Health in 2004, more than a fifth of the 2,881 men surveyed in New York, Chicago, San Francisco, and Los Angeles had been physically abused by an intimate partner during the previous five years.

Williams, Jr., *supra* note 69.

74. NCAVP IPV REPORT, *supra* note 20, at 8 (citing Gwat-Yong Lie & Sabrina Gentlewarrier, *Intimate Violence in Lesbian Relationships: Discussion of Survey Findings and Practice Implications*, 15 J. SOC. SERV. RESEARCH 46 (1991)).

75. Peterman & Dixon, *supra* note 43, at 40; see *id.* (“Between 2 and 4 million women in the U.S. are physically battered annually by their partners.”); cf. *Domestic Violence Statistics*, AMERICANBAR.ORG, http://www.americanbar.org/groups/domestic_violence/resources/statistics.html (last visited May 10, 2012) (noting a “study conducted in the 50 States and the District of Columbia,” which indicated that “nearly 25% of women . . . were raped and/or physically assaulted by a current or

C. Differences Between Same-Sex and Heterosexual Domestic Violence

The foregoing section illustrates that domestic violence in heterosexual and same-sex couples is remarkably similar—if not identical—in many regards.⁷⁶ Victims of same-sex domestic violence, however, face their own set of concerns not shared by victims of heterosexual domestic violence.⁷⁷ This second set of issues ranges from specialized forms of abuse unique to same-sex relationships⁷⁸ to inadequate access to social services⁷⁹ and mistreatment by the legal system.⁸⁰ As one author aptly noted, these differences must be “understood so that the experiences of heterosexual couples are no longer viewed as the norm and used to approach the dynamics of same-sex partner violence.”⁸¹

1. UNIQUE FACTORS OF SAME-SEX DOMESTIC VIOLENCE

Unique forms of abuse available only against same-sex domestic violence victims include “[o]ut[ing] or threatening to out a partner to friends, family, employers, police or others”;⁸² “[r]einforcing fears that no-

former spouse, cohabiting partner, or dating partner/acquaintance at some time in their lifetime”); *Get the Facts: The Facts on Domestic, Dating and Sexual Violence*, FUTURES WITHOUT VIOLENCE, http://www.futureswithoutviolence.org/content/action_center/detail/754 (last visited May 10, 2012) (“Nearly one in four women in the United States reports experiencing violence by a current or former spouse or boyfriend at some point in her life.”).

76. See *supra* Part II.B.

77. See NCAVP LGBT REPORT, *supra* note 5, at 5; INTIMATE PARTNER ABUSE & RELATIONSHIP VIOLENCE WORKING GROUP, INTIMATE PARTNER ABUSE AND RELATIONSHIP VIOLENCE 3 (2002), <http://www.apa.org/pi/women/programs/violence/partner-violence.pdf> (“Traditional views of gender roles, heterosexism, negative attitudes toward homosexuality, prejudice and discrimination based on sexual orientation contribute to unique issues of same-gendered intimate partner abuse.”); Brown, *supra* note 5, at 458 (discussing the “marked differences” in heterosexual and homosexual domestic violence cases); see also Kathleen O’Brien, *Lesbians Confront Domestic Violence*, STAR LEDGER (Nov. 5, 2007), <http://www.ncdsv.org/images/Lesbians%20Confront%20Domestic%20Violence.pdf> (discussing special concerns faced by lesbian domestic violence victims).

78. See *infra* Part III.1.

79. See *infra* Part III.11.a.

80. See *infra* Part III.11.b.; Duthu, *supra* note 22, at 34 (“Unfortunately, there has been widespread mistreatment of gay men and lesbians in the legal system.”).

81. Brown, *supra* note 5, at 459.

82. NCAVP LGBT REPORT, *supra* note 5, at 5; Brown, *supra* note 5, at 458 (noting victims of same-sex partner abuse “can experience being ‘outed’ by their partner”); *id.* at 461 (revealing that many lesbians reported not going to their families for help, “because they did not know they were lesbians or in a relationship”); Da Luz, *supra* note 23, at 272 (“Particular to same-sex partner abuse, abusive partners might threaten to reveal their victims’ sexual orientation to the victims’ families, friends or co-workers.”).

[T]he batterer may threaten “to out” the victim to family, friends, co-workers and ex-spouses who are not aware of and will not accept his or her sexuality. When forced “out of the closet,” victims

one will help a partner because she/he is lesbian, gay, bisexual or transgender, or that for this reason, the partner ‘deserves’ the abuse’;⁸³ justifying the abuse by convincing a partner that she or he is not “‘really’ a lesbian, gay, bisexual or transgender” individual;⁸⁴ explaining to a partner that “abusive behavior is a normal part of LGBT relationships, or that it cannot be domestic violence because it is occurring between LGBT individuals”;⁸⁵ and “[p]ortraying the violence as mutual and even consensual, especially if the partner attempts to defend against it”⁸⁶

Additionally, because of the prevalence of HIV and AIDS in the LGBT communities,⁸⁷ abusers will often take advantage of and utilize the

may lose child custody, prestigious careers, and valued personal relationships. Since there are few positive gay and lesbian role models, batterers may convince “newly out” partners that their relationship is normal and abuse occurs in all gay or lesbian relationships.

Duthu, *supra* note 22, at 31 (footnotes omitted); Williams, Jr., *supra* note 69 (“The abuser may threaten to tell friends or family that the victim is gay.”). See generally NETWORK/LA RED, *supra* note 18, at 14 (“Outing is the act of revealing that someone is LGBTQ or intersex to someone who doesn’t know. LGBTQ individuals should have the right to choose who they wish to be out to. . . . Abusers may threaten to out their partner to gain power and control over them. Outing someone may cause someone to lose their job, housing, or children and may put their relationships in jeopardy.”).

83. NCAVP LGBT REPORT, *supra* note 5, at 5; Duthu, *supra* note 22, at 31–32 (“Abusers also convince their partners that gays or lesbians are not entitled to legal protection and will be treated badly by the homophobic doctors, shelters, police and court system if he or she seeks help.”).

84. NCAVP LGBT REPORT, *supra* note 5, at 5; cf. NETWORK/LA RED, *supra* note 18, at 27 (stating abusers in same-sex relationships question “the validity of the survivor’s gender identity or sexual orientation” as a means of abuse).

85. NCAVP LGBT REPORT, *supra* note 5, at 5; Da Luz, *supra* note 23, at 268 (noting “gay men and lesbians refuse to accept that violence occurs within their relationships,” because “[g]ay men and lesbians consider themselves enlightened and outside of the traditional heterosexual, male-dominated family in which they consider violence to be an accepted norm”).

86. NCAVP LGBT REPORT, *supra* note 5, at 5; Duthu, *supra* note 22, at 31 (footnotes omitted) (“Batterers also exploit the myth and misconceptions of ‘just fighting’ and ‘mutual battering’ when talking about an incident with the victim, friends, or police to avoid full responsibility for the abuse, especially when the victim has fought back in self-defense.”); see *id.* (“Both the heterosexual and homosexual communities entertain the common misperception that two men or two women involved in a violent incident are ‘just fighting’ or engaged in ‘mutual battering.’”).

Abuse is NOT about both partners just “fighting it out” all the time. Abuse is never mutual. Abuse is not about “two girls in a cat fight” or “boys being boys.” Abuse is one person using power and control OVER another; by definition both partners cannot have the kind of control we’re talking about. Although the abused partner may fight back, there is a difference between self-defense and abuse. The difference lies in the context, intent and effect of the behavior.

NETWORK/LA RED, *supra* note 18, at 25 (footnote omitted).

87. See, e.g., *AIDS Rate 50 Times Higher in Homosexual Men*: Center for Disease Control, LIFESITENEWS.COM (Aug. 26, 2009, 11:15 PM), <http://www.lifesitenews.com/news/archive/ldn/2009/aug/09082609> (announcing the CDC’s estimate that “AIDS is fifty times more prevalent among men who have sex with men (‘MSM’) than the rest of the [United States] population”); *United States HIV & AIDS Statistics Summary*,

stigma attached to the disease. For example, abusers may threaten to disclose their partner's (or his or her own) HIV positive status;⁸⁸ withhold, hide, or discard their partner's medication;⁸⁹ limit their partner's contact with others due to the partner's HIV positive status;⁹⁰ or threaten to or actually infect their partner.⁹¹ Further, with respect to transgendered individuals, abusers may "[w]ithhold[] hormones needed for gender transition";⁹² "refuse[] to let one's partner rest or heal from gender transition-related surgeries";⁹³ refuse to call one's partner by their chosen name and pronoun;⁹⁴ and refer to one's partner's anatomy in a way that "undermines his [or her] gender identity."⁹⁵

Still, more victims of same-sex domestic violence face the unique issue of societal homophobia.⁹⁶ While there is a growing tolerance and acceptance of individuals whom identify as LGBT, there are still many segments of society that view homosexuality as subversive, "sick," and in some cases illegal.⁹⁷ This societal prejudice has a very powerful effect on victims of same-sex domestic violence, because "anti-gay assault or other overt victimization can create considerable distress"⁹⁸

The victims are faced not only with the difficulty of identifying themselves as victims of partner abuse but [also] with the additional trauma

AVERT.ORG, <http://www.avert.org/usa-statistics.htm> (last visited May 10, 2012) ("The main transmission route [of HIV] among males [in 2009] was male-to-male sexual contact (74%)").

88. NCAVP LGBT REPORT, *supra* note 5, at 6.

89. *Id.*

90. *Id.* at 6–7.

91. *Id.* at 7.

92. NETWORK/LA RED, *supra* note 18, at 27.

93. *Id.*

94. *Id.* at 28.

95. *Id.*

96. *Homophobia Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/medical/homophobia> (last visited May 1, 2012) (defining "homophobia" as "irrational fear of, aversion to, or discrimination against homosexuality or homosexuals").

Use of homophobia is the crucial difference between gay and lesbian domestic violence and heterosexual domestic violence. Society's fear and hatred of homosexuality causes isolation and increases the vulnerability of gay men and lesbians to domestic abuse. The same sex batterer frequently uses homophobia as a powerful tool to maintain the control and power imbalance in the relationship in a variety of ways.

Duthu, *supra* note 22, at 31 (footnotes omitted).

97. See, e.g., Bricker, *supra* note 7, at 1400 ("[A]nti-gay bias and stereotypes about gay men and lesbians . . . consistently depict them as aberrant or sick"); Duthu, *supra* note 22, at 27 ("Some persons still mistakenly believe that homosexuality itself is a psychological disorder."); RELIGIOUSTOLERANCE.ORG, http://www.religioustolerance.org/hom_poll2.htm, (last visited May 10, 2012) (providing responses to a Gallop Poll asking, "Do you feel that homosexuality should be considered an acceptable alternative lifestyle or not?").

98. Bricker, *supra* note 7, at 1391; see Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 LAW & SEX. 133, 147 (1991).

of homophobia. Instead of reporting the abuse accurately, the victims may lie about either the nature of their injuries or their abusive partner's gender. The result is increased cases of partner abuse that remain unacknowledged and unreported.⁹⁹

As a result of the homophobia, and thus the underreporting, same-sex domestic violence (unlike heterosexual domestic violence) remains a largely invisible issue. Making things worse, it has not been examined to the same extent as heterosexual domestic violence.¹⁰⁰ Moreover, homophobia towards victims may in many cases prevent judges, prosecutors, police officers, and juries from acting fairly.¹⁰¹

2. SOCIETY'S MALTREATMENT OF SAME-SEX DOMESTIC VIOLENCE VICTIMS

Unfortunately, the plight of LGBT domestic violence victims does not end with their suffering of violence unique to same-sex relationships. Same-sex victims face additional obstacles that emanate from forces outside of their turbulent relationships, namely disparate access to social services and inadequate legal protection by law enforcement and the courts.¹⁰²

99. Da Luz, *supra* note 23, at 269.

100. NCAVP IPV REPORT, *supra* note 20, at 11 ("Current national research regarding the prevalence of [domestic] violence within LGBTQH communities does exist, but it is limited."); *cf.* Da Luz, *supra* note 23, at 268 ("Statistics are difficult to obtain because, for the most part, same-sex partner abuse was not recognized or systematically recorded anywhere in the country until 1987."); Duthu, *supra* note 22, at 24 ("[V]ery little has been published about same sex domestic violence."); Richards et al., *supra* note 17, at 5 ("Research into violence and abuse within same-sex couples is . . . relatively new and, in terms of depth, relatively understudied."). There are no reliable statistics on the prevalence of intimate violence in the gay and lesbian community. Anecdotal evidence from shelter workers, psychologists and anti-violence project personnel, however, indicates that such violence probably occurs at the same rate as it occurs in heterosexual households or in approximately twenty percent of all gay and lesbian relationships. There is some evidence that violence may occur with more frequency between gay men than between lesbians, but here, as elsewhere, too little empirical research has been done. Bricker, *supra* note 7, at 1388–89.

101. Bricker, *supra* note 7, at 1397; Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U. L. REV. 567, 578–79 (1990). "Many judges and legal officials have been educated in domestic violence issues in ways which emphasize the dominant/submissive patriarchal arrangement based on objective criteria such as gender." *Id.* at 579.

102. *E.g.*, Peterman & Dixon, *supra* note 43, at 46 ("Domestic violence victims of same-sex relationships are not equally protected in our society."); *Fact Sheet*, *supra* note 67. Unfortunately, domestic violence victims in same-sex relationships are not receiving the help they need. This is due to the lack of legal recognition of same-sex relationships, law enforcement's failure to identify and properly handle domestic violence cases involving people of the same sex, and the shortage of resources available to victims of same-sex partner domestic abuse.

a. Lack of Social Services

Same-sex victims of abuse do not have the same access to social services as do their heterosexual counterparts.¹⁰³ Tragically, this lack of resources often precludes them from escaping abusive relationships. This is especially true for gay men, because while “domestic violence shelters appear to be increasingly responsive to the needs of lesbian victims, gay male victims are rarely admitted.”¹⁰⁴ In fact, “[s]ervices for gay men are practically nonexistent.”¹⁰⁵ This lies in stark contrast to the hundreds of organizations and shelters committed to assisting women who suffer from domestic violence.¹⁰⁶ One author notes this unfortunate reality and also proffers reasons for its existence.

There are very few agencies that specifically handle same-sex partner abuse. Of the services established originally for heterosexual abused women, there are few shelters, counseling centers and battery hotlines that will discuss partner abuse with gay or lesbian victims or with their abusive partners. The staff at women’s shelters may be unwilling or ill-equipped to assist gay and lesbian victims. Shelters and services were originally created specifically for heterosexual women abused by their heterosexual partners—men. Men as victims and women as abusive partners were not contemplated in developing these services and programs. Abused partners

Fact Sheet, *supra* note 67.

103. Williams, Jr., *supra* note 69 (“Outside of the gay and lesbian anti-violence groups, there aren’t many organizations out there that provide services to gay and lesbian people, specifically in dealing with domestic abuse.”); NCAVP LGBT REPORT, *supra* note 5, at 22. One survivor recounts: “I called a lot of places that claim to give shelter to people who are abused but I found that none of them were willing to give shelter to an HIV+ gay man who is a victim of domestic violence.” NCAVP LGBT REPORT, *supra* note 5, at 22.

104. *Fact Sheet*, *supra* note 67; see Nomi Porat, *Support Groups for Battered Lesbians*, in NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 80 (Kerry Lobel ed., 1986) (noting that, although some battered lesbians can take advantage of the current domestic violence network, many apparently face obstacles to both admission and treatment). Some commentators have attributed this problem to homophobia and heterosexism among shelter workers. See Linda Geraci, *Making Shelters Safe for Lesbians*, in NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 77 (Kerry Lobel ed., 1986) (“[I]t is absolutely vital to work to eliminate homophobia and heterosexism in the shelter environment. . . . As long as the word ‘lesbian’ has the power to produce fear in people, lesbians in shelter will not feel totally comfortable.”).

105. *Fact Sheet*, *supra* note 67; see Bricker, *supra* note 7, at 1393 (citing Phyllis Winfield, *Rare Program Aids Battered Lesbians*, *Gays: Violence Mirrors Heterosexual Incidents*, SEATTLE TIMES, Sept. 24, 1990, at E3 (noting specialized counseling services are available for battered gay men and lesbians in four cities: New York City, Minneapolis, Seattle, and San Francisco)); see also NCAVP LGBT REPORT, *supra* note 5, at 12.

106. See, e.g., BATTERED WOMEN’S SUPPORT SERVS., *supra* note 3.

may also face homophobic shelter workers and residents.¹⁰⁷

It is by no small coincidence that studies have indicated that the availability of services for women has helped decrease the number of female-perpetrated homicides.¹⁰⁸ But while gay men and lesbians lack these services, it is likely that violence and lethality levels will continue to rise.

b. Lack of Legal Protection

i. The Police

Police officers “have been historically unresponsive” to same-sex domestic violence.¹⁰⁹ This outlook has left LGBT victims with little protection from a legal system that promises to safeguard equal protection of the laws.¹¹⁰ Indeed, as a result of police indifference, same-sex victims are much less likely than heterosexual victims to report incidents of violence.¹¹¹ In 2010, for example, only “7.1% of survivors called the police for support, . . . a decrease from 2009 where 21.7% of survivors called the police.”¹¹² According to the NCAVP, “[t]his low number may in

107. Da Luz, *supra* note 23, at 270–71; cf. Peterman & Dixon, *supra* note 43, at 46 (“Social services and legal systems that are designed for heterosexual couples are difficult for homosexual couples to use and access.”).

108. See Angela Browne & Kirk R. Williams, *Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides*, 23 LAW & SOC’Y REV. 76, 91 (1989) (acknowledging a high correlation between the twenty percent decrease in female perpetrated homicides from the years 1979 to 1984 and the presence of emergency shelters and state domestic violence legislation).

109. Bricker, *supra* note 7, at 1396–97.

[The] police . . . [have] failed to recognize same-sex domestic violence and its victims. An official who may identify and faithfully report partner abuse among heterosexuals may ignore the need to report same-sex abuse. The failure of police officers . . . to report incidents of same-sex partner abuse further exacerbates the lack of documented cases. Without police intervention and without a reasonable expectation that gay men and lesbians have adequate remedies under the law, these victims will be reluctant to seek official assistance or to prosecute their batterers.

Da Luz, *supra* note 23, at 269–70 (footnotes omitted).

110. See Da Luz, *supra* note 23, at 274 (“[P]olice are not encouraged or mandated to respond to same-sex partner abuse incidents, to report these incidents, to arrest the abusive partners or to inform the victims of their civil and criminal remedies.”); see also U.S. CONST. amend. XIV, § 1 (“No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

111. *Sexual Orientation and the Law*, 102 HARV. L. REV. 1508, 1542 (1989). The history of conflict between the police and the gay and lesbian community, as well as the history of unprovoked violence by the police against gay men and lesbians, contributes to gay men’s and lesbians’ reluctance to report crime. *Id.* According to one survey of gay men and lesbians in eight cities, 13% of the lesbians and 23% of the gay men reported being victimized by the police due to their sexual orientation. *Id.* at 1542 n.157 (citation omitted).

112. NCAVP IPV REPORT, *supra* note 20, at 31.

part result from the historical distrust within LGBTQH communities towards the police.”¹¹³ Even when the police were contacted, they frequently downplayed the seriousness of the violence between the same-sex couples.¹¹⁴ The NCAVP posits: “Police officers in general are more apt to view violence between LGBT individuals, especially partners of the same gender, as mutual or consensual abuse.”¹¹⁵ Consequently, the abuser skirts arrest, or even worse, the victim is arrested.¹¹⁶ This is often due to the fact that very few police officers receive the training necessary to distinguish the abuser from the victim.¹¹⁷ Alternatively, it may be because “many police officers continue to express homophobia themselves,” so they are not too concerned about fleshing out the identity of abuser versus victim.¹¹⁸

ii. The Courts

Even when victims succeed in having their batterers arrested or when they appear in court to request an order of protection, judges and prosecutors may be unwilling or unable to help the victim. Relief for victims of same-sex domestic violence is generally found in criminal

113. *Id.*; see also NCAVP LGBT REPORT, *supra* note 5, at 7 (“Fear of the police prevents many LGBT victims of domestic violence from seeking the assistance of law enforcement themselves.”).

114. NCAVP LGBT REPORT, *supra* note 5, at 7.

115. *Id.*; *Fact Sheet*, *supra* note 67 (“Gay and lesbian victims are more likely to fight back than are heterosexual women. This can lead law enforcement to conclude that the fighting was mutual, overlooking the larger context of domestic violence and the history of power and control in the relationship.”).

116. NETWORK/LA RED, *supra* note 18, at 27 (noting “[t]here is a greater likelihood of no arrest, wrongful arrest, or dual arrest when [same-sex couples] call[] the police”); Peterman & Dixon, *supra* note 43, at 46 (“[I]t is not uncommon for police to arrest both partners or to arrest the wrong partner. Also, if the violence involves two women, law enforcement officers may not see the severity of the situation and fail to make an arrest.”); Williams, Jr., *supra* note 69 (“Some people in abusive relationships will not report abuse because cops often will not know whom to arrest in a situation such as this. Victims are often left by police or arrested, thus creating more trauma. It’s traumatizing as a victim when you are trying to get assistance from an officer.”); *Fact Sheet*, *supra* note 67 (“In some cases the victim will be detained instead of the aggressor because the latter was physically smaller.”).

117. *Fact Sheet*, *supra* note 67. “Authorities often lack the knowledge of how to handle domestic violence cases involving people of the same gender.” *Id.* “[F]ew police officers receive the training necessary to distinguish the actual abuser in many incidents of LGBT domestic violence, such that the arrest of the victim is not an infrequent occurrence.” NCAVP LGBT REPORT, *supra* note 5, at 7.

118. NCAVP LGBT REPORT, *supra* note 5, at 7; Brown, *supra* note 5, at 461 (“[M]any GLBT individuals find that when they do report instances of partner abuse they encounter discrimination and disbelief.”) “Police officers may exhibit hostility or violence towards LGBTQH people which puts survivors at risk.” NCAVP IPV REPORT, *supra* note 20, at 31.

courts, as opposed to family courts.¹¹⁹ Family courts in many jurisdictions adjudicate domestic violence cases only between married or heterosexual partners who have a child in common.¹²⁰ This leaves same-sex domestic violence victims to seek relief in the criminal courts, which in many cases are not equipped to respond to the victim's unique needs.¹²¹ For example, the criminal courts may require that the abusive partner be arrested or charged with a crime before considering a victim's petition for an order of protection.¹²² Additionally, criminal courts do not provide access to the array of public and private domestic violence services that are considered to be an integral part of the family court system.¹²³

Generally, domestic violence laws provide funding for counseling and shelter space, establish information-gathering systems, and provide for state-sponsored research.¹²⁴ In some cities, a combination of laws and policies encourage the arrest of batterers, provide for protective orders, mandate arrest for violation of those orders, and define certain acts of domestic violence as felonies.¹²⁵ States that do not define domestic violence as including homosexual couples effectively bar gay men and lesbians from these services afforded to heterosexual couples, and as a result, equal protection.

III. BATTERED WOMAN'S SYNDROME AND THE USE OF EXPERT TESTIMONY

While differences are seen in many areas regarding domestic violence, one area where the difference is the most dramatic, and the costs are the highest, is in the use of expert testimony on Battered Woman's Syndrome in same-sex domestic violence cases.

A. WHAT IS BATTERED WOMAN'S SYNDROME?

Battered Woman's Syndrome ("BWS") is characterized as frequent

119. NCAVP LGBT REPORT, *supra* note 5, at 8.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. Bricker, *supra* note 7, at 1398 n.79; *see, e.g.*, N.Y. SOC. SERV. LAW § 459-a - 459-h (McKinney 1987) ("New York State's Domestic Violence Prevention Act provides funding for shelters, services and information gathering services.").

125. Bricker, *supra* note 7, at 1398. For example, in addition to New York State's domestic violence law, the New York City Police Department has a pro-arrest policy. It mandates arrest in certain situations and discourages police officers from using mediation as a technique. *Id.* at 1398 n.80 (citing Leonard Buder, *Ward Orders More Arrests in Domestic Violence*, N.Y. TIMES, Apr. 3, 1984, at B20).

and regular psychological, physical, and sexual abuse at the hands of an intimate partner.¹²⁶ BWS sheds light on certain behavior of the battered woman, such as attempts to leave or cope with the abuse and its damage.¹²⁷ These coping efforts can often lead to destructive behavior, including addictive consumption of alcohol, food, and drugs. Finally, the result can be violent, and lead to homicide.¹²⁸

B. WHEN IS BWS TESTIMONY USED?

Expert testimony regarding BWS is often utilized in criminal cases relating to domestic violence – particularly when the defendant presents a self defense case.¹²⁹ In self-defense cases, the abused victim must satisfy two elements to persuade the court to allow BWS testimony: the battered woman must show that she reasonably believed (1) “that deadly force was necessary to protect herself or others against death or serious bodily harm used, or threatened by the batterer,” and (2) “the use of force was immediately necessary to protect against death or serious bodily injury.”¹³⁰ This evidence is then used to better educate the judge or jury on whether the elements of self-defense have been satisfied.¹³¹ The importance of this evidence is undeniable.¹³²

126. Ellen Leesfield & Mary Ann Dutton-Douglas, “Faith and Love”: Use of Battered Woman Syndrome to Negate Specific Intent, *CHAMPION* 9–12 (1989).

127. *Id.* While BWS was traditionally created to assist women victims, many courts have begun to apply it towards other persons who are victims of domestic violence. *See infra* note 143. Some courts have gone on to rename BWS as battered syndrome or battered person’s syndrome. *Id.* However, for use in this article, BWS can be equally applied to all victims of domestic violence.

128. *Id.*

129. Mary Ann Dutton, *Validity of Battered Woman Syndrome in Criminal Cases Involving Battered Women*, National Institute of Justice, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials* 1–5, 7–30 (Malcolm Gordon ed., 1996).

In a criminal proceeding, the dynamics and effects of battering can become an issue in the self-defense or insanity defense of a battered woman accused of murdering or assaulting their abuser; the charging and sentencing of a battered woman; the duress defense of a batterer woman accused of criminal or illegal conduct through the instigation or coercion of their abuser; the prosecution of cases of domestic violence; to address and explain misconceptions about domestic violence that might be held by a judge
Id.

130. *Id.* at 3. Although many state courts do not impose a duty to retreat for a defendant claiming self-defense, such details may, nevertheless, weigh heavy on the minds of judges and juries may. *Id.*

131. *Id.*; *see also* Com. v. Rodriguez, 418 Mass. 1, 4–5 (1994).

132. Janet Parrish, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases* (Highlights), National Institute of Justice Report, ix–xii. The highlights provide analysis of 238 state court decisions, 31 federal court decisions, as well as 12 state statutes addressed the admissibility of expert testimony on battering and its effects in criminal trials, the types of cases

C. BWS EXPERT TESTIMONY IN CHARGING AND SENTENCING

Expert testimony of BWS is also admitted in an effort to show mitigating factors for sentencing purposes.¹³³ Evidence includes the violence the woman endured in the past, her efforts to protect herself, the psychological damage resulting from this violence, and the context in which the violence occurred.¹³⁴ Despite the importance of such testimony, a small number of states admit evidence of such mitigating factors for purposes unrelated to proving self-defense.¹³⁵ Rather, evidence of BWS is more widely used and therefore more helpful in determining a victim's state of mind and to determine whether a victim truly acted in self-defense.

D. BATTERED WOMAN'S SYNDROME AND THE GAY OR LESBIAN DEFENDANT

In an ideal world, a gay or lesbian defendant asserting BWS would be afforded the same deference towards their suffering and victimization as heterosexual defendants. Unfortunately, this has yet to happen. Gay or lesbian defendants who wish to use BWS to help explain or mitigate their actions against an abusive partner face a great challenge, as this kind of testimony is typically used in only traditional, heterosexual relationships. This places a large hurdle before a gay man or lesbian; the task of proving they are in a similar circumstance of a battered woman in a heterosexual relationship.

For example, in *Green v. State*,¹³⁶ Annette Green was on trial for allegedly murdering her lesbian partner, Yvonne Julio.¹³⁷ During her trial, Green's attorneys provided BWS expert testimony to support her self-defense argument.¹³⁸ But the BWS testimony could not save Green, who was ultimately convicted of second-degree murder.¹³⁹ Male jurors later revealed that, despite believing Green's testimony that she was beaten, they

in which expert testimony was admitted, the showing necessary to introduce such testimony, the scope and relevance of expert testimony, the circumstances under which such testimony triggers an adverse Psychological examination, and the disposition of cases on appeal.

133. *Id.*

134. *Id.*

135. See Margaret M. Prendergast, *Evidence - the Admissibility of Expert Testimony on Battered Woman Syndrome Under the Federal Rules of Evidence - Arcorea v. United States*, 929 F.2d 1235 (8th Cir.), *Cert. Denied*, 112 S. Ct. 312 (1991), 65 TEMP. L. REV. 341, 342 (1992).

136. *Green v. State*, 575 So. 2d 796 (Fla. Dist. Ct. App. 1991).

137. Bricker, *supra* note 7, at 1381

138. *Id.*

139. *Id.*

could not accept that she suffered from BWS.¹⁴⁰ The *Green* verdict only highlights the extreme challenges that gay or lesbian defendants endure in attempting to prove to a jury that he or she suffers from BWS.

One major problem that arises for the gay or lesbian defendant is that BWS expert testimony tends to enforce traditional stereotypes of women.¹⁴¹ The current view of this testimony is one that promotes harmful and degrading stereotypes that the traditional woman is dependent or weak.¹⁴² As noted by scholar Denise Bricker, this view results in a situation where the gay or lesbian defendants, already burdened with many societal stereotypes, are tasked with defending against their charges *and* overcoming the apparent challenge of satisfying the stereotypical female gender role of a victim suffering from BWS.¹⁴³ Experts, at the urging of defense counsel, may be faced with the quandary of attempting to somehow force the victim into this stereotypical gender mold that the jury is willing to accept as acting in self-defense.¹⁴⁴ Ironically, this testimony may bolster the already existing problem of stereotyping, as jurors may attempt to assign the victim and defendant into separate stereotyped gender roles rather than focusing on the elements of self-defense.¹⁴⁵

One of the basic challenges of fitting defendants from same sex relationships into these traditional molds is the lack of size discrepancy between same sex partners.¹⁴⁶ Since the difference in size between partners can be less apparent in same sex relationships than in heterosexual couples, confusion for juries as to assignment of traditional gender roles is a common occurrence.¹⁴⁷ These concerns of traditional stereotypes, still ingrained in our society today, strip the fact-finder's focus from the reasonable fear of imminent danger standard to confusing questions of traditional gender role assignments.

140. *Id.* (citing Arlaine Rockey, *To Male Jurors, Battered Lesbian Fought Back Once Too Often*, MIAMI REVIEW, Oct. 24, 1989, at 8).

141. *Id.* at 1384.

142. Elizabeth Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L.REP. 195, 198, 208–20 (1986).

143. Bricker, *supra* note 7, at 1425–26.

144. *Id.* at 1426.

145. *Id.*

146. *See id.*; *see also* State v. Wanrow, 559 P.2d 548, 558–59 (Wash. Ct. App. 1977).

147. *Id.*; *see also* People v. Huber, 475 N.E.2d 599, 601 (Ill. App. Ct. 1985) (finding the defendant's size was relevant when she was "physically larger than the decedent" in a lesbian self-defense case where there was a history of intimate violence).

E. CREATING A NEW EXPERT TESTIMONY FOR THE GAY OR LESBIAN DEFENDANT

The fundamental purpose of expert testimony on BWS should be to show the jury the defendant's past, violent experiences and to illustrate the defendant's state of mind at the time he or she attacked an abuser. The importance of experts in this role cannot be overstated. Experts can "educate the judge and jury about the common experiences of battered [persons and] . . . explain the context in which an individual battered [person] acted, so as to lend credibility and provide a context to [his or her] explanation of [the] action."¹⁴⁸

While there has been some recognition by the courts of the need to expand BWS beyond the model of a battered woman,¹⁴⁹ courts are still slow in creating a unique BWS model for victims of same sex-domestic violence. Rather, they have tried to apply the traditional model to an untraditional situation.¹⁵⁰ Failing to allow an expert to testify about the gay or lesbian experience, same-sex domestic violence, and BWS as it pertains to a victim of same-sex domestic violence would be tantamount to depriving the gay or lesbian defendant of their fundamental right to be judged fairly without regard to their sexual orientation.¹⁵¹ The need to create a new type of expert testimony on BWS specifically designed to explain the experiences of the battered same-sex domestic violence victim is dire.

IV. CONCLUSION: OVERCOMING THE CHALLENGES

Victims of same-sex domestic violence still face many challenges.

148. Schneider, *supra* note 142, at 201.

149. See, e.g., *People v. Colberg*, 701 N.Y.S. 2d 608, 610 (1999) ("If the claimed elements of being 'battered' are the same regardless of the relationship between the parties or their gender then there is no reason to limit admissibility of expert testimony in a 'battered syndrome' case to only women or children.").

150. Bricker, *supra* note 7, at 1389 n.41. Bricker notes several pertinent cases. See, e.g., *People v. Spencer*, 458 P.2d 43 (Cal. App. Dep't Super. Ct. 1969) (involving lesbian defendant who asserted a heat of passion defense and presented evidence of prior violence against her by the victim, her lesbian lover); *Green*, 575 So. 2d 796 (involving lesbian defendant who presented evidence of prior acts of intimate violence by the victim, her lesbian lover); *Bristow v. State*, 338 So.2d 553 (Fla. Dist. Ct. App. 1976) (involving defendant who asserted self-defense in the murder trial of his gay lover by presenting evidence of being battered by the victim); *People v. Huber*, 475 N.E.2d 599 (Ill. App. Ct. 1985) (involving defendant who presented evidence of prior violence by the victim, her lesbian lover); *Crawford v. State*, 404 A.2d 244 (Md. 1979) (involving defendant who presented evidence of prior violence against the defendant by the victim, her lesbian lover).

151. Bricker, *supra* note 7, at 1436.

Societal prejudices both in and out of the justice system exist, and lack of social services continue. Further, when a victim of same-sex domestic violence retaliates against their abuser, expert testimony that develops the situation, rather than focusing on stereotyped gender roles, is needed. Taking action in three areas will help address the challenges faced by the victims of same-sex domestic violence. First, we must provide a new and comprehensive same-sex domestic violence research study, examining the causes and prevalence of same-sex domestic violence. Second, we must provide more funding and additional social services to same-sex domestic violence victims. Finally, we must create a new expert testimony designed to explain BWS and how it pertains to victims of same-sex domestic violence. Same-sex domestic violence victims should no longer be held to a different standard, but rather it is time that victims in same sex relationships receive equal protection.